Talaq Divorce Cases in the United States

Over the past several months, three state appellate courts in the United States have examined whether a "talaq" divorce obtained in another country is entitled to recognition as a matter of comity. In this post, I first survey the rules relating to the recognition of foreign divorce judgments in the United States. I then explain the concept of a talaq divorce. Finally, I discuss the cases.

Foreign Divorce Judgments

U.S. courts are often asked to recognize divorce judgments rendered by courts in other countries. While the rules relating to foreign *money* judgments are set forth in the Uniform Foreign-Country Money Judgments Recognition Act, there is no uniform act that addresses when a U.S. court must recognize a foreign *divorce* judgment.

In the absence of statutory guidance, U.S. courts apply common law principles of comity to determine whether a foreign divorce judgment should be given effect. These principles were famously expounded by the U.S. Supreme Court in *Hilton v. Guyot* (1895), where the Court held that a foreign judgment should be recognized when:

> *there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it is sitting, or fraud in procuring the judgment.*

The *Hilton* Court also observed that a foreign judgment need not be recognized when contrary to the public policy of the enforcing state:

> *A judgment affecting the status of persons, such as a decree confirming or*

> *dissolving a marriage, is recognized as valid in every country unless contrary to the policy of its own law (emphasis added).*

With these principles in mind, let us now turn to the type of divorce here at issue—a talaq divorce.

Talaq

Talaq is an Islamic form of divorce. It has been described by one U.S. court as follows:

> *Under Islamic law, a husband has the right to initiate a divorce ("talaq") against his wife. All that is required to achieve talaq is for a husband to pronounce his intent to divorce his wife on three separate occasions, either verbally or in writing. The husband does not need to communicate his three pronouncements to his wife. She need not be present for them or even aware of them. A wife cannot object to a talaq.*

In 2008, the Maryland Supreme Court was asked to recognize a talaq divorce in *Aleem v. Aleem*. In that case, the husband—a Muslim and a national of Pakistan—went to the Pakistan Embassy in Washington, D.C., and executed a written document stating three times that he was divorcing his wife. He argued that this act was sufficient to effectuate a divorce under the law of Pakistan even though he and his wife were residents of Maryland.

The Maryland Supreme Court held that, even if the talaq divorce was valid as a matter of Pakistani law, it was not entitled to recognition in Maryland because (1) it provided no due process protection for the wife; (2) only the husband (not the wife) had a right to invoke this process; and (3) the wife was not entitled to an equitable share of the marital property. On these facts, the Maryland Supreme Court held that recognizing such a divorce would be contrary to Maryland public policy.

The *Aleem* decision has cast a long shadow. It is cited by each of the more recent cases, to which we now turn.

Adewale v. Adewale

On June 22, 2026, the Pennsylvania Superior Court discussed a talaq divorce in *Adewale v. Adewale*. In that case, a man and woman were civilly married in Lagos, Nigeria, in 2011, and subsequently moved to the United States. In 2020, the man filed for divorce in Pennsylvania. After the woman sought alimony, the court ordered the man to pay her a set sum of money each month.

In the course of the divorce proceedings, the man became aware that his putative wife may have been married to another person at the time of their "marriage." Over the course of several years of evidentiary hearings, he discovered that she had, in fact, married someone else in 2001. The woman's legal husband testified that the 2001 marriage had occurred and submitted a wedding certificate and photographs as proof. In light of this evidence, the trial court concluded that the parties' marriage was void *ab initio* and terminated the man's alimony obligations.

On appeal, the woman argued, among other things, that her 2001 marriage had been terminated by a talaq divorce in 2006, thereby paving the way for the court to conclude that the 2011 marriage was valid. The Pennsylvania Superior Court rejected this argument. Even if her husband had, in fact, repeated "I divorce you" three times in front of witnesses in 2006, the court held, this act was of no legal consequence because talaq could "only be valid if uttered by a Muslim husband." Since the husband had converted to Christianity in 1980, the court reasoned, he did not identify as Muslim and could not divorce his wife in this manner. The court also observed (citing *Aleem*) that other "U.S. states have declined to recognize talaq as a valid unilateral method of divorce on the grounds that it violates the right to due process, equal protection, and fundamental fairness." It ultimately affirmed the trial court's judgment and held that the parties' 2011 marriage was void from the beginning.

Ali v. Osman

On August 6, 2026, the North Dakota Supreme Court addressed the issue of talaq in its opinion in *Ali v. Osman*. The couple in that case were married in Sudan in 2001 and moved to the United States soon afterwards. In 2024, the wife filed for divorce in North Dakota. The husband moved to dismiss the action for lack of subject-matter jurisdiction on the grounds that he had, unbeknownst to his wife, obtained a talaq divorce when he was traveling in Sudan in 2022, as evidenced by

an official certificate.

The question presented was whether this divorce was entitled to recognition in North Dakota. The trial court held that it was not. It noted that neither the husband nor the wife was a resident of Sudan when the husband obtained the talaq divorce. It pointed out that the wife was given no notice that the husband was seeking a talaq divorce and did not learn of it until after it had occurred. It concluded that these proceedings had failed to provide the most "basic rudiments" of due process to the wife.

This decision was affirmed by the North Dakota Supreme Court, which observed (citing *Aleem*) that a number of other U.S. courts had declined to recognize talaq divorces in similar situations. It held that the trial court had not "abused its discretion by declining to recognize the Sudanese divorce certificate as a matter of comity."

Azhar v. Choudhri

On September 25, 2026, the Texas Supreme Court declined to recognize a talaq divorce in *Azhar v. Choudhri*. In this case, the husband had lived in Houston, Texas, since he was a child. In 2008, he traveled to Pakistan and married a Pakistani woman. The wife moved to Houston to join her husband in 2010. In 2012, the husband sent his wife back to Pakistan under the guise of renewing her visa. He subsequently obtained a talaq divorce against her, in Pakistan, in 2013, without her knowledge:

> *According to Wife, Husband did not inform Wife before or afterwards that they would be divorced. No one notified Wife of the proceedings or served her with process. Instead, Husband purported to effectuate service by publishing a notice in a small local Pakistani newspaper a mere five days in advance. Wife did not happen to come across that publication.*

The wife did not learn of the talaq divorce until 2015.

In that year, the wife filed for divorce in Texas, seeking an equitable division of the substantial marital estate. The husband moved to dismiss on the grounds that the couple was already divorced under Pakistani law and that, accordingly, there was no marriage to dissolve. The trial court held that the Pakistani talaq divorce

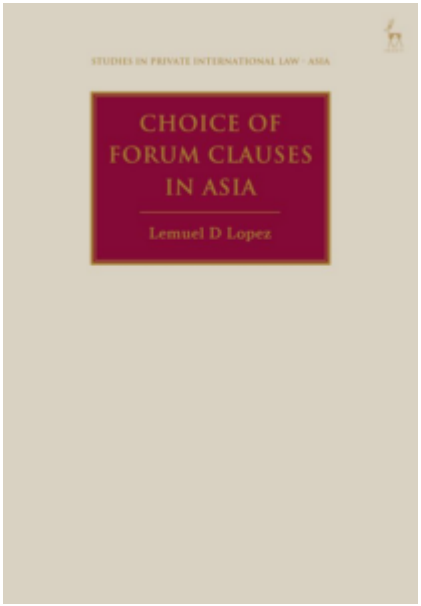
judgment was entitled to recognition and rendered a take-nothing judgment against the wife. This decision was affirmed by the Court of Appeals of Texas.

The Texas Supreme Court reversed. It concluded that the talaq divorce was not entitled to recognition because the wife was never provided with notice "reasonably calculated to apprise her of the action." The notice provided was, in the court's view, so far short of what Texas law required that the divorce judgment was not entitled to recognition. Although the court acknowledged that the husband had published a notice in a Pakistani newspaper five days before he initiated the talaq divorce, it viewed this as insufficient:

> *[W]e have cautioned that citation by publication or posting violates due process when the address of a known defendant is readily ascertainable . . . This record forecloses the conclusion that Husband really wanted to find Wife and notify her of the divorce proceeding. Husband put on no evidence that the typical channels of spousal communication—telephone, text messages, email, social media messaging, in-person communication, mutual friends, and so on—were unavailable. Under these circumstances, the trial court should have heeded the default rule that when a defendant's identity is known, service by publication is generally inadequate.*

In light of these issues with respect to notice, the Texas Supreme Court unanimously reversed and remanded the case.

Book Review: Choice of Forum Clauses in Asia (Lemuel L Lopez)



Choice of forum clauses are an important means of managing litigation risk in international commercial contracts. Their effectiveness, however, depends on how courts understand and enforce the parties' agreement. This well-researched book offers a substantial comparative examination of that problem across seven Asian jurisdictions: Singapore, Hong Kong, Malaysia, the Philippines, China, Indonesia and Japan. Presented as the first work devoted to this particular comparative inquiry, it makes a valuable contribution to Asian private international law and offers insights that will interest readers working on choice of forum agreements elsewhere.

