UK Supreme Court Rules on Inherent Jurisdiction to Order Return of Children

On 4 December 2013, the UK Supreme Court delivered its judgment in In the matter of KL (A Child).

The Court issued the following press summary.

BACKGROUND TO THE APPEAL

This appeal arises from proceedings under the Hague Convention on the Civil Aspects of International Child Abduction ('the Convention'). The Convention establishes procedures to ensure the prompt return of children to the state of their habitual residence. The question arising is the approach that the courts of this country should take when a child is brought here pursuant to an order made abroad in Convention proceedings which is later overturned on appeal.

The proceedings concern a child, K, who was born in 2006 in Texas and is a United States citizen. His father is also a US citizen; his mother came to the UK from Ghana as a very young child and she has indefinite leave to remain in the UK. They married in Texas in December 2005 and lived together there. The marriage broke up and in March 2008 the father issued divorce proceedings in the Texas state court. That court made orders by consent providing for the mother to take care of K (in the former matrimonial home) while the father was posted abroad on military service. In July 2008 she took him to London. In March 2010 a welfare-based custody hearing took place in the Texas court in which both parents were represented. The judge in those proceedings decided that it was in K's best interests that he reside with his father and have contact with his mother. As a result K moved back to the US.

The mother applied to the US Federal District Court for an order under the Convention, alleging that K had been habitually resident in the UK in March 2010 and that K had been wrongfully retained in Texas by the father. This argument succeeded in the District Court in August 2011. The father complied with the order to return K and his passport to the mother, whereupon the mother returned

to the UK with K and they have lived here ever since. The father appealed against the order. On 31 July 2012 the US Court of Appeals for the Fifth Circuit overturned the decision of the District Court and on 29 August 2012 the District Court ordered K's return to the US. When the mother did not comply, the father issued applications under the Convention in the UK. He argued that the mother's retention of K in the UK was wrongful because K's habitual residence had remained in the US. He further argued that the UK court should exercise its inherent jurisdiction to return K to the US in the circumstances of his case, even if it was not required to do so under the Convention.

On 17 January 2013 the judge in the High Court dismissed the father's applications, and his decision was upheld on appeal to the Court of Appeal. The Supreme Court granted the father permission to appeal on the grounds that K had been wrongfully retained in the UK after 29 August 2012 under the Convention and/or that the court should order his return to the US under its inherent jurisdiction.

JUDGMENT

The Supreme Court unanimously allows the appeal by the father and orders the return of K to the US on the basis of the undertakings offered by the father to enable the mother to live in Texas, independently of the father and sharing the care of K between them, pending any application she might make to the Texas court to modify the order relating to K's residence. The sole judgment is given by Lady Hale.

REASONS FOR THE JUDGMENT

Convention proceedings

The father's application could only succeed if K was habitually resident in the US when the US Court of Appeals overturned the earlier order of the District Court in the mother's favour. [17]. The Convention does not define habitual residence but the UK applies the concept of habitual residence adopted by most member states of the European Union, namely that it is a question of fact and corresponds to the place which reflects some degree of integration by the child in a social and family environment [20]. Parental intention plays a part in establishing or changing a child's residence and this has to be factored in with all the other relevant factors in deciding whether a move from one country to another has a sufficient degree of

stability to amount to a change of habitual residence [23].

In this case, the move of the mother with K to the UK in August 2011 was intended by her to be permanent and neither she nor K will have perceived it as temporary, notwithstanding the appeal. K became integrated into a social and family environment in the UK during the year before the appeal succeeded [26]. The judge was entitled to hold that K had become habitually resident in the UK by 29 August 2012 [27]. Thus the father was not entitled to an order for K's return under the Convention.

Inherent jurisdiction

Under the Family Law Act 1986 the High Court has power to exercise its inherent jurisdiction in relation to children by virtue of the child's habitual residence and presence here. Before the Convention was adopted this jurisdiction was used to secure the prompt return of children who had been wrongfully removed from their home country. The existence of an order made by a competent foreign court is a relevant factor in deciding whether to exercise it [28].

