Third Issue of Journal of Private International Law for 2024

The third issue of the Journal of Private International Law for 2024 features a special issue in honour of Professor Trevor Hartley.

It provides as follows (with other research articles):

Jacco Bomhoff, Uglješa Grušic & Manuel Penades Fons, "Introduction to the special issue in honour of Professor Trevor Hartley"

Jacco Bomhoff, Uglješa Grušic & Manuel Penades Fons, "Professor Trevor C Hartley's Bibliography"

Jacco Bomhoff, "Law made for man: Trevor Hartley and the making of a "modern approach" in European and private international law"

This article offers an overview and an interpretation of Trevor Hartley's scholarship in the fields of private international law and EU law. It argues that Hartley's work, beginning in the mid-1960s and spanning almost six decades, shows striking affinities with two broader outlooks and genres of legal discourse that have roots in this same period. These can be found, firstly, in the approach of senior English judges committed to "internationalising" the conflict of laws in the post-war era; and, secondly, in the so-called "legal process" current of scholarship that was especially influential in American law schools from the late 1950s onwards. Reading Hartley's writings against these backgrounds can help illuminate, and perhaps to some small extent complicate, two labels he himself has given to his own work: of a "modern approach", in which "law is made for man, not man for the law".

Adrian Briggs, "What remains of the Brussels I Regulation in the English conflict of laws?"

The paper argues that whether we are concerned with retained or assimilated EU laws, or with rules of UK law made as close copies of EU laws, initial encouragement to interpret them as though they were still rules of EU law is coming to be, and should be, replaced by a cooler realisation that, as they no

longer function in English law as cogs in a great European legal construction, they should be reassessed and repurposed to serve the purposes of domestic law. That will mean, for good or ill, that the tangible and intangible effect of the Brussels I Regulation on English law is less, and will come to be much less, than some had supposed.

Hans van Loon, "A view from the Hague"

This article highlights the crucial role of Trevor Hartley as the principal author of the Explanatory Report of the 2005 Hague Choice of Court Convention. His exhaustive and crystal-clear explanations, for example on the Convention's sophisticated rules on intellectual property and its relation to the Brussels I Regulation, are a lasting, indispensable help to its correct interpretation and application. They even shed light on some aspects of the 2019 Hague Judgments Convention. The article also recalls Trevor Hartley's essential role in the European Group for Private International Law, of which he has been an original member since 1991, most of the time as the only representative of a common-law legal system. Lastly, this contribution praises Trevor Hartley's exceptional scholarly and pedagogical qualities, as evidenced notably by his widely used International Commercial Litigation.

Linda Silberman, "Trevor Hartley: champion for the Hague Choice of Court Convention"

This article, in tribute to Professor Trevor Hartley, discusses the debate between Gary Born and *Professor Hartley about whether countries should ratify the Hague Choice of Court Convention. It also explains how that debate contributed to the conclusions reached by a New York City Bar Committee that was asked by the United States State Department for its views on ratification of the Convention.*

Alex Mills, "Assessing the Hague Convention on Choice of Court Agreements 2005"

Almost twenty years after the adoption of the Hague Choice of Court Convention 2005, it may be an appropriate moment to reflect on and assess its legacy to date. This article, part of an issue paying tribute to the work of Professor Trevor Hartley, notes a number of different ways in which the legacy of the Convention

may be evaluated, particularly appreciating the important role of the Explanatory Report co-authored by Professor Hartley. It argues that the Convention should not be judged merely based on the (admittedly limited, but perhaps growing) number of state parties, but also taking into account its wider influence in a number of different respects which may cast a more positive light on its achievement. These include the importance of the Convention to the Hague Conference on Private International Law, the soft power of the Convention, and the role of the Convention in preserving the enforceability of UK judgments based on exclusive jurisdiction agreements in European Union Member States notwithstanding Brexit.

Andrew Dickinson, "Anti-suit injunctions – beyond comity"

This short article considers a theme emerging from Trevor Hartley's writing on the topic of anti-suit injunctions – the significance of the existence of an international treaty that regulates the circumstances in which the States concerned may or must assert, and may or must decline, jurisdiction with respect to the subject matter of the dispute. It examines, in particular, recent case law extending the reach of the European Union's prohibition on anti-suit injunctions within the Brussels I regime, and the place of anti-suit injunctions within the framework of the Hague Choice of Court Convention.

Verónica Ruiz Abou-Nigm, "Iconic asymmetries of our times: "super Highways" and "jungle tracks" in transnational access to justice"

Drawing from Hartley's "Multinational Corporations and the Third World: A Conflict-of-Laws Analysis" where he exposes the "unequal fight" between powerful multinational corporations and the people and communities in "the third world", suggesting that this is partly a consequence of the deficits of legal infrastructures therein, this brief contribution dwells on the global systemic impact of channelling legal proceedings justiciable in the Global South (GS) to courts in the Global North (GN). It takes a private international law and sustainable development perspective and draws attention to the rhetoric and narratives of interdependence between the "super highways" and the "jungle tracks"- the illustrations used by Hartley. The main argument taken forward in

this paper is that to realise private international law's contribution to SDG 16 (peace, justice and strong institutions) responsivity is necessary in jurisdictional decision making in this context to enhance access to justice for all in the GS.

Grace Underhill, "Masterstroke or misguided? Assessing the proposed parallel proceedings solution of the Hague Conference on Private International Law and the likelihood of its acceptance in Australia"

A dispute litigated simultaneously in two different jurisdictions wastes time and resources, and risks inconsistent judgments. In March 2024, the Hague Convention on Private International Law's Working Group on matters related to civil and commercial jurisdiction released its third iteration of draft provisions on parallel proceedings. These provisions represent the groundwork (and one chapter) of a long-awaited international instrument that addresses the assumption and declining of jurisdiction. This article canvasses the proposal's successes and failures in securing the continuance of litigation in a single forum. To assist, this article selects the example of Australia, against whose judicial practice the compatibility of the Working Group's proposal is tested. This exercise identifies fundamental inconsistencies between the two schemes. Those (potentially insurmountable) concerns for judicial practice, alongside bureaucratic stagnation in Australia's policy-making appetite in this area must, it is argued, be balanced against the strong normative influences for Australia's accession to such an agreement. This invites concern for the acceptance of the proposal, and the broader future of the Jurisdiction Project as a whole.

Tobias Lutzi, "What remains of H Limited? Recognition and enforcement of non-EU judgments after Brexit: Journal of Private International Law"

In its controversial decision in H Limited, the Court of Justice held that an English confirmation judgment, transforming two Jordanian judgments into an English one, constituted a judgment in the sense of Articles 2(a) and 39 Brussels Ia and,

as such, qualified for automatic recognition and enforcement in all Member States. The decision has been heavily criticized for seemingly violating the rule against double exequatur and potentially opening a backdoor into the European Area of Justice. As the particular door in question has already been closed with the UK's completed withdrawal from the EU, though, crafty judgment creditors will have to look to other Member States. This paper will make an attempt at identifying those jurisdictions to which they might look. For this purpose, it will first argue that for an enforcement decision to fall under Chapter III of the Regulation, two requirements must be fulfilled: It must be a new decision on the judgment debt (rather than a mere declaration of enforceability) and it must have come out of adversarial proceedings. The paper will then look in more detail at a selection of jurisdictions that might fulfil these two requirements.