The selection of jurisdictions gives the study considerable comparative breadth. Singapore, Hong Kong and Malaysia represent common law systems strongly influenced by English law. The Philippines provides a mixed legal tradition shaped by American and Spanish influences, while China, Indonesia and Japan represent civil law traditions, with Dutch law having exerted a particularly significant influence on Indonesia. By bringing these systems together, the author examines how shared problems are addressed through different legal concepts and procedural arrangements.

The book's analytical framework, introduced at the outset, comprises six connected questions: the characterisation of choice of forum clauses; party autonomy; the procedures available for enforcement; judicial discretion in granting relief; the applicable law; and the overriding effect of forum state and

international interests (p 1). This framework is one of the book's principal strengths. It connects questions that are often examined separately and demonstrates why the practical effectiveness of a clause cannot be assessed solely by reference to its contractual wording. The central argument is persuasive: choice of forum clauses can help manage the risks associated with international commercial transactions, but their effectiveness requires careful drafting and coherent judicial treatment.

Chapter 2 provides the conceptual foundation by examining competing understandings of the nature of choice of forum clauses. It explores the tension between their contractual or substantive character, commonly associated with traditional common law approaches, and their procedural or public character, associated with civil law approaches. The author appears to favour an approach that recognises both dimensions. I agree with this position. A choice of forum agreement records a private commitment, but its enforcement also affects the exercise of judicial authority. An account that accommodates both features provides a convincing basis for understanding the questions addressed throughout the book.

The chapter also considers the relationship between choice of forum clauses and arbitration agreements, their effects on non-parties, and their interaction with other contractual provisions. The comparison with arbitration is useful because both mechanisms enable parties to organise the resolution of future disputes. The author distinguishes the dual public and private character of choice of forum clauses from the contractual nature of arbitration agreements, thereby clarifying the conceptual basis of the book's subsequent analysis.

Chapter 3 develops the discussion of party autonomy by distinguishing the parties' freedom to determine the contents of their clause from their freedom to control the conduct of litigation. This distinction is helpful: agreement on a forum does not necessarily give parties unrestricted control over the court's response. The treatment of the ouster rule illustrates the tension between private agreement and judicial authority. The book describes the movement away from the traditional objection that parties cannot oust the jurisdiction of common law courts, while showing the continuing influence of that objection in the Philippines. Its discussion of the Hague Choice of Court Convention 2005 places these domestic approaches within a broader framework for giving effect to party autonomy.

Chapter 4 examines the relief and remedies available in Singapore, Hong Kong, Malaysia and the Philippines. The comparative account reveals important differences within jurisdictions influenced by the common law. Singapore emerges as particularly receptive to contractual enforcement and party autonomy, whereas the Philippine treatment of choice of forum agreements as venue stipulations, together with the continuing influence of the ouster rule, limits their effect. Malaysia places greater emphasis on judicial discretion. The chapter also examines anti-suit injunctions and the recognition and enforcement of foreign judgments associated with the enforcement or breach of choice of forum agreements.

The Singapore discussion is especially instructive. The Singapore International Commercial Court and the operation of the Hague Choice of Court Convention demonstrate the jurisdiction's commitment to facilitating international commercial dispute resolution. Yet the coexistence of different enforcement regimes also creates complexity. Parties may encounter different approaches depending on the court concerned, the applicability of the Convention, the exclusive or non-exclusive character of the clause, and the involvement of third parties. Singapore's experience therefore illustrates a recurring theme of the book: strong support for party autonomy must be accompanied by rules whose practical operation parties can understand and predict.

Chapter 5 considers judicial discretion, including England's judicial influence of The Eleftheria and Spiliada on the treatment of exclusive and non-exclusive jurisdiction clauses in Singapore, Hong Kong and Malaysia. Its examination of whether those clauses should be subjected to similar tests raises an important question about the relationship between contractual commitment and the assessment of the appropriate forum. The discussion helps explain why a court's stated commitment to party autonomy does not, by itself, determine the outcome of an enforcement application.

Chapter 6 examines the relationship between choice of forum clauses and choice of law, focusing on existence, validity and interpretation. The account of Singapore, Hong Kong and Malaysia shows the influence of English common law approaches, including reliance on the law governing the main contract and the reservation of certain questions to the law of the forum. The operation of the Hague Choice of Court Convention in Singapore introduces a different reference to the law of the chosen court for substantive validity.

The discussion of exclusivity is also valuable. The cases examined suggest that, outside the relevant Convention framework, courts in Singapore, Hong Kong and Malaysia approach exclusivity principally as a question of contractual interpretation rather than through a general presumption. This finding reinforces the practical importance of clear drafting. Parties who intend to confer exclusive jurisdiction should express that intention in terms that minimise uncertainty about the scope and effect of their agreement.

Chapter 7 broadens the analysis by considering forum state and international community interests. Mandatory rules, public policy, comity and related concepts may affect the existence, validity and interpretation of clauses, the availability of relief, and the recognition and enforcement of resulting judgments. The attention given to weaker parties is particularly welcome. Asymmetric agreements, standard-form contracts and consumer transactions reveal why formal consent may not provide a sufficient justification for enforcement in every case. This chapter strengthens the book's account of party autonomy by examining the interests that may legitimately qualify its operation.

Chapter 8 applies the preceding framework to China, Indonesia and Japan. Its discussion demonstrates both the usefulness and the limits of broad classifications into common law and civil law traditions. The Chinese treatment of disputes involving Hong Kong, Macau and Taiwan introduces distinctive questions concerning conflicts between legal systems. The discussion of *forum non conveniens,* anti-suit injunctions and asymmetric jurisdiction agreements further reveals how familiar mechanisms may acquire different functions within a particular legal system. In particular, the book contrasts the emphasis on efficiency in the Chinese approach to *forum non conveniens* with the attention to justice in the English approach.

The Indonesian analysis identifies difficulties arising from the conflation of choice of law and choice of court, including reliance on a foreign choice of law clause as a basis for declining jurisdiction. This is a useful illustration of the practical consequences of failing to distinguish two different exercises of party autonomy. The Japanese discussion addresses the special circumstances test, the presumption of exclusivity, the treatment of asymmetric clauses, and rules protecting consumers and employees. Together, these accounts show that support for choice of forum agreements operates within procedural and regulatory arrangements that vary considerably across the jurisdictions examined.

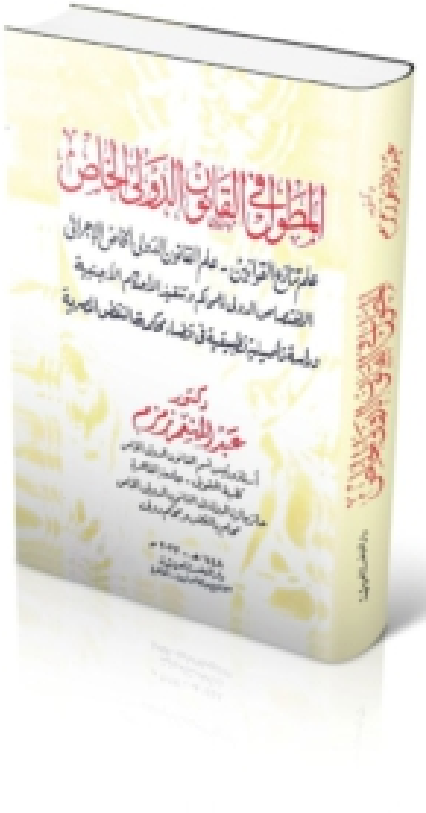
Interestingly, the book reveals differing approaches to asymmetric jurisdiction agreements in the civil law jurisdictions examined. Chinese courts enforce such agreements, while a Japanese court has treated an asymmetric jurisdiction clause as exclusive. The Japanese approach nevertheless operates within a framework that includes the special circumstances test and protections for weaker parties, particularly consumers and employees. These findings suggest that asymmetry does not, by itself, necessarily prevent enforcement in China or Japan.

The final chapter draws the comparative findings together effectively. Characterisation shapes the legal tools available; party autonomy guides judicial approaches; forum procedure determines the means of enforcement; and discretion remains an important element of the court's response. The applicable law also matters, although the allocation of questions of existence, validity and interpretation differs between systems. Finally, forum state and international interests may override both private agreement and the otherwise applicable law. These findings support the book's emphasis on careful drafting, predictable judicial analysis and procedural reform. They also provide a basis for considering wider participation in the Hague Choice of Court Convention and the Hague Judgments Convention 2019.

A modest criticism concerns the presentation of the findings. The chapters generally begin with clear and helpful introductions, but more consistent concluding sections would have made it easier to identify and compare their principal lessons. In a study of this breadth, short chapter conclusions could also have helped readers retain the relationship between the detailed national analysis and the book's overarching framework. The strong final chapter substantially compensates for this omission.

Overall, this is an impressive and richly analysed comparative study. Its contribution lies in bringing contractual commitment, procedural rules, judicial discretion and public interests into a sustained examination of choice of forum clauses across diverse Asian legal systems. It will be valuable to scholars and practitioners of Asian private international law, while also providing a useful framework for comparative work beyond the region. I will certainly return to it, particularly when examining choice of forum agreements in African jurisdictions.

