Update: HCCH 2019 Judgments Convention Repository

HCCH 2019 Judgments Convention Repository

In preparation of the Conference on the HCCH 2019 Judgments Convention **on 9/10 June 2023**, taking place on campus of the University of Bonn, Germany, we are offering here a Repository of contributions to the HCCH 2019 Judgments Convention. Please email us if you miss something in it, we will update immediately…

Update of 22 June 2022: New entries are printed bold.

Please also check the "official" Bibliography of the HCCH for the instrument.

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III. Recordings of Events Related to the HCCH 2019 Judgments Convention

ASADIP; HCCH	“Conferencia Internacional: Convención HCCH 2019 sobre Reconocimiento y Ejecución de Sentencias Extranjeras”, 3 December 2020 (full recording available here and here)
ASIL	“The Promise and Prospects of the 2019 Hague Convention”, 25-26 June 2020 (full recording available here and here)
Department of Justice Hong Kong; HCCH	“Inaugural Global Conference – 2019 HCCH Judgments Convention: Global Enforcement of Civil and Commercial Judgments”, 9 September 2019 (recording available here)
HCCH	“HCCH a|Bridged: Innovation in Transnational Litigation – Edition 2021: Enabling Party Autonomy with the HCCH 2005 Choice of Court Convention”, 1 December 2021 (full recording available here)
HCCH	“22nd Diplomatic Session of the HCCH: The Adoption of the 2019 Judgments Convention”, 2 July 2020 (short documentary video available here)
JPRI; HCCH; UNIDROIT; UNCITRAL	“2020 Judicial Policy Research Institute International Conference – International Commercial Litigation: Recent Developments and Future Challenges, Session 3: Recognition and Enforcement of Foreign Judgments”, 12 November 2020 (recording available here)

UIHJ; HCCH	"3rd training webinar on the Hague Conventions on service of documents (1965) and recognition and enforcement of judgements (2019)", 15/18 March 2021 (full recording available here in French and here in English)
University of Bonn; HCCH	"Pre-Conference Video Roundtable on the HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil and Commercial Matters between the EU and Third Countries", 29 October 2020 (full recording available here)
Lex & Forum Journal; Sakkoula Publications SA	« The Hague Conference on Private International Law and the European Union – Latest developments », 3 December 2021 (full recording available here)

Prestige of Spanish judgment over the UK arbitral award – not on the principle, but on the conditions to it

This morning, the CJEU has pronounced on the interplay between the Brussels I bis Regulation and arbitration, this time in the context of the recognition in the UK of a judgment given by a Spanish court.

I. Facts

This case C-700/20 results from the event taking place two decades ago. Some of you may recall that in November 2002, the Greek-owned and Bahamas-operated oil tanker Prestige encountered a storm in the seas close to Galicia coast in Spain. Being damaged, the tanker eventually sunk leaving oil spill and causing significant damage to northern coast of Spain and the western coast of France.

The Spanish state and some other parties sought damage compensation, in the context of the criminal proceedings before the Audiencia Provincial de A Coruña commenced against the master, owners, and the London P&I Club, the liability insurer of both the vessel and its owners, in 2003. In 2012, the London P&I Club commenced arbitration proceedings in London seeking a declaration that, pursuant to the arbitration clause in the insurance contract concluded with the owners of the Prestige, the Spanish state was required to pursue its claims in the arbitration proceedings, and that it could not be liable to the Spain in respect of those claims due to the 'pay to be paid' clause.

The arbitration was quicker and the award was made in 2013, upheld the claims also limiting the the London P&I Club's liability up to USD 1 billion. The P&I Club applied to the High Court of Justice (England & Wales), Queen's Bench Division (Commercial Court), under Section 66 (1) and (2) of the Arbitration Act 1996, for leave to enforce the arbitral award in that jurisdiction in the same manner as a judgment or order and for a judgment to be entered in the terms of that award. The leave was granted in 2013 along with a judgment in the terms of the award.

The Spanish proceedings ended in 2018 by the judgment of the Tribunal Supremo whereby it confirmed that the master, ship owners and the P&I Club were liable to over 200 parties, including the Spanish state, subject, in the case of the P&I Club, to the contractual limit of liability of USD 1 billion. In 2019, the Audiencia Provincial de A Coruña issued an order setting out the amounts that each of the claimants was entitled to obtain from the respective defendants, entitling the Spanish State to be paid approximately EUR 2.3 billion, subject in the case of the P&I Club to the limit of EUR 855 million. Soon after, the Spanish state made an application to the High Court of Justice (England & Wales), Queen's Bench Division, on the basis of Article 33 of the Brussels I Regulation, for recognition of the latter enforcement order. Slightly prior to the expiration of the Brexit transition period, the UK court made a reference for preliminary ruling concerning the Brussels I Regulation, Article 1(2)(d) – exclusion of arbitration, and Article 34(1) and (3) – grounds for refusal of recognition and/or enforcement.

II. The Issues

At issue was whether that recognition or enforcement could be refused on the basis of the existence, in the UK, of a judgment entered in the terms of an arbitral award and the effects of which are irreconcilable with those of the abovementioned judicial ruling (first and second question). And, if not, whether recognition or enforcement may be refused as being contrary to public policy on the ground that it would disregard the force of *res judicata* acquired by the judgment entered in the terms of an arbitral award (third question).