The judge did not ask himself the correct question, which is whether it is in K's best interests to remain in the UK, so that the dispute between his parents is decided here, or to return to Texas so that the dispute can be decided there. The Supreme Court is in as good a position as the judge was to answer this as he heard no oral evidence [32]. The approach and procedure of the Texan and English courts are very similar and the father's evidence is that an application by the mother in Texas would be decided in less than three months [30, 33]. In favour of K's remaining in the UK is the fact that he has been living here with his mother for over two years, is at school and apparently doing well [34]. In favour of return to the US is the fact that he was born in Texas, has a large extended family in the US, and has spent half his life living there, most recently in the sole care of his father, who has facilitated contact with his mother [35]. The crucial factor is that K is a Texan child who is currently being denied a proper opportunity to develop a relationship with his father and with his country of birth. While the conflicting orders remain in force he has effectively been denied access to the US. It is necessary to restore the synthesis between the two jurisdictions which the mother's actions have distorted [36]. Despite the passage of time there is no reason to consider that K would suffer any significant harm by returning to Texas on the basis proposed by the father and accordingly the Supreme Court

allows the appeal and orders K's return on these terms. This order is to stand even if the mother chooses not to avail herself of the opportunity to return with her son [38].

ECJ Rules on Scope of European Enforcement Order

On December 5, 2013, the Court of Justice of the European Union delivered its judgment in Vapenik v. Thurner (Case 508/12).

The case was concerned with a loan contract concluded between two persons not engaged in commercial or professional activities. The issue for the Court was whether a claim based on this contract was eligible to benefit from Regulation 805/2004 on the European Enforcement Order for uncontested claims.

More specifically, the issue was whether such contract fell within the scope of Article 6(1)(d).

> ***Article 6.*** *A judgment on an uncontested claim delivered in a Member State shall, upon application at any time to the court of origin, be certified as a European Enforcement Order if:(a) the judgment is enforceable in the Member State of origin; and*
>
> *(b) the judgment does not conflict with the rules on jurisdiction as laid down in sections 3 and 6 of Chapter II of Regulation (EC) No 44/2001; and*
>
> *(c) the court proceedings in the Member State of origin met the requirements as set out in Chapter III where a claim is uncontested within the meaning of Article 3(1)(b) or (c); and*
>
> *(d) the judgment was given in the Member State of the debtor's domicile within the meaning of Article 59 of Regulation (EC) No 44/2001, in cases where*
>
> *– a claim is uncontested within the meaning of Article 3(1)(b) or (c); and*

– it relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession; and

– the debtor is the consumer.

The Court ruled that the Regulation does not apply. It relied on the language of Article 6, but also, and to a much larger extent, on Regulation 44/2001.

25 In that connection, and in order to ensure compliance with the objectives pursued by the European legislature in the sphere of consumer contracts, and the consistency of European Union law, account must be taken, in particular, of the definition of 'consumer' in other rules of European Union law. Having regard to the supplementary nature of the rules laid down by Regulation No 805/2004 as compared with those in Regulation No 44/2001, the provisions of the latter are especially relevant.

(…)

33 It must be stated that there is also no imbalance between the parties in a contractual relationship such as that at issue in the main proceedings, namely that between two persons not engaged in commercial or professional activities. Therefore, that relationship cannot be subject to the system of special protection applicable to consumers contracting with persons engaged in commercial or professional activities.

34 That interpretation is supported by the structure and broad logic of the rules of special jurisdiction over consumer contracts laid down in Article 16(1) and (2) of Regulation No 44/2001, which provides that the courts for the place where the consumer is domiciled are to have jurisdiction with respect to actions brought by and against him. It follows that that provision is applicable only to contracts in which there is an imbalance between the contracting parties.

35 Furthermore, account must be taken of the supplementary nature of the rules laid down by Regulation No 805/2004 as compared with those on recognition and enforcement of decisions laid down by Regulation No 44/2001.