Zamzam on Egyptian Private International Law (in Arabic): Towards Reviving the Golden Age of Egyptian Private International Law



Private international law in Egypt has often been described as being in a state of stagnation. After enormous efforts by the government since the end of the 19th century, and particularly during the beginning of the 20th century, Egypt succeeded in developing a relatively comprehensive PIL framework, covering choice of law (Arts 10–28 of the 1948 Civil Code), international jurisdiction (Arts 28–35 of the 1968 Code of Civil and Commercial Procedure), and the enforcement

of foreign judgments (Arts 296–301 the 1968 Code of Civil and Commercial Procedure), alongside other rules scattered across various pieces of legislation. While these rules could be considered relatively modern and well developed, and broadly in line with the general tendencies of comparative law at the time, they have since become quite outdated and, in many respects, old-fashioned. This, however, has not prevented Egyptian law from exerting considerable influence throughout the region, with more recent codifications often reproducing or adapting Egyptian solutions.

The influence of Egyptian law is due not only to its legislation, but also to the role played by Egyptian scholars in laying the foundations of a genuine Egyptian PIL scholarship. Early treatises were, more often than not, encyclopedic in scope, deeply engaged with comparative law and attentive to judicial practice. In this respect, one may cite the seminal work of Ezzeddine Abdallah, *Al-qānūn ad-Duwalī al-Khāṣ* [القانون الدولي الخاص – *Private International Law*], which consists of two volumes: Volume I, dealing with Nationality, Domicile and the Status of Aliens (1986), and Volume II, dealing with Conflict of Laws and Conflict of Jurisdictions (1986). This work remains, in my view, one of the leading and most authoritative scholarly works in the field.

Slowly, however, the golden age of Egyptian scholarship in private international law entered a period of decline. Much recent scholarship has, more often than not, contented itself with reproducing the work of the great early scholars, while often neglecting the comparative-law dimension from primary sources that was so prominent in those earlier works. Indeed, it is not uncommon for recent publications to refer to existing descriptions of old French case law, to engage in detailed discussions of issues with little practical relevance for Egypt, such as *renvoi*, or to refer to private international law systems that no longer exist, such as those of Czechoslovakia and Yugoslavia. Some also continue to cite, without any particular relevance to the issues under discussion, rather outdated French scholarly works.

More importantly, recent scholarship has generally paid insufficient attention to developments in case law. Rather than systematically examining the more recent decisions of the Egyptian Court of Cassation, despite their relative accessibility, many works continue to rely heavily on older French decisions or on relatively old Egyptian Court of Cassation judgments. This is particularly unfortunate in a field

such as private international law, where the practical meaning and development of legal rules can often be understood only by looking closely at how courts actually apply them.

In this regard, the publication of Professor Abdel Moneem Zamzam's book on Egyptian private international law provides a useful opportunity to examine the current state and development of Egyptian law and legal scholarship in this field. Professor Zamzam, who is also Head of the Department of Private International Law at the Faculty of Law, Cairo University, is an outstanding scholar of private international law and international civil procedure, including international insolvency and arbitration, as well as international investment law. He obtained his PhD from the University of Dijon in 2003 with a thesis entitled "Overriding Mandatory Rules in State Courts and International Arbitration: A Comparative Franco-Egyptian Study" (*Les lois de police dans la jurisprudence étatique et arbitrale : étude comparée franco-égyptienne*). The thesis was first published in 2004 by the Atelier national de reproduction des thèses and was republished in 2021 by Éditions universitaires européennes. Professor Zamzam has also published several works in English, notably an article published in 2010 in the *Journal of Private International Law*, entitled "Bankruptcy Jurisdiction and Enforcement of Foreign Bankruptcy Judgments in Egypt".

The book, entitled ***Al-muṭawwal fī al-Qānūn al-Duwalī al-Khāṣ*** **[المطـــول فـــي القانون الدولي الخاص – *The Treatise on Private International Law*] (Dar al-Nahḍa al-ʿArabiyya, 2027)**, revives an old Egyptian tradition of lengthy legal treatises, running to approximately 1,100 pages. It covers the core areas of private international law, namely choice of law, international jurisdiction and the recognition and enforcement of foreign judgments, with particular reference to the case law of the Egyptian Court of Cassation (*Maḥkamat al-Naqḍ* / محكمـــــــة النقض).

The book, kindly made available by the author here for the benefit of Arab PIL scholars and other Arabic-speaking readers, consists of three main parts, preceded by a general introduction.

Part I deals with the general theory of private international law, notably the nature and scope of private international law and its branches (Chap. I), the nature of the conflict-of-laws rule (Chap. II), the application of the conflict-of-laws rule (Chap. III), and disregarding the conflict-of-laws rule and correcting its

application (Chap. IV).

Part II deals with the substantive rules of the conflict of laws, notably conflict of laws in personal status matters, or The Principle of the Personal Law (Chap. I), conflict of laws in immovable and movable property, or The Principle of the Territorial Law (Chap. II), conflict of laws in international contractual obligations, or The Principle of Party Autonomy (Chap. III), and conflict of laws in international non-contractual obligations, or The Principle of the Local Law (Chap. IV).

Part III deals with procedural private international law and is divided into two main sections: the first concerns conflicts of international adjudicatory jurisdiction and the international jurisdiction of Egyptian courts (Chap. I), while the second deals with the recognition and enforcement of foreign judgments (Chap. II).

The book has several notable strengths. First, it builds on the existing literature while proposing a broader treatment of private international law in Egypt, often advancing positions that are original, or at least distinct from those prevailing in Egyptian scholarship. Second, it gives an important place to the case law of Egyptian courts, particularly that of the Egyptian Court of Cassation. Finally, in keeping with the tradition of Egyptian scholarly works, it adopts a comparative-law approach, presenting different approaches in major legal systems.

Despite these strong points, there are also some aspects that could, in my view, be taken into account by the author in future editions.

First, I found it particularly unfortunate that the book pays relatively little attention to private international law in other Arab countries. For instance, when discussing the trend towards comprehensive codifications of private international law, the author refers, inter alia, to the Swiss codification of 1984 and the Italian codification of 1995. Surprisingly, however, he also refers to a number of outdated codifications that have since been repealed and replaced by new legislation, such as the Turkish codification of 1982, which was replaced by new legislation in 2007, the Hungarian PIL Law-Decree of 1979, replaced in 2017, and the Romanian PIL Act of 1992, whose substantive provisions were subsequently incorporated into Book VII of the Civil Code, adopted in 2009 and in force since 2011. He also refers to instruments that, although bearing the title “private

international law", deal essentially with choice of law and therefore cannot properly be regarded as comprehensive codifications, such as the Polish Act of 1965, which was replaced by a new Act in 2011.

Surprisingly, the author does not refer to the Tunisian Code of Private International Law of 1998, despite its being available in both Arabic and French. This could have provided a particularly relevant point of reference for a comparative examination of Arab private international law systems. More generally, this reflects a second aspect that, in my view, deserves closer attention: a more systematic comparative-law approach would have benefited from references to the EU regulations, recent developments in US conflict of laws, and, importantly, the work of the Hague Conference on Private International Law (HCCH), including the more recent conventions and other instruments adopted in areas such as international jurisdiction, the recognition and enforcement of foreign judgments, choice of court agreements, and international family law. It would also have been useful to consider contemporary developments observable in other Arab jurisdictions. These developments are largely overlooked, with the author relying instead on classical references found in classical Egyptian legal literature, together with citations to older French textbooks that have since been substantially revised, updated or, in some cases, ceased to be regarded as authoritative references, except in relation to the historical issues that were relevant at the time of their publication.

Another aspect that deserves attention is the use of the case law of the Egyptian Court of Cassation. The author's effort to identify and discuss relevant cases is certainly to be appreciated. At times, however, the references to the case law appear to be more illustrative than substantive. The treatment of derogative choice-of-court agreements provides a good example. The author cites only two decisions in which the Court of Cassation appears to uphold the validity of such agreements. A closer examination of the available case law on the issue, however, reveals a considerably more complex picture, and one that does not necessarily support the author's position in favour of derogative choice-of-court agreements. It is also unfortunate that some recent decisions, including cases reported on this blog (here, here, here, here, and here) together with the relevant references to the case law, as well as other useful and more recent sources, have not found their way into this latest contribution to Egyptian private international law.

A third point, and in my view the most important one, concerns the history of

Egyptian private international law, which is almost entirely overlooked in the book, as if its development had begun only in 1948 with the adoption of the Egyptian Civil Code and the set of private international law rules contained therein. A historical approach to Egyptian private international law, however, would reveal the broader context in which the present rules were developed, the tensions surrounding their adoption, the extraordinary work undertaken by the early scholars, and, above all, the important role played by the case law of the Mixed Courts in shaping the Egyptian private international law that we know today.