III. Decision and Reasoning

Not following the opinion of AG Collins delivered in May this year, the CJEU held that a judgment entered by a court of a MS (in this case, UK) in the terms of an arbitral award cannot prevent the recognition there of a judgment given in another MS (in this case, Spain) where a judicial decision resulting in an outcome equivalent to the outcome of that award could not have been adopted by a court of the first MS without infringing the provisions and the fundamental objectives of the Brussels I Regulation. In the case at hand, this means that the Spanish judgment could have been refused recognition and enforcement only if the UK judgment entered by the UK court in the terms of an arbitral award could have been adopted by a UK court without infringing the provisions and the fundamental objectives of that Regulation.
However, the CJEU went on to explain that such fundamental objectives include the principles of free movement of judgments in civil matters, predictability as to the courts having jurisdiction and therefore legal certainty for litigants, sound administration of justice, minimisation of the risk of concurrent proceedings, and mutual trust in the administration of justice (para. 56). It added another requirement –that such judgment should not violate the right to an effective remedy guaranteed in Article 47 of the EU Charter of Fundamental Rights (para. 58).

Turning to the facts of the case, the CJEU concludes that the respective UK judgment could not have been rendered on the basis of the Brussels I Regulation without infringing two fundamental rules of the Regulation: first, the rule on the relative effect of an arbitration clause included in an insurance contract which does not extend to claims against a victim of insured damage who bring a direct action against the insurer, in tort, delict or quasi-delict, before the courts for the

place where the harmful event occurred or before the courts for the place where the victim is domiciled and, second, the rule on lis pendens which coordinates parallel proceedings based on the priority principle favouring the court first seised.

In answering the third question, the CJEU has relied on the opinion of the AG Collins, who stated the EU legislature intended to regulate exhaustively the issue of the force of *res judicata* acquired by a judgment given previously and, in particular, the question of the irreconcilability of the judgment to be recognised with that earlier judgment by means of Article 34(3) and (4) of the Brussels I Regulation, thereby excluding the possibility that recourse be had, in that context, to the public-policy exception set out in Article 34(1) of that Regulation. Therefore, *res judicata* cannot be contained in the notion of public policy for the purpose of recognition and enforcement of judgments under Article 34 of the Brussels I Regulation.

Undoubtedly, this judgment will provoke different reactions, but one thing is certain this is a one-hit wonder in UK given that UK is no longer bound by the Brussels regime.

The CJEU judgment has been made availalbe online yet, but the CJEU issued the Press Release.

Tort Litigation against Transnational Companies in England

This post is an abridged adaptation of my recent article, *Private International Law and Substantive Liability Issues in Tort Litigation against Multinational Companies in the English Courts: Recent UK Supreme Court Decisions and Post-Brexit Implications* in the *Journal of Private International Law*. The article can be accessed at no cost by anyone, anywhere on the journal's website. The wider post-

Brexit implications for private international law in England are considered at length in my recent OUP monograph, *Brexit and the Future of Private International Law in English Courts*.

According to a foundational precept of company law, companies have separate legal personality and limited liability. Lord Templeman referred to the principle in *Salomon v Salomon & co Ltd* [1896] UKHL 1, as the 'unyielding rock' on which company law is constructed. (See Lord Templeman, 'Forty Years On' (1990) 11 *Company Lawyer* 10) The distinct legal personality and limited liability of each entity within a corporate group is also recognized. In *Adams v Cape Industries plc* [1990] Ch 433 the court rejected the single economic unit argument made in the *DHN Ltd v Tower Hamlets LBC* [1976] 1 WLR 852 decision, and also the approach that the court will pierce the corporate veil if it is necessary to achieve justice. In taking the same approach as the one taken in *Salomon v Salomon & co Ltd* [1896] UKHL 1, the court powerfully reasserted the application of limited liability and the separate legal entity doctrine in regard to corporate groups, leaving hundreds of current and future victims uncompensated, whilst assisting those who seek to minimize their losses and liabilities through manipulation of the corporate form, particularly in relation to groups of companies. A parent company is normally not liable for the legal infractions and unpaid debts of its subsidiaries. However, the direct imposition of duty of care on parent companies for torts committed by foreign subsidiaries has emerged as an exception to the bedrock company law principles of separate legal personality and limited liability. In *Chandler v Cape plc* [2012] EWCA Civ 525, [69], Arden LJ '……emphatically reject[ed] any suggestion that this court [was] in any way concerned with what is usually referred to as piercing the corporate veil.'

Arguments drawn from private international law's largely untapped global governance function inform the analysis in the article and the methodological pluralism manifested in the jurisdictional and choice of law solutions proposed. It is through the postulation of territoriality as a governing principle that private international law has been complicit in thwarting the ascendance of transnational corporate social responsibility. (See H Muir-Watt, 'Private International Law Beyond the Schism' (2011) 2 *Transnational Legal Theory* 347, 386) Private international law has kept corporate liability within the limits of local law through *forum non conveniens* and the *lex loci delicti commissi*. It is only recently that a challenge of territoriality has emerged in connection with corporate social

responsibility.