36 In that connection, it must be stated that, although certification as a European enforcement order under Regulation No 805/2004 of a judgment with respect to an uncontested claim enables the enforcement procedure laid down

by Regulation No 44/2001 to be circumvented, the absence of such certification does not exclude the possibility of enforcing that judgment under the enforcement procedure laid down by the latter regulation.

37 If, in the context of Regulation No 805/2004, a definition were to be adopted, which is wider than that in Regulation No 44/2001, that might lead to inconsistencies in the application of those two regulations. The derogation laid down by Regulation No 805/2004 might lead to refusal of certification as a European enforcement order of a judgment, whereas it could still be enforced under the general scheme laid down by Regulation No 44/2001 since the circumstances in which that scheme allows the defendant to challenge the issue of an enforcement order, on the ground that the jurisdiction of the courts for the State in which the consumer is domiciled has not been respected, would not be satisfied.

Final ruling:

Article 6(1)(d) of Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims must be interpreted as meaning that it does not apply to contracts concluded between two persons who are not engaged in commercial or professional activities.

New Book on the Hague Child Abduction Convention

Rhona Schuz (Sha'arei Mishpat Law School) has published The Hague Child Abduction Convention: A Critical Analysis (Hart Publishing).

International child abduction is one of the most emotionally charged and fascinating areas of family law practice. The 1980 Hague Convention on the Civil Aspects of International Child Abduction was the response of the

international community to the increase in the phenomenon of parental child abduction. However, behind the widely acclaimed success of this Convention – which has now been ratified by more than 90 states – lie personal tragedies, academic controversy and diplomatic tensions.

The continuing steady flow of case-law from the various Member-States has resulted in the emergence of different approaches to the interpretation of key concepts in the Convention. In addition, over the years other global and regional legal instruments and the recommendations of the Special Commissions have had an impact on the implementation of the Convention.

This book brings together all these strands and provides an up-to-date, clear and highly readable discussion of the international operation of the Abduction Convention together with in-depth critical academic analysis in light of the objectives of the Convention and other relevant legal norms, such as the 1989 UN Convention on the Rights of the Child. Throughout the book, examples are brought from case-law in many jurisdictions and reference is made to relevant legal and social science literature and empirical research.

Over the past decade, increasing focus has been placed on what might be seen as procedural issues, such as separate representation for children, undertakings, judicial liaison and mediation. The book analyses the significance of these developments and the extent to which they can help resolve the continuing tension between some of the objectives of the Convention and the interests of individual children.

ERA / MPI Conference on Arbitration and EU Law

The Academy of European Law (ERA) and the Max Planck Institute Luxembourg will co-organize a conference on Arbitration and EU Law in Trier, Germany, on March 10 and 11, 2014.

Monday, 10 March 2014

I. AFTER THE RECAST OF BRUSSELS I
Moderator: *Stefania Bariatti*

09:30 Consequences and interpretation of the arbitration exception

10:00 *West Tankers,* antisuit injunctions and beyond: recent developments and latest case law
Alexander Layton

10:30-11:00 Discussion

11:30 Brussels I and the New York Convention: recognition and enforcement of judgments and awards
Catherine Kessedjian

12:00 Discussion

Moderator: *Catherine Kessedjian*

12:15-13:00 Panel discussion: How to ensure the effective coordination of judicial and arbitration proceedings?
• *Massimo Benedettelli*
• *Alexander Layton*

II. THE CROSS-OVER BETWEEN INSOLVENCY AND ARBITRATION
Moderator: Burkhard Hess

14:00 Effects of insolvency in arbitral proceedings taking into account the Insolvency Regulation and the proposals for its review
Stefania Bariatti

14:30 Effects of foreign insolvency on arbitration seated in Switzerland
Martin Bernet

15:00-15:30 Discussion

III. PROCEDURE, MINIMUM STANDARDS AND HUMAN RIGHTS

16:00 Innovative systems for dispute resolution in sport – and in other areas?

