# U.S. Federal Judicial Center Publication on “Discovery in International Civil Litigation”

The Federal Judicial Center (FJC) has just published the most recent item in their series on international litigation. The text, entitled “Discovery in International Civil Litigation: A Guide for Judges,” was written by Timothy Harkness, Rahim Moloo, Patrick Oh and Charline Yim. The guide joins a variety of other titles, including those on mutual legal assistance treaties (T. Markus Funk), the Foreign Sovereign Immunities Act (David Stewart), international commercial arbitration (S.I. Strong), recognition and enforcement of foreign judgments (Ron Brand), and international extradition (Ronald Hedges).

The new text can be downloaded from the FJC website here. The other texts are also available for download at fjc.gov. If you would like a free copy of the new discovery guide or any of the judicial guides on international law, just contact the FJC.

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# Conference From common rules to best practices in European Civil Procedure

As was announced earlier on this blog, on 25 and 26 February 2016 a conference will be held at Erasmus University Rotterdam (Netherlands) on the theme **From common rules to best practices in European Civil Procedure**, jointly organized by Erasmus School of Law and the Max Planck Institute in Luxembourg.

The conference brings together distinguished academics, practitioners,

legislators, and policy makers, discussing in panels the need for common rules to facilitate judicial cooperation and mutual trust, procedural innovation and e-justice in the EU, alternative dispute resolution, and best practices on the operationalization of judicial cooperation.

The program and more information is available here and you are cordially invited to register.

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# The Council of the EU to adopt a political agreement on the regulations on matrimonial property regimes and the property consequences of registered partnerships

The Council of the European Union is expected to adopt at its next meeting on Justice and Home Affairs, scheduled to take place on 3 and 4 December 2015, a political agreement on the compromise text of the future regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (see here, however, for a corrigendum), and the compromise text of the future regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships.

The initiative comes one year after the Council had observed that “some member states needed more time to complete their internal reflection process” on the two Commission proposals of 2011 and decided to “re-examine this matter as soon as

possible, and by no later than the end of 2015”.

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# Peter Hay: Selected Essays on Comparative Law and Conflict of Laws

Although it is hard to believe given his prolific writing and his remarkable fitness, American-German conflicts giant Professor Dr. Dr. h.c. mult. *Peter Hay* has actually celebrated his eightieth birthday on 17 September this year in Berlin. On this occasion, he has been honoured by a publication of *Selected Essays on Comparative Law and Conflict of Laws*, edited by *Hans-Eric Rasmussen-Bonne* and *Manana Khachidze*. For further information, click here. This volume is a collection of articles, case notes and book reviews authored by Professor *Hay*, both in English and in German. The contributions cover the whole range of his academic interests, mainly private international law, comparative law and international civil procedure. Taken together, they provide a fascinating view of the development of private international law and comparative law in recent decades, from the U.S. conflicts revolution in the 1960’s to the Europeanization of conflict of laws since the Treaty of Amsterdam. This book is a testimony to a truly impressive lifetime achievement, and it is to be hoped that many more contributions will be added in the future. *Ad multos annos!*

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# Notice from Member States – Update of Information on the Brussels I Recast

First update of the information referring to Article 76 of Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, to be found here (OJ C 390/10, 24.11.2015).

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# International Seminar on Private International Law, Madrid 2016. Call for Papers

The 10th edition of the International Seminar on Private International Law, organized by Prof. Fernández Rozas and Prof. de Miguel Asensio will be held next 14 and 15 April 2016, at the Faculty of Law of the Universidad Complutense of Madrid .

At the sitting of Thursday 14 special attention will be paid to the recent reforms of Spanish private international law; the latest developments towards codification of private international law in Latin America will also be addressed . The following sessions, on Friday, will focus on the development of private international law in Europe and within international commercial arbitration.

As in previous editions the main lectures of the seminar will be in charge of well-known scholars, including Jürgen Basedow (Max Planck Institute Hamburg), Roberto Baratta (University of Macerata), Bertrand Ancel (Paris II), Christian Heinze (University of  Hannover) and Sebastien Mancieaux (University of Dijon). Nonetheless, the seminar is open to all scholars, either Spanish or foreigners,

willing to participate with brief presentations. In this regard proposals including both the title and a brief summary are to be sent no later than December 15 to Prof. Angel Espiniella Menéndez (espiniell@gmail.com). The final written version of the presentations, not exceeding 25 pages, is to be submitted before April 1, 2016. Subject to prior peer-review they will be published in the *Anuario Español de Derecho Internacional Privado,* vol. XVI.