Extraterritoriality is employed in this context as a method of framing a private international law problem rather than as an expression of outer limits. Therefore, there is nothing pejorative about regulating companies at the place of their seat, and there is no reason why the state where a corporate group is based should not (and indeed should not be obliged to) sanction that group's international industrial misconduct on the same terms as similar domestic misconduct, in tort claims for harm suffered by third parties or stakeholders. (Muir-Watt (ibid) 386)

The idea of methodological pluralism, driven by the demands of global governance, can result in jurisdictional and choice of law rules that adapt to the needs of disadvantaged litigants from developing countries, and hold multinational companies to account. The tort-based parental duty of care approach has been utilized by English courts for holding a parent company accountable for the actions of its subsidiary. The limited liability and separate legal entity principles, as applied to corporate groups, are circumvented by the imposition of direct tortious liability on the parent company.

The UK Supreme Court's landmark decisions in *Vedanta v Lungowe* [2019] UKSC 20 and *Okpabi v Shell* [2021] UKSC 3 have granted jurisdiction and allowed such claims to proceed on the merits in English courts. The decisions facilitate victims of corporate human rights and environmental abuse by providing clarity on significant issues. Parent companies may assume a duty of care for the actions of their subsidiaries by issuing group-wide policies. Formal control is not necessarily the determining factor for liability, and any entity that is involved with the management of a particular function risks being held responsible for any damage flowing from the performance of that function. When evaluating whether a claimant can access substantial justice in another forum, English courts may consider the claimants lack of financial and litigation strength. The UK Supreme Court decisions are in alignment with the ethos of the UN Guiding Principles on Business and Human Rights ("Ruggie Principles"), particularly the pillar focusing on greater access by victims to an effective remedy. (The United Nations Guiding Principles on Business and Human Rights, UN Doc. A/HRC/17/31 (2011))

Post-Brexit, the broader availability of the doctrine of *forum non conveniens* may help the English courts to ward off jurisdictional challenges against parent companies for damage caused by their subsidiaries at the outset. However, in

exceptional cases, the claimant's lack of financial and litigation strength in the natural forum may be considered under the interests of justice limb of *The Spiliada* test, which motivate an English court not to stay proceedings. (*Spiliada Maritime Corpn v Cansulex Ltd (The Spiliada)* [1987] AC 460) It has been argued that if the Australian "clearly inappropriate forum" test for *forum non conveniens* is adopted, (*Voth v Manildra Flour Mills Pty Ltd* (1991) 65 A.L.J.R. 83 (HC); *Regie National des Usines Renault SA v Zhang* [2002] HCA 10 (HC)) it is unlikely that a foreign claimant seeking compensation from a parent company in an English court would see the case dismissed on *forum non conveniens* grounds. As a result, it is more likely that a disadvantaged foreign litigant will succeed in overcoming the jurisdictional hurdle when suing the parent company. From a comparative law standpoint, the adoption of the Australian common law variant of *forum non conveniens* will effectively synthesize *The Spiliada's* wide-ranging evaluative enquiry with the certainty and efficiency inherent in the mandatory rules of direct jurisdiction of the Brussels-Lugano regime.

In relation to choice of law for cross-border torts, the UK has wisely decided to adopt the Rome II Regulation as retained EU law. (See The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019) Article 4(1) of the Rome II Regulation will continue to lead to the application of the law of the country where the damage occurred. Post-Brexit, it remains to be seen whether the English courts would be more willing to displace the applicable law under Article 4(1) by applying Article 4(3) of Rome II more flexibly. The territorial limitations of the *lex loci damni* might be overcome by applying the principle of closest connection to select a more favorable law. The result-selectivism inherent in the idea of a favorable law is reminiscent of the regulatory approach of governmental interest analysis. (See SC Symeonides, *Codifying Choice of Law Around the World* (OUP 2014) 287) Article 7 of the Rome II Regulation provides the claimant in an environmental damage claim a choice of applicable law either pursuant to Article 4(1) or the law of the country in which the event giving rise to the damage occurred. Alternatively, any regulatory provisions in English law may be classified as overriding mandatory provisions of the law of the forum under Article 16 of the Rome II Regulation. The Rome II Regulation, under the guise of retained EU law, constitutes a unique category of law that is neither EU law nor English law *per se*. The interpretation of retained EU law will give rise to its own set of challenges. Ultimately, fidelity to EU law will have to be balanced with the ability of UK appellate courts to depart

from retained EU law and develop their own jurisprudence.

Any future amendments to EU private international law will not affect the course of international civil litigation before English courts. (Cf A Dickinson, 'Walking Solo – A New Path for the Conflict of Laws in England' Conflictoflaws.net, suggests engagement with the EU's reviews of the Rome I and II Regulations will provide a useful trigger for the UK to re-assess its own choice of law rules with a view to making appropriate changes) However, recent developments in the UK and Europe are a testament to the realization that the avenue for access to justice for aggrieved litigants may lead to parent companies that are now subject to greater accountability and due diligence.

First Issue of Journal of Private International Law for 2022

The first issue of the *Journal of Private International law* for 2022 was released yesterday. It features the following articles:

M Lehmann, "A new piece in the puzzle of locating financial loss: the ruling in *VEB v BP* on jurisdiction for collective actions based on deficient investor information"

For the first time, the CJEU has ruled in VEB v BP on the court competent for deciding liability suits regarding misinformation on the secondary securities market. Surprisingly, the Court localises the damage resulting from misinformation on the secondary financial markets at a single place, that where the financial instruments in question were listed. This raises the question of how the decision can be squared with earlier cases like Kolassa or Löber and other precedent. It is also unclear how the new ruling applies to special cases like dual listings or electronic trading venues. Furthermore, the judgment is of utmost importance for the jurisdiction over collective actions by postulating that they

should not be treated any differently than individual actions, without clarifying what this means in practice. This contribution analyses these questions, puts the judgment in larger context, and discusses its repercussions for future cases.