Dirk-Reiner Martens

16:30 Procedural minimum standards and the applicability of Article 6 ECHR in arbitration
Massimo Benedettelli

17:00-17:30 Discussion

Tuesday, 11 March 2014

IV. INVESTMENT ARBITRATION
Moderator: *Alexander Layton*

09:30 Compatibility of bilateral investment treaties (BITs) with EU law
Luca Radicati di Brozolo

10:00 Investment arbitration under extra-EU BITs
Patricia Nacimiento

10:30-11:00 Discussion

Moderator: *Luca Radicati di Brozolo*

11:30 Recent developments in investment arbitration
Maxi Scherer

12:00 Discussion

12:15 Panel discussion: Challenges and opportunities for investment arbitration
• *Patricia Nacimiento*
• *Maxi Scherer*

13:00 Lunch and end of the conference

Bar Associations Lend Support to Hague Choice of Court Convention

The Hague Conference on Private International Law has announced that the German Bar Association (*Deutschen Anwaltverein*, or DAV) has encouraged the European Union to ratify the Choice of Court Convention. In a statement released in October 2013 (official version in German; a courtesy translation performed by the Permanent Bureau of the Hague Conference can be found here), the DAV, which represents the interests of the German bar at the national, European and international level, emphasised the significance of the Convention for EU litigants, and recommended that the EU extend the recognition and enforcement regime of the Convention to non-exclusive choice of court agreements (pursuant to Art. 22).

The statement follows support for the Convention from other national and international bar associations. In June, the Inter-American Bar Association recommended that States join the Convention. In 2006, the American Bar Association passed a resolution urging the United States to join the Convention, which was followed in 2009 by the US signing the Convention.

Milan Conference on the Reform of the Brussels I Regime (13 December 2013)

The University "Luigi Bocconi" of Milan will host on **Friday 13 December** (9h30 – 13h00) a conference on the recast of the Brussels I reg., organized in collaboration with the International Law Association: **"The Reform of the 'Brussels I' Regime – The Recast Regulation (EU) No 1215/2012"**. A substantial part of the colloquium will be held in English. Here's the programme (available as a .pdf file):

Welcome Address: *Giorgio Sacerdoti* (Università Bocconi)

Opening Remarks: *Alberto Malatesta* (Secretary, ILA-Italy)

Chair: *Fausto Pocar* (Università degli Studi di Milano)

- The Revised Brussels I Regulation – A general outlook: The Rt. Hon. Lord *Jonathan Mance* (Judge, Supreme Court of the UK and Chair, Executive Council, ILA);
- Does the Recast Regulation Make Choice-of-Court Agreements More Effective?: *Gianluca Contaldi* (Università di Macerata);
- The New Rules on Parallel Proceedings with Particular Regard to Relations with Third States: *Pietro Franzina* (Università degli Studi di Ferrara);
- The Abolition of Exequatur and the New Rules on the Free Movement of Judgments: *Paola Mariani* (Università Bocconi).

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Roundtable (held in Italian): "Il ruolo di Bruxelles I nel contesto globale: quale ruolo per le norme UE?"

Chair: *Riccardo Luzzatto* (Università degli Studi di Milano)

Speakers:

- *Luigi Fumagalli* (Università degli Studi di Milano);
- *Alberto Malatesta* (LIUC Università Carlo Cattaneo);
- *Gian Battista Origoni della Croce* (Attorney at Law, Milan);
- *Fausto Pocar* (Università degli Studi di Milano).

Further information and the registration form are available on the conference's webpage.

The SDNY Grants Google's Motion to Dismiss the Google Book Search Case

Many thanks to Cristina Mariottini, Senior Research Fellow, Max Planck Institute Luxembourg

After eight years of intense litigation, on November 14th, 2013 the U.S. District Court for the Southern District of New York granted Google's motion to dismiss *The Authors Guild, Inc., et al. v. Google Inc., also known as the Google Book Search Case. This litigation, which captured for such a long time the attention of publishers, authors, libraries and internet users, quite interestingly* included in its different stages unusual procedural passages such as the court's rejection of an amended settlement agreement and the uncertification of a class, and eventually it ended with a rather surprising departure from the SDNY's earlier approach in this case to "fair use" in copyright.