These comments may appear critical, but my intention is simply to express the hope that the tradition of the classical authors, who through meticulous comparative research combined with close attention to judicial practice succeeded in bringing Egyptian private international law to a remarkably advanced level for its time, can be revived. In this sense, the challenge today is not merely to describe the current state of Egyptian private international law by largely reproducing the prevailing literature, but to build on the foundations laid by earlier generations while engaging seriously with contemporary comparative developments and the evolving case law of Egyptian courts. If Egyptian private international law is to regain the dynamism and intellectual ambition that characterised what might be described as its golden age, future editions could benefit from a broader comparative perspective, more systematic and substantive engagement with the case law of Egyptian courts, including the Court of Cassation, and greater attention to the historical experiences that have shaped the present system. Such an approach would not simply document the current state of Egyptian private international law; it could also contribute to reviving the golden age of Egyptian private international law and laying the foundations for its further development.

Despite the above comments, the book remains an important contribution to the field and a valuable addition to the literature on Egyptian private international law. It provides a comprehensive account of the current state of Egyptian PIL and, importantly, brings together the relevant statutory provisions, doctrinal debates and judicial developments in a single work. I hope that it will stimulate further discussion and research and, in future editions, contribute even further to the renewal and development of Egyptian private international law.

Maintenance Duties for a Gestational Surrogate Following Non-Recognition – An Unreported Spanish Judgment

Written by Nicolás Zambrana-Tévar LLM, PhD (KIMEP University)

Facts of the case

An unreported judgment of the Family, Childhood and Capacity Section of the Tribunal de Instancia de Alicante (No. 3), dated 29 April 2026, has attracted attention for ordering a Mexican gestational surrogate to pay child maintenance to the Spanish father for whom she carried a child, despite having no custody, no exercise of parental authority, and no contact rights (here and here).

A Spanish man, described in some reports as resident in Alicante province and in others as working in Switzerland, had a child through gestational surrogacy in Mexico using his own sperm and a donor egg; the surrogate has no genetic link to the child. The child was born on 24 April 2024 and travelled to Spain in January 2025, since when he has lived with the father. A separate, earlier 2024 judgment of the same Alicante court had already determined the father's biological paternity and registered the child, under ordinary Spanish civil-registry rules, with the father's and the surrogate's surnames. In the April 2026 judgment, at the Prosecutor's request and applying Arts. 154 and 158 of the Spanish Civil Code (CC), the court declined to strip the surrogate mother of parental responsibility (*patria potestad*) but suspended its exercise, gave the father sole custody, denied the mother contact and, because she remains the child's legal mother, ordered her to pay €150/month plus half of extraordinary expenses.

Recent Spanish case law and practice on surrogacy

The Alicante case follows a line the Spanish Supreme Court has been building with similar facts. In STS 496/2025, of 25 March 2025 (ROJ: STS 1262/2025), the Court dealt with a case originating from a surrogacy arrangement in Tabasco, Mexico. The surrogate contributed no genetic material, and the contract expressly stated she was not the legal, biological or genetic mother and renounced *patria potestad* and custody in the father's favour. The children were registered in Tabasco with the father's two surnames, but the Spanish consular registration ultimately recorded the gestational carrier as mother. Years later the father sued in Spain to have her maternal filiation struck entirely and the surrogate mother herself supported his claim. The Spanish Court of Appeal (*Audiencia Provincial*) granted it; the Public Prosecutor appealed in cassation, and the Spanish Supreme Court reversed, reinstating her as legal mother. The Supreme Court applied Art. 10.2, Ley 14/2006 which expressly provides that the maternal filiation of children born through gestation by substitution is determined by childbirth. The Supreme Court treated this as a mandatory rule that could not be circumvented by agreement or by an action challenging the maternal filiation (Arts. 131, 139 CC). The court also rejected a request to refer the question to the CJEU because it considered that nothing in Arts. 19 and 20 TFEU was offended by it. The Court also cited its own earlier judgment, STS 1626/2024 of 4 December 2024, for the related but distinct proposition that a foreign judgment attributing parentage to intended parents cannot be recognised in Spain (*exequatur*) on the same public-policy grounds.

The current administrative framework is set out in the guidelines of the Spanish Ministry of Justice (DGSJFP Instruction of 28 April 2025). The Instruction expressly leaves without effect the earlier Instructions of 2010 and 2019. It provides that a foreign civil-status certificate, a declaration accompanied by medical evidence of birth, or even a foreign judicial decision determining parentage is not, by itself, a sufficient title for registration of a child born through surrogacy. Instead, filiation is to be established through the ordinary mechanisms recognised by Spanish law, including biological filiation and, where appropriate, subsequent adoption.

This doctrine is not merely a registration technicality; it holds even where both the father and the surrogate want the registration undone, which is a stronger statement than a case about recognition of a foreign judgment. Second, the Alicante court's own earlier 2024 filiation ruling, and its 2026 refusal to go

further than suspending (rather than terminating) parental responsibility, both sit squarely within this line: once the gestational carrier was treated as the child's legal mother, the ordinary legal consequences of parenthood, including the duty to contribute to the child's maintenance, followed. The Alicante court did not deprive her of parental responsibility; instead, it suspended its exercise, while assigning custody exclusively to the father and excluding contact.

Potential enforcement in Mexico

Whether Mexican law would recognise the same maternal relationship the Spanish courts are drawing consequences from is doubtful. STS 496/2025 illustrates the potential divergence particularly clearly: the contract stated that the gestational carrier was not the legal, juridical or biological mother, and the children were registered in Tabasco with the father's two surnames, whereas the Spanish courts ultimately treated the gestational carrier as the legal mother under Spanish law. Mexican rules on surrogacy and parentage are state-specific, making it necessary to identify the law applicable to the particular arrangement before drawing conclusions about the status that Mexican law would attribute to the gestational carrier. On that view, the child in the Alicante case could be, simultaneously, solely his father's child under Mexican law and jointly his and the surrogate's under Spanish law. That divergence matters practically: a Mexican court asked to enforce the Spanish maintenance order might see the underlying "motherhood" it rests on as itself inconsistent with Mexican public policy, not merely as a foreign court applying stricter substantive rules.

Filiation is governed by Art. 9.4 CC, pointing primarily to the law of the child's habitual residence at the time when filiation is established, with nationality only a fallback. Maintenance is governed, per Spain's own conflicts rule (Art. 9.7 CC), by the 2007 Hague Protocol, whose Art. 3(1) points primarily to the creditor's habitual residence and which, per its Art. 2, applies even where the resulting law is that of a non-Contracting State. The press record is unclear on the relevant facts: the father is described both as Alicante-based and as working in Switzerland, and the child reportedly holds a Swiss passport. A passport evidences nationality, not habitual residence, and nationality isn't the operative factor for either rule, but if the family's actual centre of life was split between Spain and Switzerland, that bears on which law governed the 2024 filiation ruling in particular, made before the child's reported move to Spain.

If pursued in Mexico, recovery of the Spanish maintenance order would fall under the 1956 UN Convention on the Recovery Abroad of Maintenance (Mexico: party since 1992; Spain: since 1966), since the 2007 Hague Child Support Convention doesn't bind Mexico and the 1989 Spain-Mexico bilateral convention expressly excludes maintenance from its scope. The Mexican authorities or courts would still have to apply the applicable Mexican rules governing recognition and enforcement, including any applicable public-policy limitations. However, the father has reportedly said he won't pursue enforcement of the order. The EU proposal on parenthood recognition does not solve this problem either. The proposal is designed to govern recognition of parenthood established in one Member State by another Member State; it expressly leaves recognition of parenthood established in a third State to national law. Negotiations on the proposal remain ongoing. Thus, even if adopted in its present basic structure, it would not govern recognition in Spain or elsewhere of a parent-child relationship established in Mexico.

The human rights angle

The case sits at an angle to the ECtHR's surrogacy jurisprudence. *Mennesson v. France* found a violation of Article 8 in respect of the children's right to respect for private life because of the failure to recognise their legal relationship with their biological father, while finding no violation as to the parents' own family-life claim; *Paradiso and Campanelli v. Italy*, on referral to the Grand Chamber, found no violation where the intended parents had no biological link to the child at all; *Valdís Fjölnisdóttir and Others v. Iceland* likewise found no violation in the non-recognition of a same-sex couple's intended parenthood, given the practical continuity secured through foster care. All three cases concern the position of intended or genetic parents seeking recognition, not, as in the Alicante case, the position of a gestational carrier who is treated as a legal parent for purposes of imposing parental obligations while her exercise of parental responsibility and contact with the child have been suspended or excluded

The ECtHR's 2019 Advisory Opinion concerning France (P16-2018-001]) further clarified that Article 8 does not require a State to register the details of a foreign birth certificate in order to recognise the legal relationship between a child born through gestational surrogacy and the intended mother. The Court held that another means of recognition, such as adoption, may satisfy the requirements of Article 8, provided that the procedure available under domestic law can be

implemented promptly and effectively and in accordance with the child's best interests. The Advisory Opinion therefore leaves States a choice as to the legal mechanism through which the relationship with the intended mother is recognised, rather than imposing direct registration as the only permissible solution.