F Rielaender, “Financial torts and EU private international law: will the search for the place of “financial damage” ever come to an end?”

The determination of jurisdiction and the applicable law concerning violations of financial law remains one of the most controversial subjects in EU private international law. Departing from its previously wayward case law regarding jurisdiction in disputes concerning purely financial losses, the Court of Justice of the European Union (CJEU) has finally taken a more principled approach in its Verenigeng van Effectenbezitters (VEB) decision, concentrating jurisdiction for actions based on issuer liability for inaccurate disclosures in the courts of the Member States where the issuer “has complied, for the purposes of its listing on the stock exchange, with the statutory reporting obligations”. While the judgment marks a necessary step forward, this paper argues that a market-oriented rule, which the CJEU has thus far not fully embraced, for conferring jurisdiction in disputes concerning infringements of securities law needs to be further developed and consistently applied in determining the applicable law.

M Ahmed, “Private international law and substantive liability issues in tort litigation against multinational companies in the English courts: recent UK Supreme Court decisions and post-Brexit implications”

This article examines the private international law and substantive liability issues in tort claims against UK based parent companies for the actions of their foreign subsidiaries. Arguments drawn from private international law’s largely untapped global governance function inform the analysis and the methodological pluralism manifested in the jurisdictional and choice of law solutions proposed. The direct imposition of duty of care on parent companies for torts committed by foreign subsidiaries is examined as an exception to the bedrock company law principles of separate legal personality and limited liability. In this regard, the UK Supreme Court’s recent landmark decisions in Vedanta v Lungowe and Okpabi v Shell have granted jurisdiction and allowed such claims to proceed on the merits in the English courts. This article assesses these decisions and their significance for transnational corporate accountability. The post-Brexit private international law regime and its implications for the viability of tort claims against parent companies are examined.

N Brannigan, “Resolving conflicts: establishing forum non conveniens in a new Hague jurisdiction convention”

In 1992, the Hague Conference on Private International Law (HCCH) commenced the Judgments Project with the aim of delivering a convention harmonising rules of jurisdiction and recognition and enforcement of judgments. Despite the ambition and promise the project held, the first major attempt at delivering a convention, the 2001 Interim Text, was unsuccessful after it failed to gain consensus among the Conference's Member States. The HCCH scaled back the Judgments Project to focus work on the 2005 Convention on Choice of Court Agreements and the 2019 Convention on the Recognition and Enforcement of Foreign Judgments. However, the issue of jurisdiction has not been forgotten, with the Hague having recently established a Working Group to begin drafting provisions for a fresh attempt at the subject which hopefully will succeed where the Interim Text did not. The aim of this article is to explore the issue of how the proposed convention shall address conflicts of jurisdiction in international litigation. A conflict of jurisdiction will typically arise where the same proceedings, or related ones, come before the courts of several fora, or in one forum which considers another forum to be better placed to adjudicate the dispute. One solution to such conflicts is the, originally Scottish, doctrine of forum non conveniens, which allows a court discretion to decline to exercise jurisdiction on the basis that the appropriate forum for the trial is abroad or the local forum is inappropriate. This article argues for the inclusion of a version of forum non conveniens in the proposed jurisdiction convention to settle these conflicts when they arise. However, as there are many interpretations of what makes one forum more or less appropriate to hear a case than another, this article tackles the issue of how such a principle could be drafted to achieve consensus at the Hague Conference. Much of this analysis is based on the original 2001 Interim Text, and upon more modern cross-border agreements which utilise forum non conveniens.

J Huang, "Substituted service in Australia: problem, tension, and proposed solution"

Substituted service is an important and frequently used method to bring judicial documents to a defendant's attention when service of process in the manner otherwise required by the civil procedure rule is impracticable. Between substituted service and the Hague Service Convention 1965 exists a tension: as the scope of substituted service expands, the application of the Convention shrinks. The tension predated the pandemic but has become increasingly acute as Australian courts have frequently been called upon to address when substituted service may be ordered to replace service under the Convention. Addressing this tension is significant but complex as it involves Australia's international obligation to follow the Convention, a plaintiff's legitimate expectation to quickly effect service of process, and a defendant's fundamental right to due process. This paper is a digest of Australian private international law on substituted service. It provides timely proposals both at the domestic and international dimensions to

address this tension.

AA Kostin & MA Pesnya, “The recognition of foreign judgments on personal status under Russian law (Historical aspects and current issues)”

The Article provides an insight into the development of the Russian rules of law concerning recognition of foreign judgments on personal status. The analysis reveals that initially the Russian (formerly Soviet) law did not include any specific provisions relating to recognition of foreign judgments on personal status. In this regard such judgments were recognised on the basis of the conflict of laws’ provisions of the Family and Civil Codes. In turn the current Article 415 of the Civil Procedure Code of the Russian Federation addressing the recognition of foreign judgments on personal status and foreign divorces should be considered as a borrowing from the legislation of the former Socialist countries. The authors argue that the concept of “personal status” in Article 415 covers both foreign judgments affecting capacity and regarding filiation (kinship). Therefore, these foreign judgments shall be recognised in Russia in absence of an international treaty and without exequatur proceedings.

