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The latest issue of the Dutch Journal on Private International Law (NIPR) has been published. It contains the following contributions.

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Editorial

Mathijs ten Wolde / p. 421

Articles

Steven Stuij, De positie van art. 10:2 BW in het Nederlands burgerlijk procesrecht / p. 423-444

Abstract

Article 10:2 of the Dutch Civil Code stipulates that the rules of private international law as well as the applicable law designated by those rules are to be applied ex officio. There has been a debate as to the positioning of this provision in relation to other rules of civil procedure on party autonomy as a result of two cases of the Dutch Supreme Court ('Hoge Raad'). This contribution will address this problem and discuss different views on the issue of the interaction between Article 10:2 of the Dutch Civil Code and certain provisions of the law of civil procedure.

Jeroen van Hezewijk en Cathalijne van der Plas, De logica van Lindeteves; zijn de regels over internationaal derdenbeslag wel adequaat? / p. 445-470

Abstract

Receivables and other debts owed to a party (e.g., wages, bank balances, etc.) are part of that party's assets. As such, other parties may seek to have recourse to those assets in the context of (pre- or post-) judgment enforcement efforts. In an international context, this presents various legal challenges. This article investigates these challenges by mapping out which (private and public law) interests are at stake when considering the attachment or garnishment of receivables/debts in an international context. It then reviews the Dutch doctrine and case law, in particular the leading 1954 Supreme Court precedent *Lindeteves/Meilink*. It assesses whether the Dutch legal rules adequately address the interests that they purport to protect. The authors conclude that public international law concerns that are sometimes voiced, in particular the so-called 'principle of territoriality', do not substantially restrict the Dutch practice of allowing attachments of and enforcement against (certain) international receivables/debts. The interest of protecting the third-party debtors (i.e., the debtors under the debt that is to be attached) against unfair prejudice (in particular the risk that they might be forced to pay twice: once to the judgment creditor and once to their original creditor, the judgment debtor) is not necessarily optimally served by the Dutch practice. The authors conclude that the Dutch practice is, in some respects, over-protecting and, in other respects, under-protecting the third party. Therefore, certain aspects of the current Dutch framework could be tweaked or reconsidered.

Case notes

Bryan Verheul, In de spiegel van artikel 24 Brussel Ibis? Over de exclusieve bevoegdheidsgronden onder Brussel Ibis in derdelandssituaties na BSH Hausgeräte/Electrolux (C-339/22) / p. 471-486

Abstract

In *BSH Hausgerate*, the Court of Justice of the European Union ('CJEU') was asked to rule on the relationship between Article 24(4) and Article 4(1) Brussels Ibis in the context of infringement proceedings concerning a patent registered in several EU Member States and in Turkey (a third State). While the judgment has far-reaching implications for intellectual property practice, this case note focuses mainly on the issues arising from the fact that the patent in dispute is (also) registered in Turkey. In his Opinion, the Advocate General seised upon this scenario to question the territorial scope of Brussels Ibis' jurisdictional scheme in relation to third States. He proposed attributing so-called 'reflexive effect' to Article 24 as a means of filling what he described as a 'gap' in the Regulation's territorial scope vis-a-vis third States. While adopting a different approach, the CJEU nonetheless advanced the debate by clarifying the territorial scope of the jurisdictional rules in a third State context. It held that – although not at issue in the present case – jurisdiction under Article 4(1) may be limited by the public international law principle of non-interference. In doing so, the CJEU distinguished between proceedings in a Member State resulting in inter partes decisions and those producing erga omnes effects. The CJEU's reasoning seems capable of extending to other matters covered by Article 24, yet the broader discussion on the relationship between territorial scope and third States is far from concluded.

Ekaterina Pannebakker, Internationale rechtsmacht bij een vordering uit een pactum de contrahendo, Hof van Justitie EU 15 juni 2022, C-393/22, NJ 2023/335, NIPR 2023/747 (EXTÉRIA) / p. 487-500

Abstract

Which courts have jurisdiction over claims for breach of a pre-contractual agreement? This question was addressed by the Court of Justice of the European Union in C-393/22 (EXTERIA). In contrast to an earlier decision, *Tacconi*, in which the Court dealt with non-contractual liability in tort for breaking off negotiations, *EXTERIA* concerns liability in matters relating to a contract, namely, a claim for

performance of a pre-contractual agreement. Such pre-contractual agreements are frequently used in commercial practice. Examples include letters of intent, memoranda of understanding, and heads of terms. In *EXTERIA*, the Court of Justice develops the existing private international law framework relating to obligations arising from such pre-contractual commitments.