The registration deadline to attend the seminar, as well as the programme and further information will be announced in due time.

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# The recast EU Regulation on insolvency proceedings: an invitation to join the on-line debate at the Italian Society of International Law

*SIDIBlog* – the blog of the *Italian Society of International Law and European Union Law* – has issued a call for contributions to an on-line debate on EU Regulation No 848/2015 on insolvency proceedings (recast).

> [From the blog] – *The EU Regulation No 848/2015 of the European Parliament and of the Council of 20 May 2015 brings about the revision of the EC Regulation No 1346/2000 in matters of insolvency proceedings: while not departing from the structure of the pre-existing Regulation, the new instrument aims at improving the application of uniform rules under several aspects. With the following post of Professor Stefania Bariatti, and other ones that will be published in the coming weeks, the SIDIBlog intends to start a debate on the novelties contained in the new Insolvency Regulation, trusting*

*to host further contributions of Italian and foreign scholars and practitioners, willing to discuss the issues raised by the new instrument. Prospective contributors can submit their posts at sidiblog2013@gmail.com.*

Contributions may be submitted in English, French, Spanish or Italian. The papers received will appear in the next issue of the on-line journal *Quaderni di SIDIBlog*.

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# International Symposium on Private International Law in Asia at Doshisha University, Kyoto

*The following announcement has been kindly provided by Béligh Elbalti, Assistant Professor, Graduate School of Law, Kyoto University.*

On December 19, 2015, a one-day international symposium on the theme of private international law in Asian countries will be held at Doshisha University, Kyoto (Japan). The symposium is organized by The Research Center of International Transaction and Law (RECITAL), Doshisha University (Professor *Naoshi Takasugi*, Director of RECITAL) with the support of the Ministries of Justice and Foreign Affairs of Japan and coordinated by Professor *Yuko Nishitani* (Kyoto University). The symposium presents an opportunity to gather distinguished experts in the field of Private International Law from many countries (especially Asian countries) as well as representatives from the Hague Conference on Private International Law. The ultimate purpose of the symposium is to discuss private international law issues from an Asian perspective and to share knowledge as well as experience with the aim of building a set of "Asian Principles of Private International Law". The program of the symposium is as follows:

Morning Session
Title: "Private International Law from a Comparative Perspective"

Time: 9:30 – 12:00
Venue: Doshisha University, Imadegawa Campus, “Ryoshin-Kan” Building, 1st floor room 107

9:30 – 9:40
Naoshi Takasugi (Professor, Doshisha University, Japan)
“Opening Speech: Towards the Asian Principles of Private International Law (APPIL)”

9:40 – 10:10
Kanaphon Chanhom (Professor, Chulalongkorn University, Thailand)
“Private International Law in Thailand: Focusing on Jurisdiction”

10:10 – 10:40
Yu Un Oppusunggu (Professor, University of Indonesia)
“Introduction to Private International Law in Indonesia”

10:40 – 11:10
Gérald Goldstein (Professor, Montreal University)
“Highlights of Quebec Private International Law Rules and Case Law”

11:10 – 11:40
Discussion

Afternoon Session:
Title: “Cross-Border Business Transactions and the Hague Conference in Asia”
Time: 13:30 – 17:30
Venue: Doshisha University, Imadegawa Campus, “Ryoshin-Kan” Building, 1st floor room 107
Chair: Naoshi Takasugi (Director of RECITAL; Professor, Doshisha University)

13:30-13:35
Koji Murata (President, Doshisha University)
“Welcome Speech”

13:35-13:45
Muneki Uchino (Councilor, Ministry of Justice, Civil Affairs Bureau)
“Opening Speech”

## **Part 1 – Hague Principles: Soft Law of PIL**

13:45-14:15
Yuko Nishitani (Professor, Kyoto University)
“Hague Principles and Party Autonomy in International Contracts”