LEX & FORUM, VOLUME 1/2022

With this present issue, Lex & Forum enters its second year of publication. The first four issues of the previous year were dedicated to the fundamental and most current issues of European private/procedural international law: the judicial cooperation after BREXIT (1st issue), the impact of 40 years since Greece joined the European Union to the internal Procedural Law (2nd issue), the importance of private autonomy in European private/procedural international law (3rd issue) and the accession of the European Union to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters 2019 (4th issue). During the second year, the focus of the issues will now be shifting to individual disputes, influenced by European procedural or private international law. The focus of the present issue refers to maritime differences, which are particularly important for our country. As data shows, while the population of Greece represents only 0.15% of the world population, the Greek-owned ships represent almost 21% of the world tonnage and 53% of the EU merchant fleet. Greek shipowners lead the world rankings in ship ownership with 17% for 2021,

compared to colossal countries in terms of population and economy, such as China (15%) and Japan (12%) (data: IUMI 2021). Under these circumstances, maritime differences at the European and global scale are a particularly crucial chapter for our country's economy and fully justify the involvement of this focus on this issue.

The 'Praefatio' of this Lex&Forum issue has the great honor of hosting the valuable thoughts of the former President of the CJEU (2003-2015), Prof. *Vassilios Skouris*, on the topic of mutual trust and recognition as key pillars of the European Union. The main topic of the issue (Focus) is dedicated to maritime disputes and was initially presented at an online event, on the 21st of February 2022, in collaboration with the most competent bodies on the subject, the Piraeus Court of First Instance and the Piraeus Bar Association (<https://www.sakkoulas.gr/el/info/events/archive/lex-forum-oi-navtikes-diafores-ston-evropaiko-kai-ton-pagkosmio-charti/>). The Focus in this issue incorporates the contribution of the Professor at the HSB Hochschule Bremen Ms. *Suzette Suarez* on arrest of ships in cases of environmental damages, the presentation of the Professor at the University of Athens and Chair of the meeting Ms. *Lia Athanassiou*, regarding the treatment of foreign shipping companies by the Greek jurisprudence, and the ones of the Judges who served in the Maritime Department of the Court of Piraeus, Mr. *Antonios Alapandas,* PhD, Judge at the Court of Appeal, on the special jurisdictional bases of maritime disputes, and Mr. *Kyriakos Oikonomou,* former Judge of the Supreme Court, on the choice of court agreements in maritime disputes, as well as the contributions of the Judge Mr. *Antonios Vathrakokilis*, on the applicable law to maritime privileges, and, finally, of Mr. *Georgios Theocharidis,* Professor of Maritime Law and Politics at the World Maritime University in Malmö, Sweden, on the International Convention on the 'Judicial Sale of Ships'. Lex&Forum expresses its warmest thanks to the President of the Courts of First-Instance of Piraeus Council Judge Mr. *Vassilios Tzelepis* and the President of the Piraeus Bar Association Mr. *Elias Klappas*, as well as to all the rapporteurs for their honorable contributions.

The jurisprudence section of this issue includes the CJEU judgments, 15.7.2021, European Commission v. Poland, on the topic of national regulations restricting the independence of judges, with commentary by the scientific associate in the International Hellenic University Ms *R. Tsertsidou*, 7.5.2020, LG/Rina, on the concept of civil and commercial matters in case of an action against a ship

classification and certification body under the authority of a third state, with a commentary by Dr. *N. Zaprianos*, 1.7.2021, UE, HC, on a European Certificate of Succession of 'indefinite time', with commentary by Dr. *S. Karameros*, and 4.6.2020, FX/GZ, on international jurisdiction for the adjudication of the opposition against the execution of a maintenance claim, with commentary by the President of the Court of First Instance Mr. *A. Vathrakokilis.*

The national case law section features the following judgments: Court of First Instance Piraeus No 3296/2020, on the appointment of an Interim Administration of a Shipping Company with a registered office abroad, with commentary by the PhD Cand. Ms. *A. Lagoudi;* Court of First Instance Korinthos No 1/2022, on the topic of parental care and maintenance of an out-of-marriage minor by parents of foreign citizenship, with commentary by Dr. *G.-A. Georgiadis;* Supreme Court decision No 1127/2020, on the applicable law on limitation periods in case of a lawsuit of an insurance company against a carrier, with commentary by Dr. *A. Anthimos*.

The issue includes as well the legal opinion of Professor Emeritus at the University of Athens Mr. *Nikolaos Klamaris* on the international jurisdiction of the Court of Piraeus (Department of Maritime Disputes) on a tort, committed in Piraeus by defendants based in Asia, while in the column L&F Praxis, the Judge Mr. *Georgios Safouris* presents the main practical problems of the referral questions to the CJEU within 11 Q&As.

Lex&Forum renews its scientific appointment with its subscribers for the next issue, focusing on the Internet and other emerging technologies within the EU and International legal order.

Update: HCCH 2019 Judgments

Convention Repository

HCCH 2019 Judgments Convention Repository

In preparation of the Conference on the HCCH 2019 Judgments Convention on 9/10 September 2022, taking place on campus of the University of Bonn, Germany, we are offering here a Repository of contributions to the HCCH 2019 Judgments Convention. Please email us if you miss something in it, we will update immediately…

Update of 20 April 2022: New entries are printed bold.

Please also check the "official" Bibliography of the HCCH for the instrument.