I. Judicial History

In September 2005, the Authors Guild filed a class action lawsuit in the Southern District of New York against Google over Google's scanning of over 20 million library books from several research libraries without the prior authorization of rightsholders. The following month, the Association of American Publishers filed another lawsuit against Google for copyright infringement, seeking injunctive relief. Google responded that its use was a "fair use" because they were only showing "snippets" for books where they did not have permission from a rightsholder. In the spring of 2006 the parties began settlement negotiations, and two years later, in October 2008, Google announced an agreement to pay $125 million to settle the lawsuit. The settlement agreement also included licensing provisions, allowing Google to sell personal and institutional subscriptions to its database of books. However, in November 2009, after the Department of Justice filed a brief suggesting that the initial agreement may violate U.S. anti-trust laws (in fact, as the Department of Justice observed, it "[gives] Google control over the digitizing of virtually all books covered by copyright in the United States"), the parties filed an Amended Settlement Agreement (ASA). Among the changes it

encompassed, the ASA limited the scope to foreign books that are registered with the U.S. Copyright Office or published in the UK, Canada, or Australia; it granted the rightsholder the ability to renegotiate the revenue share and provided Google with added flexibility in discounting; and it created a fiduciary to hold payments due to orphan works: if the rightsholder was never ascertained, the funds would be distributed cy-près instead of redistributed among rightsholders.

However, severe criticism was raised against the ASA by authors, publishers and other stakeholders according to which, in spite of these "improvements", the ASA continued to impose a de facto compulsory license with respect to worldwide digital book copyrights under the guise of an intellectual property class action. Such worldwide coverage was the result of the fact that – regardless of the wording in the agreement – the ASA was not simply limited to authors and publishers in the United States, Canada, the United Kingdom and Australia but, rather, it also extended to international authors who registered with the U.S. Copyright Office (in this regard cf. the Memorandum of law in opposition to the Amended Settlement Agreement on behalf of the Federal Republic of Germany of January 28th, 2010). Subsequently, on March 22nd, 2011 supervising Judge Chin issued a ruling rejecting the settlement, stating that the ASA was "an attempt to use the class action mechanism to implement forward-looking business arrangements that go far beyond the dispute before the Court" and that it would "release Google (and others) from liability for certain future acts". Eventually, Judge Chin urged that the settlement be revised from "opt-out" to "opt-in". Despite a series of status conferences that were held throughout 2011, an amended "opt-in" settlement was not reached, and the ASA was simply rejected. In 2012 Judge Chin recertified the class represented by the Authors Guild, and the case was scheduled to go to court by July 2013. However, in July 2013, the Second Circuit overruled the class certification and remanded the case to the District Court for consideration of the "fair use" issues. In holding that it "believe[d] that the resolution of Google's fair use defense in the first instance will necessarily inform and perhaps moot our analysis of many class certification issues" the appellate court provided clear indication that it deemed that Google's "fair use" defense was grounded and that, once the lower court addressed the Author Guild's claim from a "fair use" perspective, it would find that no class needed to be certified as there was no claim to be brought.

II. Upholding the "Fair Use" Doctrine

The “fair use” doctrine is codified in § 107 of the Copyright Act (17 U.S.C. § 107), which provides that in order to assess the fair use of a copyrighted work certain factors must be considered, including:

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

Judge Chin’s analysis of the four factors in the Google Book Search decision may be summarized as follows:

Factor No 1. *Purpose and character of the use*: Google Books serves several important educational purposes: Google’s use of the copyrighted works is highly transformative. Google Books digitizes books and transforms expressive text into a comprehensive word index that helps readers, scholars, researchers, and others find books. Google Books is also transformative in the sense that it has transformed book text into data for purposes of substantive research. Words in books are being used in a way they have not been used before. Google Books has created something new in the use of books. Google Books does not supersede or supplant books because it is not a tool to be used to read books. Instead, it adds value to the original and allows for the creation of new information, new aesthetics, new insights and understandings. Fair use has been found even where a defendant benefitted commercially from the unlicensed use of copyrighted works. Google does not sell the scans it has made of books; it does not sell the snippets that it displays. Google does, of course, benefit commercially in the sense that users are drawn to the Google websites by the ability to search Google Books. Even assuming Google’s principal motivation is profit, the fact remains that Google Books serves several important educational purposes.