14:15-14:45
Anselmo Reyes (Representative of HAPRO; Professor, Hong Kong University)
“Hague Principles from a Practical Viewpoint in Asia”

14:45-15:20
Discussion

(Coffee Break)

**Part 2 – Foreign Judgment Project: Past, Present and Future**

15:30-16:00
Marta Pertegás (First Secretary, Hague Conference on Private International Law)
“Development of the Hague Judgments Project”

16:00-16:30
Keisuke Takeshita (Professor, Hitotsubashi University)
“The Hague Choice of Court Convention and Dispute Resolution in Asia”

16:30-16:50
Masato Dogauchi (Professor, Waseda University)
“Comments”

16:50-17:30
Discussion

Participation to this event is free of charge. However, all those who are interested in taking part of this event are cordially required to contact beforehand via email Professor Naoshi Takasugi (ntakasug@mail.doshisha.ac.jp) and indicate their name, affiliation and email address. All presentations are in English.

Access:
(http://www.doshisha.ac.jp/en/information/campus/imadegawa/imadegawa.html#)
By Subway: from “Kyoto Station”, take Karasuma line to Kokusai-Kaikan and get off at “Imadegawa Station” (10 mn). (Exit #1 of Subway Imadegawa Station is

directly connected to the symposium venue, Ryoshinkan, Doshisha University).

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# The fifth meeting of the Working Group charged with preparing the Hague Judgments Convention

The report of the fifth meeting of the Working Group established by the Council on General Affairs and Policy of the Hague Conference on Private International Law to prepare proposals in connection with "a future instrument relating to recognition and enforcement of judgments, including jurisdictional filters" is now available through the Conference's website (see here for an account of the previous meeting).

The Working Group proceeded on the basis that the Convention should: (*a*) be a complementary convention to the Hague Choice of Court Convention of 30 June 2005, currently in force for the EU and Mexico; (*b*) provide for recognition and enforcement of judgments from other contracting States that meet the requirements set out in a list of bases for recognition and enforcement; (*c*) set out the only grounds on which recognition and enforcement of such judgments may be refused; and (*d*) not prevent recognition and enforcement of judgments in a contracting State under national law or under other treaties, subject to one provision relating to exclusive bases for recognition and enforcement (covering matters in the fields of intellectual property rights and immovable property).

The proposed draft text of the Convention prepared by the Working Group is annexed to the report.

The Working Group recommended to the Council on General Affairs and Policy (which is expected to meet in March 2016) that the proposed draft text be submitted for consideration to a Special Commission "to be held, if possible, in June 2016".

It also recommended that matters relating to direct jurisdiction (including exorbitant grounds and *lis pendens*) be considered by the Experts' Group in charge of the Judgments Project "with a view to preparing an additional instrument". In the Working Group's view, the Experts' Group "should meet soon after the Special Commission has drawn up a draft Convention".

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# The ECJ on the meaning of "extrajudicial document" and on the service of such a document according to Regulation No 1393/2007

On 11 November 2015, the ECJ rendered its judgment in the case of *Tecom Mican SL* (case C-223/14). The ruling clarifies the interpretation of Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (the Service Regulation), and, more specifically, the interpretation of Article 16 ("Extrajudicial documents may be transmitted for service in another Member State in accordance with the provisions of this Regulation").

The dispute in the main proceedings concerned an agency agreement between a German and a Spanish company. The Spanish agent asked a Spanish judicial officer to effect service of a letter of demand on the German principal, through the competent German authority, seeking payment of a goodwill indemnity and of unpaid commission, or, in the alternative, disclosure of the principal's accounts. The letter stated that the same demand had already been addressed to the German company in a previous letter of demand certified for official purposes by a Spanish notary.

The judicial officer refused to grant the application on the basis that no legal

proceedings had been brought requiring the judicial assistance sought to be granted. The Spanish company then brought proceedings in Spain for review of that refusal.

The seised court, however, decided to stay proceedings and to refer some questions to the ECJ for a preliminary ruling, regarding both the meaning of the expression "extrajudicial document" and the rules governing the service of such a document from one Member State to another.