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Department of Justice Hong Kong; HCCH	“Inaugural Global Conference – 2019 HCCH Judgments Convention: Global Enforcement of Civil and Commercial Judgments”, 9 September 2019 (recording available here)
HCCH	“HCCH a|Bridged: Innovation in Transnational Litigation – Edition 2021: Enabling Party Autonomy with the HCCH 2005 Choice of Court Convention”, 1 December 2021 (full recording available here)
HCCH	“22nd Diplomatic Session of the HCCH: The Adoption of the 2019 Judgments Convention”, 2 July 2020 (short documentary video available here)

JPRI; HCCH; UNIDROIT; UNCITRAL	"2020 Judicial Policy Research Institute International Conference – International Commercial Litigation: Recent Developments and Future Challenges, Session 3: Recognition and Enforcement of Foreign Judgments", 12 November 2020 (recording available here)
UIHJ; HCCH	"3rd training webinar on the Hague Conventions on service of documents (1965) and recognition and enforcement of judgements (2019)", 15/18 March 2021 (full recording available here in French and here in English)
University of Bonn; HCCH	"Pre-Conference Video Roundtable on the HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil and Commercial Matters between the EU and Third Countries", 29 October 2020 (full recording available here)
Lex & Forum Journal; Sakkoula Publications SA	**« The Hague Conference on Private International Law and the European Union – Latest developments », 3 December 2021 (full recording available here)**

Netherlands PIL journal (NIPR) – issue 2022(1)

The latest edition of the Dutch journal on private international law (NIPR) includes the following papers:

Editorial:

Van der Grinten, Erkenning en tenuitvoerlegging na Brexit: de rechtzoekende als verliezer / p. 1-6

Abstract

In this editorial the author gives a short overview of the possible instruments to be used for the recognition and enforcement of judgments by Dutch courts in the UK and vice versa after Brexit. The author's conclusion is that the losers in Brexit, sadly, are the citizens of both states.

Articles

Henckel, Cryptovaluta in het conflictenrecht: een verkenning / p. 7-27

Abstract

This article comprises of a reconnaissance of the conflict of laws aspects associated with cryptocurrencies under the Dutch conflict of laws. Cryptocurrencies are founded on new technologies that are unencumbered by borders or central authority, which makes them resistant to traditional rules of private international law that require a connection to a geographic location. A potential major problem may therefore lie in integrating cryptocurrencies into the existing conflict of laws system. This article provides an overview of how

cryptocurrencies fit into the existing Dutch conflict of laws system and discusses existing problem areas.

Rosner, The Singapore Convention and commercial mediation in the EU / p. 28-36

Abstract

This article presents an insider's view of the United Nations Convention on International Settlement Agreements Resulting from Mediation (the 'Singapore Convention'), from the inception phase of the project within the framework of the United Nations Commission on International Trade Law ('UNCITRAL') to the negotiation phase and its adoption in 2018. The article equally presents the main features of this new international system and shows how the EU and its Member States view the enforcement of mediated settlement agreements and the reasons for such positions.

The article continues with a presentation of the current EU legislative framework for commercial mediation, with an emphasis on the enforcement of mediated settlement agreements, including a comparison between the intra-EU regulation of this matter and the enforcement system under the Singapore Convention. A few reflections follow on the compatibility of the two systems, both from a legal viewpoint and from a policy perspective.

The article is concluded with a few general remarks on the role of mediation in resolving (international) commercial disputes.

Foreign pil

Z.D. Tarman, Recognition and enforcement of foreign court judgments in civil and commercial matters before Turkish courts: frequently encountered legal problems and proposed solutions / p. 37-54

Abstract

An efficient process for the recognition and enforcement of foreign court judgments in civil and commercial matters is even more significant in our globalized world for both individuals and businesses involved in cross-border litigation. However, under Turkish legal practice parties repeatedly face certain difficulties arising from disputed procedural issues. This paper examines certain

frequently encountered legal problems in Turkish legal practice regarding the recognition and enforcement of foreign court judgments and aims to propose solutions to ameliorate legal practice in Turkey. In this regard the paper gives a general overview of the recognition and enforcement system under Turkish law and addresses the problematic issues in legal practice regarding the competent court, court fees, the simple litigation procedure rules, securities and the exemptions thereto, certain prerequisites and conditions for enforcement, preliminary injunctions as well as the application of the mandatory mediation process to recognition and enforcement proceedings.

Update: HCCH 2019 Judgments Convention Repository

In preparation of the Conference on the HCCH 2019 Judgments Convention on 9/10 September 2022, taking place on campus of the University of Bonn, Germany, we are offering here a Repository of contributions to the HCCH 2019 Judgments Convention. Please email us if you miss something in it, we will update immediately…

Update of 16 February 2022: New entries are printed bold.

Please also check the "official" Bibliography of the HCCH for the instrument.

