Third Issue of Journal of Private International Law for 2023

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

Chukwuma Samuel Adesina Okoli & Abubakri Yekini, "Implied jurisdiction agreements in international commercial contracts: a global comparative perspective"

This article examines the principles of implied jurisdiction agreements and their validity on a global scale. While the existing scholarly literature primarily focuses on express jurisdiction agreements, this study addresses the evident lack of scholarly research works on implied jurisdiction agreements. As such, it contributes to an understanding of implied jurisdiction agreements, providing valuable insights into their practical implications for international commercial contracts. The paper's central question is whether implied jurisdiction agreements are globally valid and should be enforced. To answer this question, the article explores primary and secondary sources from various jurisdictions around the world, including common law, civil law, and mixed legal systems, together with insights from experts in commercial conflict of laws. The paper argues for a cautious approach to the validity of implied jurisdiction agreements, highlighting their potential complexities and uncertainties. It contends that such agreements may lead to needless jurisdictional controversies and distract from the emerging global consensus on international jurisdiction grounds. Given these considerations, the paper concludes that promoting clear and explicit jurisdiction agreements, as supported by the extant international legal frameworks, such as the Hague Conventions of 2005 and 2019, the EU Brussels Ia Regulation, and the Lugano Convention, would provide a more predictable basis for resolving cross-border disputes.

Veena Srirangam, "The governing law of contribution claims: looking beyond *Roberts v SSAFA*"

The governing law of claims for contribution, where the applicable law of the underlying claim is a foreign law, has long posed a knotty problem in English private international law. The Supreme Court's decision in Roberts v Soldiers, Sailors, Airmen and Families Association considered this issue in the context of the common law choice of law rules. This article considers the decision in Roberts and claims for contribution falling within the scope of the Rome II Regulation, the Rome I Regulation as well as the Hague Trusts Convention. It is argued here that claims for contribution arising out of the same liability should be considered as "parasitic" on the underlying claim and should prima facie be governed by the applicable law of the underlying claim.

Weitao Wong, "A principled conflict of laws characterisation of fraud in letters of credit"

This article examines how the issue of fraud in letters of credit (which constitutes a critical exception to the autonomy principle) should be characterised in a conflict of laws analysis; and consequently, which law should apply to determine if fraud has been established. It argues that the fraud issue has thus far been incorrectly subsumed within the letter of credit contract, rather than being correctly characterised as a separate and independent issue. On the basis of fundamental conflict of laws principles and policies, this article advocates that the fraud issue should be characterised separately as a tortious/delictual issue. It then discusses how some of the difficulties of such a conflicts characterisation may be adequately addressed.

Zlatan Meški, Anita Durakovi, Jasmina Alihodži, Shafiqul Hassan & Šejla Handali, "Recognition of talaq in European states – in search of a uniform approach"

The paper aims to answer the question if and under which conditions a talaq performed in an Islamic state may be recognised in European states. The authors provide an analysis of various forms of talaq performed in different Islamic states and reach conclusions on the effects that may be recognised in Europe, with an outlook towards a possible uniform approach. The recognition of talaqs in England and Wales, Germany and Bosnia and Herzegovina are used as examples for different solutions to similar problems before European courts. The EU

legislator has not adopted a uniform approach to the application and recognition of talaqs in the EU. The CJEU got it wrong in Sahyouni II and missed the opportunity to contribute to a uniform EU policy but its subsequent decision in TB opens the door for the CJEU to overturn Sahyouni II if another case concerning a non-EU talaq divorce comes before them. The Hague Divorce Convention of 1970 is an international instrument that provides for appropriate solutions. Ratification by more states in which a talaq is a legally effective form of divorce and by more European states would provide the much-needed security for families moving from Islamic states to Europe.

Sharon Shakargy, "Capacitating personal capacity: cross-border regulation of guardianship alternatives for adults"

Increasing global mobility of people with disabilities, changes in the measures employed to protect them, and growing awareness of their human rights significantly challenge the existing cross-border protection of adults around the world. National legislations are slow to react to this challenge, and the existing solutions are often insufficient. While the Hague Convention on the Protection of Adults (2000) is imperfect, it offers a solution to this problem. This article discusses the changing approach towards people with disabilities and their rights and demonstrates the incompatibility of the local protection of adults with their cross-border protection. The article further explores possible solutions to this problem. It then explains why the Hague Adults Convention is the best solution to this problem and what changes should and could be made in order to improve the solution offered by the Convention even further.

Anna Natalia Schulz, "The principle of the best interests of the child and the principle of mutual trust in the justice systems of EU Member States – Return of a child in cross-border cases within the EU in the light of EU Council Regulation 2019/1111 and the situation in Poland"

The suspension of the enforcement of a return order under the Hague Convention on the Civil Aspects of International Child Abduction and EU law, as well as the admissibility of modifying such an order, remains one of the most sensitive matters in cross-border family disputes. The article analyses EU Council

Regulations 2201/2003 (Brussels IIa) and 2019/1111 (Brussels IIb) in terms of the objectives set by the EU legislator: strengthening the protection of the interests of the child and mutual trust of Member States in their justice systems. The text also refers to Polish law as an example of the evolution of the approach to the analysed issues. It presents its development, highlights the solutions concerning the competences of the Ombudsman for Children, and provides an assessment of the current legal situation in the context of Brussels IIb.

Bich Ngoc Du, "Practical application of the reciprocity principle in the recognition and enforcement of foreign judgments in civil and commercial matters in Vietnam"

The reciprocity principle was first introduced in Vietnam by Decree 83/1998 to allow for the recognition of foreign non-executionary judgments, decisions on family and marriage matters in Vietnam. It was then adapted in the first Civil Procedure Code in 2004 and was later modified in the current Civil Procedure Code for the purpose of recognition and enforcement of foreign judgments from non-treaty countries. This article examines the practical application of this reciprocity principle in Vietnamese courts by analysing cases in which they have recognised or denied recognition to foreign judgments in civil and commercial matters (that is, non-family matters), as well as a recent development in the Supreme Court's Resolution Draft on guidance on the recognition and enforcement of foreign judgments, which adopts a presumed reciprocity approach. The article concludes that the courts have not applied the reciprocity principle in a consistent manner. The resolution for this current problem is for the presumed reciprocity approach to be promulgated soon to facilitate a uniform application in the local courts.

Meltem Ece Oba, "Procedural issues in international bankruptcy under Turkish law"

This article examines the procedural issues in a bankruptcy lawsuit with a foreign element from a Turkish private international law perspective. The article begins with a brief overview of the bankruptcy procedure under Turkish domestic law. It then explores the jurisdiction of Turkish courts in an international bankruptcy

lawsuit in detail. The effects of a foreign choice of court agreement and parallel proceedings are also addressed in discussing the international jurisdiction of Turkish courts. The article also touches upon the debates on the possible legal grounds for the inclusion of assets located abroad to the bankruptcy estate established before Turkish courts considering the approaches of universalism and territorialism. Finally, problems related to the recognition of foreign bankruptcy decisions are examined.

Review Article:

Uglješa Grušic, "Transboundary pollution at the intersection of private and public international law"

This article reviews Guillaume Laganière's *Liability for Transboundary Pollution at the Intersection of Public and Private International Law* (Bloomsbury Publishing, 2022). This book makes a valuable contribution to private international law scholarship by exploring the relationship between public and private international law and the regulatory function of private international law in relation to transboundary pollution. The book's focus on transboundary pollution, however, is narrow. A comprehensive and nuanced regulatory response to contemporary environmental challenges in private international law must also address cases where transnational corporations and global value chains are sued in their home states for environmental damage caused in developing states