The Alicante case raises a different question. Its human-rights significance lies not primarily in the refusal to recognise intended parenthood, but in the consequences of attributing legal motherhood to the gestational carrier. The Strasbourg case law does not appear to have addressed the precise question raised here: whether the attribution of legal motherhood to a gestational carrier may subsequently generate parental obligations, including maintenance, despite the absence of an intended parental relationship between that woman and the child.

From Symbolism to Substance: Comity and Judicial Reform in South Africa's Foreign Judgments Regime

South Africa occupies a strategic position in African and Global South trade networks, yet its economy continues to lag behind its BRICS partners and many of its African peers. A recurring, if underexamined, contributor to this underperformance is the state of its private international law governing the recognition and enforcement of foreign judgments (REFJ). The article, published in the Journal of African Law (2026), investigates why and how the principle of comity might help resolve this issue.

The empirical picture is striking. Of the reported South African REFJ cases

collated for this study, roughly 44 per cent of foreign judgments brought for enforcement are refused. Contrary to what one might expect, the leading cause is rarely fraud or public policy. Instead, over half of all refusals (53 per cent) turn on a single, narrow ground: the rendering court's lack of "international competence" under South African law. Under the framework laid down in *Jones v Krok* (1995), a foreign court is internationally competent only where the debtor was resident in, or voluntarily submitted to, that court's jurisdiction. Every other basis for jurisdiction recognised elsewhere – the place of contractual performance, the place where harm occurred, or a valid choice-of-court agreement standing alone- is, on the weight of authority, insufficient.

The doctrinal puzzle at the heart of the article is comity's curious position within this framework. South African courts have invoked comity rhetorically and sporadically for well over a century, from *Acutt, Blaine & Co v Colonial Marine Assurance Co* (1882) through to *Richman v Ben-Tovim* (2006) and *Government of the Republic of Zimbabwe v Fick* (2013). Yet in each instance, comity's role has been exceptional, ad hoc, and ultimately subordinate to the *ad personam* residence-or-submission requirement. Even the closest thing to an operative use of comity: *Duarte v Lissack* (1973), where enforcement followed despite the absence of personal jurisdiction, was swiftly confined and effectively overruled. The result is a doctrine that is normatively invoked but structurally inert: comity as symbol, not substance.

The article argues that this need not remain the case. Drawing on the Canadian Supreme Court's development of the "real and substantial connection" test (*Club Resorts v Van Breda*; *Chevron Corp v Yaiguaje*), it proposes a tailored adaptation for South Africa, allowing courts to recognise a foreign court's competence where a genuine and substantial connection exists between the dispute and that forum, without collapsing into an unbounded "doing justice" inquiry that risks forum shopping, particularly in cross-border IP and e-commerce disputes. To guard against the corresponding risk of default judgments enforced against debtors with only tenuous links to the foreign forum, the article further proposes strengthening the natural justice defence, requiring proof of adequate notice and a proper evidentiary basis for the judgment, bringing South Africa closer to the approach already taken in India and other Commonwealth African jurisdictions.

Finally, the article situates this proposed judicial reform in relation to the

possibility of treaty accession, considering what ratification of the 2005 Hague Choice of Court Convention and the 2019 Hague Judgments Convention would mean for South Africa's REFJ regime, as the UK and Singapore have both illustrated in recent years.

The full article, including an appendix collating 39 reported South African REFJ decisions and their outcomes, is open access at the *Journal of African Law*: https://doi.org/10.1017/S0021855326101089

Persistent and Reasonable Efforts in the Field of Cross-Border Service of Documents. Continuation or Stay of Proceedings?

A. The Impetus for Presenting the Issue

In light of the publication of three judgments of the Thessaloniki First Instance Court concerning the service of documents in Contracting States to the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters [hereinafter: HSC], the issue examined was whether proceedings may continue despite the absence of a certificate of service from the State addressed. In this context, a decisive role for the judge is played by the answer to the question whether "persistent efforts" within the meaning of the Greek version of Article 15(2)(c) HSC, or "reasonable efforts" (in the English-language formulation), were undertaken by the competent authorities of the State addressed in order to obtain a certificate. The same issue arises under the relevant EU Regulation (Article 22 Regulation 2020/1784), concerning cross-border service within the EU. Finally, the very recent amendment of the Greek Code of Civil Procedure, introducing new Article 134A GCCP, is also of particular

interest.
The discussion will begin with the case law referred to above, examined in the light of the HSC (B). This will be followed by a reference to the corresponding provision of the EU Regulations (C). Next, a preliminary account will be given of the recent provision of Article 134A GCCP and its innovative features (D). This will be followed by an analysis of the terms “persistent effort” and “reasonable effort” (E-F). The study concludes with a detailed presentation of German legal scholarship (G), followed by a brief conclusion (H).

B. Case Law under the 1965 Hague Convention

The three judgments published examine the application of the 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents (ratified by Law 1334/1983). More specifically, the question is whether, under Article 15 HSC, proceedings may continue when the defendant resides in another Contracting State, and no certificate of service has been produced at the hearing.
1. In the first judgment, the court held that actual service of the statement of claim and summons on a defendant residing in Northern Ireland had not been established. Although the documents had been transmitted through the Prosecutor of the Thessaloniki Court of First Instance to the competent foreign authorities, and those authorities had informally confirmed receipt of the documents, no certificate of service had been returned by the time of the hearing. The court held that it could not render a final judgment in default of the defendant because the requirements of Article 15(2) of the Convention had not been satisfied, in particular because it had not been established that the authorities of the State addressed had undertaken persistent efforts to complete service and obtain the relevant certificate. For that reason, the Greek Court stayed the delivery of a judgment until service had been established in the manner described above.
2. In the second judgment (concerning a divorce action against a defendant residing in the United Kingdom), the court adopted a different approach. Although no proof of actual service of the summons on the defendant had been produced, it was established that the documents had been duly transmitted to the competent UK authorities, that more than six months had elapsed, and that the failure to complete service was attributable to mishandling by the British authorities, which had unjustifiably returned the documents to the Greek Agency, making a new transmission necessary. The court held that the claimant should not

bear the consequences of that error and that the requirements of Article 15(2) of the Convention had been satisfied. It therefore held that the hearing could proceed in the defendant's absence.

3. In the third judgment, the court considered an application for revocation of an interlocutory decision which had stayed the delivery of a final judgment until service on the first defendant, who resided in India, had been established.

The claimant sought revocation of the previous decision, but produced neither the certificate referred to in Article 6 HSC, nor any other document establishing that the document had been transmitted to the competent Indian authority and that, despite the relevant reminders or persistent efforts, it had not been possible to obtain a certificate of service. The court held that actual service had not been established and that the condition laid down in Article 15(2)(c) HSC, namely, the inability to obtain a certificate despite persistent efforts by the competent authorities, had not been satisfied. For that reason, it dismissed the application.

4. Taken together, the three judgments demonstrate that the mere transmission of judicial documents through the Prosecutor to the foreign authorities is not, in itself, sufficient. What is decisive is either that actual service on the foreign party be established or, by way of exception, that it be shown that the cumulative conditions of Article 15(2) HSC have been satisfied, so that the proceedings may continue without the relevant certificate. Nevertheless, the judgments differ precisely as to whether the necessary efforts were established and whether the conditions for this exception were satisfied.

C. The Corresponding Provision of the EU Regulations

It is universally acknowledged, and beyond dispute, that the Regulation governing cross-border service within the EU almost reproduces the substance of the HSC. In particular, with regard to the functional equivalent of Article 15(2)(c) HSC, the wording of the European Regulations leads, in virtually identical terms, to the same legal result. To illustrate:

1. Regulation 1348/2000 [Article 19(2)(c)]: "no certificate of any kind has been received, even though every reasonable effort has been made through the competent authorities or bodies of the Member State addressed."

2. Regulation 1393/2007 [Article 19(2)(c)]: "no certificate of any kind has been received, even though every reasonable effort has been made through the competent authorities or bodies of the Member State addressed."

3. Regulation 2020/1784 [Article 22(2)(c)]: "no certificate of any kind has been received, even though every reasonable effort has been made to obtain one through the competent authorities or bodies of the Member State addressed."

4. In contrast to the earlier versions of the EU Regulation (1348/2000 and 1393/2007), the explanatory material accompanying the Regulation currently in force (2020/1784) contains a much more extensive reference to the issue. In particular, Recital 35 states as follows:

Where national law and this Regulation allow the court to give judgment even if no certificate of service or delivery of the document instituting the proceedings or its equivalent has been received, every reasonable effort should be made to obtain the certificate through the competent authorities or bodies of the Member State addressed before any judgment is given, in compliance with any other requirements safeguarding the interests of the defendant. Unless incompatible with national law, all reasonable efforts should be made to inform the defendant that court proceedings have been instituted using any available channels of communication, including modern communications technology, for which an address or an account is known to the court seised of the proceedings.