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III. Recordings of Events Related to the HCCH 2019 Judgments Convention

HCCH	"HCCH a|Bridged: Innovation in Transnational Litigation – Edition 2021: Enabling Party Autonomy with the HCCH 2005 Choice of Court Convention", 1 December 2021 (full recording available here)
UIHJ; HCCH	"3rd training webinar on the Hague Conventions on service of documents (1965) and recognition and enforcement of judgements (2019)", 15/18 March 2021 (full recording available here in French and here in English)

ASADIP; HCCH	“Conferencia Internacional: Convención HCCH 2019 sobre Reconocimiento y Ejecución de Sentencias Extranjeras”, 3 December 2020 (full recording available here and here)
ASIL	“The Promise and Prospects of the 2019 Hague Convention”, 25-26 June 2020 (full recording available here and here)
JPRI; HCCH; UNIDROIT; UNCITRAL	“2020 Judicial Policy Research Institute International Conference – International Commercial Litigation: Recent Developments and Future Challenges, Session 3: Recognition and Enforcement of Foreign Judgments”, 12 November 2020 (recording available here)
University of Bonn; HCCH	“Pre-Conference Video Roundtable on the HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil and Commercial Matters between the EU and Third Countries”, 29 October 2020 (full recording available here)
Department of Justice Hong Kong; HCCH	“Inaugural Global Conference – 2019 HCCH Judgments Convention: Global Enforcement of Civil and Commercial Judgments”, 9 September 2019 (recording available here)
HCCH	“22nd Diplomatic Session of the HCCH: The Adoption of the 2019 Judgments Convention”, 2 July 2020 (short documentary video available here)

Third Issue of Journal of Private

International Law for 2021

The third issue of the *Journal of Private International law* for 2021 was released today. It features the following articles:

Jonannes Ungerer, “Explicit legislative characterisation of overriding mandatory provisions in EU Directives: Seeking for but struggling to achieve legal certainty”

Traditionally, the judiciary has been tasked with characterising a provision in EU secondary law as an overriding mandatory provision (“OMP”) in the sense of Art 9(1) Rome I Regulation. This paradigm has however shifted recently as the legislator has started setting out such OMP characterisation explicitly, which this paper addresses with regard to EU Directives. The analysis of two Directives on unfair trading practices in the food supply chain and on the resolution of financial institutions reveals that their explicit legislative characterisations of OMPs can benefit legal certainty if properly drafted by the EU and correctly transposed into national law by the Member States. These requirements have not yet been fully met as there are inconsistencies and confusion with only domestically mandatory provisions, which need to be resolved. More generally, the paper elucidates the tensions of competence between legislators and courts on both the EU and national levels due to the explicit legislative characterisation. It also considers the side effects on pre-existing and future provisions in Directives without explicit legislative characterisation. Finally, it acknowledges that the extraterritorial effect of OMPs is intensified and therefore requires the legislator to seek international alignment.

Patrick Ostendorf, “The choice of foreign law in (predominantly) domestic contracts and the controversial quest for a genuine international element: potential for future judicial conflicts between the UK and the EU?”

The valid choice of a (foreign) governing law in commercial contracts presupposes, pursuant to EU private international law, a genuine international element to the transaction in question. Given that the underlying rationale of this requirement stipulated in Article 3(3) of the Rome I Regulation has yet to be fully explored, the normative foundations as to the properties that a genuine international element must possess remain unsettled. The particularly low

threshold applied by more recent English case law in favour of almost unfettered party autonomy in choice of law at first glance avoids legal uncertainty. However, such a liberal interpretation not only robs Article 3(3) Rome I Regulation almost entirely of its meaning but also appears to be rooted in a basic misunderstanding of both the function and rationale of Article 3(3) Rome I Regulation in the overall system of EU private international law. Consequently, legal tensions with courts based in EU member states maintaining a more restrictive approach may become inevitable in the future due to Brexit.

Darius Chan & Jim Yang Teo, "Re-formulating the test for ascertaining the proper law of an arbitration agreement: a comparative common law analysis"

Following two recent decisions from the apex courts in England and Singapore on the appropriate methodology to ascertain the proper law of an arbitration agreement, the positions in these two leading arbitration destinations have now converged in some respects. But other issues of conceptual and practical significance have not been fully addressed, including the extent to which the true nature of the inquiry into whether the parties had made a choice of law is in substance an exercise in contractual interpretation, the applicability of a validation principle, and the extent to which the choice of a neutral seat may affect the court's determination of the proper law of the arbitration agreement. We propose a re-formulation of the common law's traditional three-stage test for determining the proper law of an arbitration agreement that can be applied by courts and tribunals alike.

Amin Dawwas, "*Dépeçage* of contract in choice of law: Hague Principles and Arab laws compared"

This paper discusses the extent to which the parties may use their freedom to choose the law governing their contract under the Hague Principles on Choice of Law in International Commercial Contracts and Arab laws, namely whether they can make a partial or multiple choice of laws. While this question is straightforwardly answered in the affirmative by the Hague Principles, it is debatable under (most) Arab laws. After discussion of the definition of dépeçage of contract, this paper presents the provisions of dépeçage of contract under

comparative and international law, including the Hague Principles, and then under Arab laws. It concludes that Arab conflict of laws rules concerning contract should be reformed according to the best practices embodied in this regard by the Hague Principles.

Jan Ciaptacz, "*Actio pauliana* under the Brussels Ia Regulation – a challenge for principles, objectives and policies of EU private international law"

The paper discusses international jurisdiction in cases based on *actio pauliana* under the Brussels Ia Regulation, especially with regard to the principles, objectives and policies of EU private international law. It concentrates on the assessment of various heads of jurisdiction that could possibly apply to *actio pauliana*. To that end, the CJEU case law was thoroughly analysed alongside international legal scholarship. As to the jurisdictional characterisation of *actio pauliana*, the primary role should be assigned to teleological and systematic considerations. *Actio pauliana* can neither be characterised as an issue relating to torts nor as a right *in rem* in immovable property. Contrary to the recent position adopted by the CJEU, it should also be deemed not to fall within matters relating to a contract. The characterisation of *actio pauliana* as a provisional measure or an enforcement mechanism for jurisdictional purposes is equally incorrect.