Factor No 2. *Nature of the copyrighted work*: While works of fiction are entitled to greater copyright protection, the vast majority of the books in Google Books are non-fiction.

Factor No 3. *Amount and substantiality of the portion used in relation to the copyrighted work as a whole*: Google scans the full text of books. On the other hand, courts have held that copying the entirety of a work may still be "fair use". As one of the keys to Google Books is its offering of full-text search of books, full-work reproduction is critical to the functioning of Google Books. Moreover, Google limits the amount of text it displays in response to a search.

Factor No 4. *Effect of the use upon the potential market for or value of the copyrighted work*. Google does not sell its scans, and the scans do not replace the books. To the contrary, a reasonable fact finder could only find that Google Books enhances the sales of books to the benefit of copyright holders. Google Books provides a way for authors' works to become noticed, much like traditional in-store book displays.

Overall, in granting Google's motions for summary judgment and for dismissal Judge Chin held that Google Books has given scholars the ability, for the first time, to conduct full-text searches of tens of millions of books. Google Books preserves books, in particular out-of-print and old books, and it gives them new life. It generates new audiences and creates new sources of income for authors and publishers. As Judge Chin eventually stated in his conclusions, "Indeed, all society benefits".

III. The Aftermath of the SDNY's Dismissal of the Google Book Search Case

The SDNY's decision left many commentators puzzled, especially with a view to Judge Chin's major change of heart with regard to this case. On the one hand, Judge Chin had expressed major skepticism about the Google Book Project in his highly-publicized 2010 ruling that rejected the ASA which, in spite of its undisputable deficiencies, would at least have created a market for the scanned books. On the other hand, in complying with the Second Circuit Court of Appeals' indication that Google had a compelling "fair use" defense that would end the case without the aggravation of going through a full class action, Judge Chin appears to have been suddenly struck by the transformative and beneficial powers of the Google Book Project, and accordingly granted Google a sweeping "fair use" blessing.

As a result of the Second Circuit's ruling vacating the class certification, from a res judicata point of view the SDNY's decision may be deemed as binding only

upon Authors Guild and the named plaintiffs (affecting only the books whose copyrights are owned by Authors Guild, in addition to those of the three named plaintiffs: Betty Miles, Joseph Goulden, and Jim Bouton), thus greatly narrowing its impact on the community of authors and publishers. From a case-law standpoint, by being a lower court's ruling, the decision may be considered as persuasive but certainly not authoritative by other courts, which further limits its impact in similar cases. Moreover, it is likely that the Authors Guild will appeal the decision, just as it is currently doing in *Authors Guild v. HathiTrust* (2012), a lawsuit in which the Authors Guild claimed that the HathiTrust digital library had violated copyright, and the SDNY (represented by a judge other than Judge Chin) ruled against the Authors Guild, finding that HathiTrust's use of books scanned by Google was "fair use" under U.S. copyright law. And while it is unlikely that the Second Circuit reverses Judge Chin's decision, one may still hope that the appellate court will at least set narrower boundaries to Judge Chin's far-reaching construction of the "fair use" doctrine.

Note from editor. The decision has also been commented by Prof. Pedro de Miguel Asensio (Universidad Complutense de Madrid) in his blog. He discusses the background to the case and focuses on its implications from a European perspective, an issue he had already considered in the light of the failed 2008 legal settlement in this case (see here). Although the November ruling only deals with the interpretation of US copyright law, Prof. de Miguel reflects on the consequences that diverging standards on digitization of books and the offering of related services such as Google Books between the US and the EU may have on authors' protection, access to culture and the availability of very powerful research tools. Furthermore, he refers to the comparison between the fair use analysis under US law and the EU system of exceptions and limitations to copyright, in connection with international harmonization in this field.