D. The New Greek Provision on (Article 134A GCCP)

The new provision, entitled "Procedure for the Service of a Judicial Document Abroad," provides in its second paragraph as follows: The court may, even if no certificate of service of the document or other equivalent document on the addressee residing abroad has been received, immediately render judgment if:

(a) the document was transmitted in accordance with the international rules applicable to the particular service or paragraph 3 of Article 134;

(b) a period of at least six (6) months has elapsed between the transmission of the document and the hearing; and

(c) it is established that the document was transmitted to the State addressed in sufficient time, so that further service on the addressee has been possible.

A reading of the above provision makes it clear that persistent or reasonable efforts are no longer required. It is therefore sufficient that the timely transmission be established and that the possibility of service upon the addressee in the State addressed be confirmed. It remains for the courts to interpret and define the possibilities embodied in the formal wording of the provision, namely, in the direction of expeditious service resulting from the timely transmission of the document from Greece to the State of destination.

E. Persistent & Reasonable Efforts

The assessments of the Hague Conference on Private International Law concerning this issue are, of course, of particular interest, namely, with regard to the third condition of the provision (failure to obtain the certificate). The type of certificate depends on the channel used to transmit the document. If the principal

channel (Article 5 HSC) was used, the certificate is the one required under Article 6 HSC. However, a United States court has held that a police report documenting attempts to effect service constitutes a certificate within the meaning of Article 15(2)(c) HSC. In the case of alternative channels, any evidence of service could qualify as a certificate. The Special Commission of the Hague Conference has expressly noted that receipt of a certificate stating that service could not be effected does not constitute an obstacle to the rendering of a judgment in accordance with the domestic law of the Requesting State, where that State has made the relevant declaration.

The requirement that every reasonable effort be made to obtain the Certificate has been considered by a number of United States courts. In one case, a federal district court held that making a single telephone call to the Central Authority in order to obtain oral confirmation of service was insufficient to satisfy that requirement.

In another case, an appellate court held that, in proceedings against the Consulate General of a Contracting State, notification of the defendant's attorney amounted to "every persistent effort," given that the rules of professional conduct under the law of the forum prohibited the claimant's attorney from communicating with the defendant except through the defendant's attorney. The court's decision was based on the premise that the legal personality of the defendant extended to all officials of the foreign State. By contacting the defendant's attorney, the claimant had accomplished "the only step ethically permitted."

F. Persistent Efforts vs. Reasonable Efforts?

Is there a difference between the persistent efforts required under the Greek version of the HSC, and the reasonable efforts contemplated by the Regulations? Attempting a preliminary comparison, it could be argued that the "treaty-based" version perhaps indirectly emphasizes the temporal dimension of the efforts. In other words, repeated attempts to locate the addressee are required and expected. From the EU perspective, the center of gravity is not linked to the temporal dimension, but rather to a somewhat indeterminate prerequisite, namely, the

Returning to the "duel" between the Greek version of the HSC and the EU and multilateral treaty legislative frameworks, we arrive at the following conclusion: even assuming that the above distinction offers some useful clarification, in practice everything will depend on the court's discretion in assessing each individual case. Delay attributable to an error by the foreign authority of the State

of destination; inability to locate the addressee, even where the addressee is a legal person; an oral assurance that service has taken place, without the certificate of service nevertheless being produced before the Greek courts; complete silence on the part of the foreign authority, whether or not following a request or reminder from the Greek side, all of the foregoing constitute a mixture of circumstances requiring classification.

G. The Discussion in the German Legal Order

Without intending to diminish the importance of other legal systems, the scholarly debate originating in German legal thought has historically been of considerable value and is, for that reason, indispensable. At the outset, it is understood and expected by legal scholarship that the competent authorities of the State of destination have taken the necessary measures to obtain a certificate of service. General assumptions and conjecture that the defendant received the document do not render the production of proof of service unnecessary. Quite the contrary: Schlosser interprets the critical provision by formulating the rule of the threshold of reasonableness (Zumutbarkeitsgrenze). Within this framework, he considers it sufficient, both on the part of the competent authority and on the part of the claimant, to submit an inquiry concerning the stage reached in the service procedure, in the form of a good-faith effort. In general terms, his position leans toward limited involvement by the competent authorities of the State of origin, apparently in order to avoid slowing down the system as a whole.

Much more detailed is Ulrici's analysis in Rauscher's article-by-article commentary on Regulation 2020/1784. First, in contrast to the Greek focus on the basic model of judicial cooperation (Transmitting and Receiving Agencies), German legal scholarship approaches the problem from other perspectives as well. Thus, what efforts have been undertaken by the Receiving Authorities is not decisive. This already follows empirically: The Authority cannot become involved in every cross-border service.

It is emphasised that the authority ordering service abroad and bearing the obligation to take all reasonable measures is the court seised of the dispute. In the case of direct service, that role is assumed by the person designated pursuant to Article 20 Regulation 2020/1784.

The purpose of the efforts, contrary to the relatively vague wording of paragraph 2(c), is to obtain a certificate concerning service that has already been effected, as well as confirmation that the procedure has been effectively carried out and completed. The purpose of the efforts is also to make a possible new attempt at transmission feasible, either at the initiative of the party seeking to expedite the

proceedings or as an expression of the effort to make a new attempt in order to obtain a certificate. This is required equally by the defendant's right to a fair trial and by the claimant's right to effective judicial protection.

If no certificate within the meaning of Article 10(1) of Regulation 2020/1784 is received, the matter requires immediate reconsideration and intervention by the Central Authority after the expiry of a further reasonable period. The same applies where no certificate is received in cases of direct service. If the Receiving Agency indicates that a request for service is deficient or does not fall within the scope of the Regulation, an appropriate response must be provided (Article 10(2) and (3) Regulation 2020/1784).

The competent authority may also have an obligation to order a new attempt at service by another procedure provided for by the Regulation, for example, where no acknowledgement of receipt has been received, by using direct service, or by service through judicial assistance. Where there are indications concerning the possibility of locating the address, it is recommended that they be pursued, provided that the law of the State of origin does not preclude an attempt at informal notification by any means recognisable to the authority ordering service, provided that such means permits notification exclusively to the addressee and therefore not publicly. It may be necessary to notify the defendant through a known email address, mobile telephone number, etc., and then allow a reasonable period of time for the defendant to respond.

H. Conclusion

I conclude my reflections by assessing the ruling of the First Instance Court in Judgment No. 3118/2025. The judge held that "the claimant should not bear the consequences of the error of others" and, for the aforementioned reason, considered that the hearing could proceed in the absence of the defendant. Prima facie, there does not appear to be, at least within Greece, a reported case corresponding to this situation under Article 22(2)(c) of the Regulation and Article 15(2)(c) HSC. Nevertheless, beyond safeguarding the right of the addressee-defendant to be heard, this interpretative approach also highlights the intention to safeguard the claimant's right to effective judicial protection. It is to this potentially balanced position of the parties that we look for the sober and harmonising approach of the country's judges, so that a common line may be developed and secured within the Greek legal order.

Speaking for the Dead: Idziski and the Forum for Post-Mortem Likeness Claims

by Marta Liduma, LLB candidate in International and European Law, University of Groningen

A Dutch actor dies in March. By April, his likeness starts to appear widely. Generated videos show him promoting a supplement, and one clip ends with a link to a shop selling shirts printed with his face. A single man in Germany creates all of this, in large quantities, using a dozen deceased performers.

Who can sue, and in which court?

Dutch law answers the first question readily. Article 21 of the Auteurswet allows publication to be resisted when a reasonable interest of the portrayed person, or after his death of one of his surviving relatives, opposes it. Article 25a, in the same paragraph of the Act, identifies those relatives as the parents, the spouse or registered partner and the children, each of whom may act independently of the others. Article 21 addresses whoever holds the copyright for the portrait, which poses a problem for a generated video that may have no author at all. However, Article 35 makes the publication of a portrait without entitlement an offence for anybody, and Dutch practice has long read the two provisions together. German law follows a similar design. Section 22 of the Kunsturhebergesetz (KUG) requires the consent of the family of the deceased (Angehörige) for ten years after death, and defines them as the surviving spouse or registered partner and the children, failing whom the parents.

The second question leads to the Court of Justice and its judgment on 18 June 2026 in Idziski (C-232/25). The concentrating head of Article 7(2) Brussels Ia puts two questions to a single individual. Does the content identify you, and where are your interests centred? Death creates separation between these questions, and current case law keeps them apart.

The custodial pattern

Both provisions grant the post-mortem entitlement to a closed class of relatives, a group defined by their relationship to the deceased and not by any interest in the estate they left. A disinherited son may object, while the residuary legatee under the will stands outside the class entirely. Such relatives are best described as custodians, since the entitlement is all they hold of the deceased.

The German decade deserves a moment's attention. Since section 22 of the KUG requires consent for ten years after death, the Federal Court of Justice has extended this same period by analogy to the pecuniary side of the post-mortem personality right in kinski-klaus.de (BGH, 5 October 2006, I ZR 277/03, BGHZ 169, 193), while the dignitary side endures beyond the ten-year mark. German law thus surrenders its transmissible part ten years after death. What survives is the dignitary part, which rests on constitutional grounds and is exercised by whoever is entitled to act for the deceased.