Harry Stratton, "Against renvoi in commercial law"

The doctrine of renvoi is rightly described as "a subject loved by academics, hated by students and ignored (when noticed) by practising lawyers (including judges)". This article argues that the students have much the better of the argument. English commercial law has rightly rejected renvoi as a general rule, because it multiplies the expense and complexity of proceedings, while doing little to deter forum-shopping and enable enforcement. It should go even further to reject renvoi in questions of immovable property, because the special justification that this enables enforcement of English judgments against foreign land ignores the fact that title or possession of such land is generally not justiciable in English courts and such judgments will not be enforced irrespective of whether renvoi is applied.

Yun Zhao, “The Singapore mediation convention: A version of the New York convention for mediation?”

Settlement agreements have traditionally been enforced as binding contracts under national rules, a situation considered less than ideal for the promotion of mediation. Drawing on the experience of the 1958 New York Convention on international arbitration, the 2019 Singapore Mediation Convention provides for the enforcement of settlement agreements in international commercial disputes. Based on its provisions and the characteristics and procedures of mediation, this article discusses the impact of the Singapore Mediation Convention on the promotion of mediation and its acceptance by the international community. It is argued that the achievements of the New York Convention do not necessarily promise the same success for the Singapore Mediation Convention.

Jakub Pawliczak, “Reformed Polish court proceedings for the return of a child under the 1980 Hague Convention in the light of the Brussels IIb Regulation”

In recent years a significant increase in applications sent to Polish institutions to obtain the return of abducted children under the 1980 Hague Abduction Convention can be observed. Simultaneously, Poland has struggled with a problem of excessively long court proceedings in those cases and the lack of specialisation among family judges. Taking these difficulties into consideration, in 2018 the Polish Parliament introduced a reform aimed at improving the effectiveness of the court proceedings for the return of abducted children. The work on the amendment of the Polish legal regulations was carried out in parallel to the EU legislative process in the field of international child abduction. Although the Polish reform had been introduced before Council Regulation (EU) 2019/1111 of 25 June 2019 (Brussels IIb) was adopted, the 2016 proposal for this Regulation had been known to the national legislature. When discussing the amended Polish legal regulations, it should be considered whether they meet their goals and whether they are in line with the new EU law.

Elaine O’Callaghan, “Return travel and Covid-19 as a grave risk of harm in Hague

Child Abduction Convention cases”

Since February, 2020, courts have been faced with many novel arguments concerning the Covid-19 pandemic in return proceedings under the “grave risk exception” provided in Article 13(1)(b) of the 1980 Hague Convention. This article presents an analysis of judgments delivered by courts internationally which concern arguments regarding the safety of international travel in return proceedings during the Covid-19 pandemic. While courts have largely taken a restrictive approach, important clarity has been provided regarding the risk of contracting Covid-19 as against the grave risk of harm, as well as other factors such as ensuring a prompt return despite practical impediments raised by Covid-19 and about quarantine requirements in the context of return orders. Given that the pandemic is ongoing, it is important to reflect on this case law and anticipate possible future issues.

Chukwudi Paschal Ojiegbe, “The overview of private international law in Nigeria” (Review Article)

Update: HCCH 2019 Judgments Convention Repository

Rescheduled: “The HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil Matters between the EU and Third Countries” – Conference on 9 and 10 September 2022, University of Bonn, Germany

In preparation of the Conference on the HCCH 2019 Judgments Convention on 9/10 September 2022, planned to be taking place on campus of the University of Bonn, Germany, we are offering here a Repository of contributions to the HCCH 2019 Judgments Convention. Please email us if you miss something in it, we will update immediately…

Update of 12 January 2022: New entries are printed bold.

Please also check the “official” Bibliography of the HCCH for the instrument.

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III. Recordings of Events Related to the HCCH 2019 Judgments Convention

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UIHJ; HCCH	"3rd training webinar on the Hague Conventions on service of documents (1965) and recognition and enforcement of judgements (2019)", 15/18 March 2021 (full recording available here in French and here in English)

ASADIP; HCCH	“Conferencia Internacional: Convención HCCH 2019 sobre Reconocimiento y Ejecución de Sentencias Extranjeras”, 3 December 2020 (full recording available here and here)
ASIL	“The Promise and Prospects of the 2019 Hague Convention”, 25-26 June 2020 (full recording available here and here)
JPRI; HCCH; UNIDROIT; UNCITRAL	“2020 Judicial Policy Research Institute International Conference – International Commercial Litigation: Recent Developments and Future Challenges, Session 3: Recognition and Enforcement of Foreign Judgments”, 12 November 2020 (recording available here)
University of Bonn; HCCH	“Pre-Conference Video Roundtable on the HCCH 2019 Judgments Convention: Prospects for Judicial Cooperation in Civil and Commercial Matters between the EU and Third Countries”, 29 October 2020 (full recording available here)
Department of Justice Hong Kong; HCCH	“Inaugural Global Conference – 2019 HCCH Judgments Convention: Global Enforcement of Civil and Commercial Judgments”, 9 September 2019 (recording available here)
HCCH	“22nd Diplomatic Session of the HCCH: The Adoption of the 2019 Judgments Convention”, 2 July 2020 (short documentary video available here)