In its judgment, the ECJ begins by noting that, for the purposes of the Service Regulation, the expression "extrajudicial document", as already stated in *Roda Golf*, must be treated as an autonomous concept of EU law. It must be given a broad definition and cannot be limited to documents that are connected to legal proceedings alone. The Court reiterates that the concept, as suggested in the latter judgment, may include documents drawn up by notaries, but concedes that it cannot be inferred from those findings alone whether, in the absence of legal proceedings, the concept in question includes only documents drawn up or certified by a public authority or official, or whether it also encompasses private documents.

Relying, in particular, on the preparatory work leading to the adoption of the Regulation (including the explanatory report of the Convention on the service in the Member States of the European Union of judicial and extrajudicial documents in civil or commercial matters, which never entered into force), the Court concludes that the concept of an "extrajudicial document", within the meaning of Article 16 of the Service Regulation, must be interpreted as encompassing "both documents drawn up or certified by a public authority or official and private documents of which the formal transmission to an addressee residing abroad is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law".

The ECJ goes on to address the issue of whether, under the Service Regulation, service of an extrajudicial document can be effected pursuant to the detailed rules laid down by that Regulation even where an earlier service has already been effected through another means of transmission.

The Court examines, in the first place, the case in which the earlier service has been effected under rules not provided for in the Service Regulation. In that

regard, the ECJ notes that the wording of Article 1(1) of the Regulation makes clear that that Regulation is applicable "where a[n] … extrajudicial document has to be transmitted from one Member State to another for service there". As the Court itself asserted in *Alder*, this means that the Regulation provides for only two situations in which the service of a document falls outside its scope: where the permanent or habitual residence of the addressee is unknown and where that person has appointed an authorised representative in the Member State of the forum.

Since it is common ground that the Regulation does not provide for any other exception, the Court concludes that, in the case considered, the cross-border service of an extrajudicial document pursuant to the means of transmission of the Service Regulation remains possible.

Secondly, as regards the consequences related to the case in which an applicant effects an earlier service pursuant to the detailed rules laid down by Regulation No 1393/2007, the Court notes that the Regulation lays down various means of transmission applicable to the service of extrajudicial documents exhaustively.

The Regulation states in Article 2 that the service of judicial documents is, in principle, to be effected between the transmitting agencies and the receiving agencies designated by the Member States. However, it also provides, in Section 2, for other means of transmission, such as service by diplomatic or consular agents or service by postal services.

As the Court already observed in *Plumex*, the Service Regulation does not establish a hierarchy between the various means of transmission that it put in place. Besides, in order to ensure an expedient cross-border transmission of the relevant documents, the Regulation neither entrusts the transmitting or receiving agencies, nor the diplomatic or consular agents, the judicial officers, officials or other competent persons of the Member State addressed with the task of determining whether the reasons for which an applicant may wish to effect service of a document through the means of transmission laid down are appropriate or relevant.

Consequently, in the Court's view, service of an extrajudicial document pursuant to one of the means laid down by Regulation No 1393/2007 remains valid, even where an earlier transmission of that document has already been effected by a

means other than those laid down therein.

The last question addressed by the ECJ is whether Article 16 of Regulation No 1393/2007 must be interpreted as meaning that it is necessary to ascertain, on a case-by-case basis, whether the service of an extrajudicial document has cross-border implications and is necessary for the proper functioning of the internal market.

The Court observes that the Service Regulation falls precisely within the area of judicial cooperation in civil matters that have cross-border implications, and that, pursuant to Article 1(1), it applies where a document has to be transmitted "from one Member State to another" for service there.

As a result, since the cross-border implications of the transmission of a document constitute an objective condition for the applicability of the Regulation, "those implications must be considered, without exception, to be necessarily satisfied where the service of such a document falls within the scope of that Regulation", and must therefore be effected in accordance with the system established by the Regulation itself.

As regards the proper functioning of the internal market, it is common ground that that element constitutes the primary objective of the system of service laid down by the Regulation. Thus, in so far as all the means of transmission of judicial and extrajudicial documents envisaged therein have been put in place expressly in order to obtain that objective, it is reasonable to consider that, once the conditions for the application of those means of transmission are satisfied, the service of such documents necessarily contributes to the proper functioning of the internal market.

In the end, where the conditions of Article 16 are satisfied, it is not necessary to ascertain, on a case-by-case basis, whether the service of an extrajudicial document has cross-border implications and is necessary for the proper functioning of the internal market.