Whose interest the custodian asserts is settled in Germany and open in the Netherlands. German law divides the post-mortem personality right in two. The dignitary components rest upon Article 1(1) of the Basic Law, the right to free development of personality under Article 2(1) belonging to the living alone, and after death they are exercised by a person entitled to act on the deceased's behalf (Wahrnehmungsberechtigter), in the case of images the Angehörige of section 22. That person holds defensive claims alone, and no claim for damages (BGH, 6 December 2005, VI ZR 265/04, BGHZ 165, 203, restated in kinski-klaus.de). The pecuniary components are separate. They are inheritable and pass instead to the heirs (Erben), who may bring damages claims in respect of them (Marlene Dietrich, BGHZ 143, 214), an allocation the Federal Constitutional Court held in 2006 (BVerfG, 22 August 2006, 1 BvR 1168/04) to be consistent with section 22, that provision governing consent rather than commercial value. Article 21 of the Auteurswet is drafted the other way about, speaking of a reasonable interest of the surviving relative herself.

The Dutch question may be left open, since the two readings fail for different reasons. Upon the first, the claimant asserts her own interest, and everything the video discloses belongs to her husband. Upon the second, the content identifies the person whose interest is asserted, and the difficulty moves to the place. Either reading leaves the concentrating head requiring one person to satisfy both of its

conditions, a burden that under a custodial statute falls to two.

The existing commentary has been occupied with a different question. Giacomo Marola reads Idziski as a judgment of continuity in his contribution to the EAPIL Blog. Tobias Lutzi, at ConflictofLaws.net, entitled his note Nothing to See Here. Both readings are sound. The difficulty is that a rule which the Court has reaffirmed without qualifying it is now settled law for situations nobody has yet brought before it. A parallel debate has been running in Denmark and the Netherlands, where legislators have considered giving a person a statutory right in their own likeness, and it turns on who ought to hold such a right once its subject has died, and for how long. Neither literature has yet asked what follows once that question receives the answer the existing statutes already give it, which is to place the entitlement in the hands of somebody whom the content passes over.

Two bounds before going further. Neither reform is in force. The Danish bill, which would add new sections 65a and 73a to the Copyright Act and protect a person's appearance and voice for fifty years after death, went out to consultation in July 2025 and was notified to the Commission under the TRIS procedure that October. The standstill ran into February 2026, when the Commission issued comments, and the entry date of 31 March 2026 written into the draft passed with the bill still not introduced. By February the Ministry of Culture had already moved its expectation to 1 July 2026, and a general election in March then removed the introduction slot as well. The Dutch initiative bill prepared by the member Dral, which would create a neighbouring right covering deepfakes of living and deceased persons, was consulted on between October and December 2025, and in May 2026 the Commissie Auteursrecht advised abandoning the proposed neighbouring right as an unsuitable instrument. Its author has since left the House of Representatives, and the government has said that it is for her successor to decide whether the project continues (Aanhangsel Handelingen II 2025/26, no 1351). The custodial provisions therefore govern. If either of the reforms arrives and if its related-right characterisation were to be recognised as an autonomous matter of Union law, the claim would move out of personality law and fall outside the scope of what follows. Secondly, if the defendant is domiciled outside the Union, then Article 6(1) applies together with the residual national rules of the forum.

What Idziski allocates

The judgment was given under Regulation 44/2001, the Polish proceedings having begun in 2013, and at paragraphs 26 and 27 the Court confirmed that its reading applies equally to Article 7(2) of Brussels Ia.

Upon the concentrating head the Court restated Mittelbayerischer Verlag (C-800/19). The courts of a claimant's centre of interests may hear a claim for the entirety of the damage only where the content carries verifiable and objectively ascertainable material identifying that person, directly or indirectly, as an individual (paragraph 50). Indirect identification requires certainty, by reason of "attributes which are specific to them and which distinguish them from all other individuals" (paragraph 55). Membership of a defined group falls short of that standard, even where the group itself is unmistakable (paragraphs 53 and 54).

Consider the widow suing upon her own interest. Everything the video displays belongs to her husband, and the very feature that makes her claim worth bringing defeats her under the test.

The representative reading raises a different problem. If she exercises the deceased's right, identification is satisfied since the content identifies the actor with precision. The centre of interests must then be located, and it belongs to a man who has died. eDate and Bolagsupplysningen both proceed upon a claimant with a life to be centred somewhere, and substituting the claimant's own would detach the connecting factor from the person the content concerns.

Paragraph 56 confirms the difficulty rather than resolving it. The requirement exists so that the issuer of content may ascertain the centre of interests of those who are its subject, and predict where proceedings against him will lie. An uploader who generates a video of a well known actor may discover within a minute where that actor lived. The daughter's residence remains obscure to him, and under Article 25a there may be four custodians acting independently, with four centres of interests between them. Predictability is served by asking after the person depicted, while the rule asks after the person suing.

The mosaic head remains available, and the point should be acknowledged. Paragraph 64 confirms, following Gtflix Tv, that compensation can be divided and recovered in each Member State for the damage caused there. Paragraph 67 applies as much to Z.R., who failed the identification test and could still recover in

Poland. Both custodial provisions describe a territorial wrong. Section 22 covers distribution and public display, while Article 21 deals with openbaarmaking. This means the injury is spread across the states where the video was viewed. Nevertheless, the concession does nothing for the German dignitary custodian. Because his claim is defensive, a damages jurisdiction is of no use to him, and the removal he seeks lies with a court that paragraph 67 places elsewhere.

Ruling 2 limits what survives. A court with territorially limited authority hears divisible claims and does not have jurisdiction over a non-pecuniary remedy that seeks to correct information placed online (paragraph 67). This is based on the indivisibility principle from Bolagsupplysningen (paragraph 48). Removal is the remedy that answers content that can be regenerated faster than damages can be assessed. Lutzi adds that such non-pecuniary remedies as do survive face poor chances of being enforced in the defendant's own Member State.

What remains

Paragraph 47 reassures that a claimant may always bring an action for damages covering all the harm caused, at the defendant's domicile or at the place of the causal event. For a corporate co-producer, the two are distinct and useful. For a single uploader, they have the same address. Article 8(1) offers a joinder that these facts fail to satisfy. Uploaders who share a subject and a model are too loosely connected to risk irreconcilable judgments. Therefore, custodians must file a separate action for each uploader in that uploader's own courts, based on whatever conflict rules the forum has in place. Personality claims are not covered by Rome II according to Article 1(2)(g). For this type of claim, the concentrating head of Article 7(2) leads to dispersal.

The merchandise version follows the same pattern. Shirts with a dead actor's face are the paradigm the provisions were drafted for, unambiguously commercial and readily quantified. Dutch law has long recognised that a reasonable interest under Article 21 may be commercial, as the Hoge Raad addressed in Cruijff v Tirion (14 June 2013, ECLI:NL:HR:2013:CA2788). The shirt, however, depicts the actor alone.

One reply claims that the difficulty is merely academic, since notice and action can resolve such disputes, and questions of jurisdiction rarely come up. The argument holds so long as the platform agrees. Under Article 16(3) of the Digital Services Act, a notice is considered to give rise to actual knowledge when it

permits a diligent provider to recognise the illegality without needing detailed legal examination. A notice sent by a Dutch widow, using a Dutch provision against a German uploader, in a field where applicable law is determined by residual national rules, is precisely the case that requires such an examination, and so falls outside the provision. Consequently, the notice keeps the provider where Article 6 of that Regulation found it, whatever other circumstances may later establish knowledge. Notice and action have concealed the defect instead of curing it.

Each part of the argument is old. Indivisibility dates back to 2017, and the identification requirement comes from 2021. Their combined effect on a claimant outside the contemplation of both is the novelty.

Anchoring the forum to the decedent

The solution proposed here aims to anchor the connecting factor to the deceased rather than to the person suing. This way, the concentrating forum shifts to the last centre of interests of the person the content concerns. Such a rule provides the predictability that paragraph 56 needs, locates the proceedings where evidence of the deceased's reputation can be found, and restores the pairing that the head presupposes.

The concept allows for this development. In paragraph 39, the Court notes that the centre-of-interests option exists in the interests of the sound administration of justice rather than for the specific protection of the applicant. This clarifies why, in Bolagsupplysningen, the natural or legal character of the claimant was not important. A head of jurisdiction serving the administration of justice may perfectly well locate its connecting factor elsewhere than in the claimant. It should be found where the dispute belongs. For content concerning one identified deceased person, that location is where that person's life was centred.

The proposal needs a development in doctrine rather than just application of it. The custodial provisions work by designation instead of transmission, and Article 25a allows four possible custodians to exercise independently, which resists simplification to a single inherited position. Lutzi and Marola both suggest that this kind of recalibration belongs to the recast of Brussels Ia rather than to the Court, and they are probably correct on this general point. The challenge is timing. Custodial claims will come with the next well known death, whereas the recast will take some more years to arrive.