Report on the Application of

Regulation (EC) 1393/2007

The European Commission presented today its findings on the application of EU rules governing the 'service of documents' in civil justice proceedings, i.e., Regulation (EC) No 1393/2007. According to the report European rules have helped speed up the service of documents between EU countries, despite an ever increasing caseload. Delivery times for judicial documents have fallen in Austria, Belgium, Finland, Germany, Greece and Portugal.

To further improve the functioning of these rules, the Commission intends to follow up on today's report with a public consultation to be carried out in the course of 2014.

Click here to access the Report.

Greek Book on Service of Process Abroad

Dr. Apostolos Anthimos has published Service of Process Abroad: A Practical Guide (Domestic Law • Bilateral Treaties • Hague Service Convention • Regulations 1348/2000 & 1393/2007) in Greek.

> *This book grew out of the experience of the author's engagement with cross-border legal practice for nearly two decades. It gives the full picture on serving Greek proceedings to litigants abroad. A purely practical approach has been opted: Its main purpose is the immediate access to key information on a state by state basis. This is accomplished by a clear-cut description of the applicable law and the presentation of the reported case law for each country separately.*
>
> *The existing legislative framework is summarized in the introductory chapter. The analysis is based on the 4-level model, well known for many countries around the globe, i.e., domestic provisions (Article 134 Greek Code of Civil*

Procedure), bilateral agreements, the Hague Service Convention, and EC-Service Regulations 1348/2000 & 1393/2007.

The main part of the book elaborates each country separately. The material varies, depending on socio-economic ties and factors. For instance, Germany, Italy, Cyprus, the UK, USA, and Australia are strongly represented on the respective chapters, in comparison with many African, Asian and Latin American legal orders, where no conventional link or case law has been traced. All chapters have the following structure: First, the connecting factors on the legislative level, plus any existing declarations from the state in question. Secondly, the elaboration of Greek case law on the service of process to litigants with residence or seat in the respective country.

The annexes of the book host all bilateral conventions signed by Greece on the matter, the text of the Hague Service Convention, coupled with the declarations made by Greece, and the text of EC-Regulation 1393/2007. The case law coverage is fully updated, and includes all decisions reported until October 2013.

The publisher is Sakkoulas Publications (Thessaloniki, 2013, XX + 325 pages, ISBN/ISSN: 978-960-568-042-8, Price: EUR 28).

US Supreme Court Rules on Forum Selection Clauses

By Verity Winship

Verity Winship is Associate Professor, Richard W. and Marie L. Corman Scholar at Illinois University College of Law

The US Supreme Court just issued a unanimous decision in *Atlantic Marine Construction Co. v. U.S. District Court for the Western District of Texas* about the effect of forum selection clauses in US federal courts. The Court has considered

these clauses only three times before, and this is the first opinion on the subject in 25 years. In this case, the parties agreed that suits would be litigated in the state of Virginia. The plaintiff, however, brought suit in federal court in Texas. Among other things, the defendant moved to transfer the case to federal court in Virginia based on a statutory provision (28 USC 1404(a)). The parties did not dispute the validity of the clause, but disagreed about whether it mandated transfer to the designated forum.

The Supreme Court held that forum selection clauses should have controlling weight absent "extraordinary circumstances unrelated to the convenience of the parties." US courts ordinarily consider both private and public interest factors in determining whether a case should be transferred among federal courts. The Court concluded that the presence of a valid forum selection clause changes the analysis. First, plaintiff's choice of forum receives no weight. Second, courts should not consider the convenience of the parties, but only public factors, which "will rarely defeat a transfer motion." Third, although transferred cases normally get the choice-of-law rule of the pre-transfer court, the Court established an exception for cases filed outside the contractually designated forum in an attempt to limit forum shopping. Although the statutory provision at issue governs movement among courts in the US federal system only, the Court indicated that the same analysis applies to motions to dismiss for *forum non conveniens* when the designated forum is a US state or non-US court.