The alternative solution is a private one and stems from a situation before Idziski. In the case of Stichting Right to Consumer Justice and Stichting App Stores Claims (C-34/24, 2 December 2025), the Court allowed representative foundations, asserting their own right to defend the collective interests of a group of unidentified but identifiable persons, to rely upon Article 7(2), a development which Burkhard Hess referred to as the creation of a new forum actoris through judicial lawmaking. Idziski continues this approach at paragraphs 57 to 59. A family could thus set up a foundation in order to defend the actor's dignity, reputation and memory and to litigate through that foundation.

The course is inferior to the proposal made above even where it succeeds, since the availability of a forum would then depend upon whether a family possessed the means and the foresight to incorporate. It very likely fails in any event. The operative ruling speaks of a group whose members form a closed category, and a single deceased individual falls outside that description. Paragraph 59 grounds the exception in predictability, and the exception was predictable in Idziski because the series addressed the unit directly, whereas an uploader generating at volume remains ignorant of a foundation's existence and of where it operates. The exception arose, moreover, in a Polish case concerning the collective dignity of a wartime unit, and may generalise less readily than its wording invites.

The question for the Court, when a national court eventually puts it, is whether the identification requirement in Article 7(2) attaches to the claimant or to the person whose interest is asserted. Idziski assumed the two to be one person, as the earlier case law had done, because on the facts of all those cases they were. Under a custodial statute they are always two.

AI was used in the creation of this post for feedback and research. All writing and analysis is the author's own.

Update (September 2026): Since publication, I have become aware that the proposal to locate jurisdiction at the deceased's last centre of interests was developed earlier by Lisa-Charlotte Krause, Der Schutz des postmortalen Persönlichkeitsrechts im Internet: Internationale Zuständigkeit und Kollisionsrecht (Duncker & Humblot 2022) 117–118, who confines it to the non-material components of the right (124–130). Readers should consult that work.

Book Review: Andrew Dickinson and Alexander Thompson, The State Immunity Act 1978 (OUP, 2025)

This review concentrates principally on the private international law dimensions of Andrew Dickinson and Alexander Thompson's *The State Immunity Act 1978*. Although state immunity is fundamentally a subject of public international law, the legislation operates at the point where public and private international law intersect. It determines whether the English courts may adjudicate disputes involving foreign states, how proceedings may be served, and whether judgments or arbitral awards may be recognised and enforced against state property. These questions are of direct importance to private international lawyers, particularly in transnational commercial, employment, property and arbitration disputes.

The authors bring considerable practical expertise to the subject. As the preface indicates, their analysis is informed not only by academic study but also by professional experience of state-immunity litigation. The result is a specialist and authoritative treatment of a technically demanding statute. The chapters generally combine legislative history, an overview of the relevant statutory provisions, and a detailed examination of their judicial application.

Chapter 1 explains the historical development of the State Immunity Act 1978 and the United Kingdom's movement from absolute to restrictive immunity. Under restrictive immunity, a foreign state remains immune in respect of sovereign acts but may be subject to jurisdiction in relation to commercial and other non-sovereign activities. This distinction provides the organising principle for much of the Act and gives the subject its particular importance for private international law.

Chapter 2 is especially significant because it situates the 1978 Act within the

wider legal framework. The Act is mandatory and generally supersedes the pre-existing common-law rules governing state immunity. Although it was influenced by the European Convention on State Immunity 1972, the United Kingdom courts are not required to interpret it as if it faithfully reproduced every aspect of that Convention. At the same time, the Act should, so far as its language permits, be interpreted consistently with customary international law, on the presumption that Parliament did not intend to place the United Kingdom in breach of its international obligations.

The United Nations Convention on Jurisdictional Immunities of States and Their Property 2004 may also inform the interpretation of the Act. It is not, however, binding for this purpose, nor can all its provisions automatically be treated as definitive statements of customary international law. The authors therefore demonstrate that statutory interpretation in this field requires careful engagement with legislation, treaties, customary international law and judicial authority.

The chapter also distinguishes state immunity from related regimes. The State Immunity Act primarily concerns the immunity of foreign states and incorporates exceptions associated with restrictive immunity. The Diplomatic Privileges Act 1964 and Consular Relations Act 1968, by contrast, protects particular persons in the performance of their official functions and is governed by separate legislations. Special missions and international organisations are similarly subject to distinct statutory regimes.

The discussion of human rights identifies a persistent tension between access to justice and respect for sovereign immunity. The United Kingdom courts have generally placed substantial weight on the latter. Provisions of the Act have nevertheless been challenged under Article 6 of the European Convention on Human Rights 1998. Declarations of incompatibility have been made in the employment context, most notably in *Benkharbouche v Embassy of Sudan* and *Secretary of State for Foreign and Commonwealth Affairs v Benkharbouche*, while in *Kingdom of Spain v Lydia Lorenzo* [2024] EWCA Civ 1602, the UK Court of Appeal ruled that a foreign state cannot claim state immunity in an employment discrimination and unfair dismissal case brought by an administrative embassy worker. These cases show that state immunity is not merely a procedural technicality: it may determine whether an individual has any effective opportunity to vindicate substantive rights.

The book also explains the post-Brexit relationship between state immunity and European Union law. EU law no longer has the supremacy it previously enjoyed within the United Kingdom, although retained or assimilated EU law and the European Union (Withdrawal) Act 2018 remain relevant to the historical development and present operation of some rules.

Equally important is the distinction between state immunity and the foreign act-of-state doctrine. Both rest, in part, on ideas of sovereign equality and the independence of states, but foreign act of state is a common-law doctrine rather than a product of the 1978 Act. The doctrines should therefore not be treated as interchangeable.

For private international lawyers, the book's most important conceptual point is that the 1978 Act limits the adjudicatory jurisdiction that a United Kingdom court would otherwise possess. It does not itself confer jurisdiction. A claimant must first establish jurisdiction under the ordinary rules of civil procedure and private international law. Only then does the separate question arise whether the foreign state is immune from the exercise of that jurisdiction. This distinction between the existence of jurisdiction and immunity from its exercise is fundamental.

Chapter 4 examines the general immunity from adjudicatory jurisdiction. The statutory scheme leans strongly towards protecting foreign states: the claimant bears the burden of establishing an applicable exception to immunity, even where the foreign state declines to appear. This may present a considerable practical obstacle because the facts necessary to establish an exception may be difficult for a private claimant to obtain without the state's participation.

Chapter 5 considers submission to jurisdiction. A choice-of-court agreement in favour of the courts of any part of the United Kingdom may constitute a waiver of immunity, whereas a choice-of-law clause does not. This distinction is particularly important in drafting international contracts. Selecting English law does not, without more, amount to consent by a foreign state to the jurisdiction of the English courts.

Submission may also occur through a treaty, convention or other international agreement, but it must be express. A state may submit after the dispute has arisen, and although such submission must be express, it need not necessarily be in writing. Submission may additionally result from instituting proceedings,

advancing a counterclaim or participating in proceedings beyond what is necessary to assert immunity. The act of submission must be duly authorised by the state. Once valid submission occurs, the state is generally placed in the position of an ordinary litigant for the relevant proceedings. Importantly, however, submission to adjudication does not necessarily amount to consent to enforcement against state property.

Chapter 6 addresses commercial transactions and associated obligations, including contracts to be performed in the United Kingdom. The commercial-transactions exception lies at the heart of restrictive immunity and is shaped by both the earlier common law and the European Convention. It is particularly relevant to private international law because disputes concerning the character of a transaction, contractual performance and the territorial connection with the United Kingdom may determine whether immunity is available.

Chapter 7 concerns employment contracts. As the authors observe, section 4 may justifiably claim to be among the most controversial provisions of the Act. The central authority is *Benkharbouche*, in which statutory restrictions on claims by state employees were held incompatible with Article 6 of the European Convention on Human Rights and, at the relevant time, Article 47 of the EU Charter of Fundamental Rights. The resulting changes strengthened employees' access to justice. The chapter is particularly valuable because cross-border employment disputes frequently bring together jurisdiction, applicable law, mandatory employment protection, human rights and the public international law of immunity.

Chapters 8 to 14 examine the statutory exceptions relating to personal injury and damage to property; ownership, possession and use of property; intellectual and industrial property; companies and other collective bodies; arbitration; admiralty proceedings; and taxation. The property provisions remove immunity in defined proceedings concerning property, subject to protections for premises used for diplomatic purposes. The intellectual-property exception reflects restrictive immunity but has generated comparatively little reported litigation.

The arbitration chapter is of special interest to commercial lawyers. Where a state has agreed in writing to submit a dispute to arbitration, immunity from the supervisory or supporting jurisdiction of the courts is generally removed in relation to the arbitration. This provision has been frequently litigated.

Nevertheless, the existence of an arbitration agreement and the removal of adjudicatory immunity do not automatically permit execution against state assets. Parties dealing with states must therefore distinguish carefully between consent to arbitration, consent to court proceedings connected with arbitration and waiver of immunity from enforcement.

Chapter 15 examines service of process and default judgments. These procedural matters have substantial private international law significance because the validity of service and the protection afforded to an absent foreign state may determine whether proceedings can advance and whether a judgment will ultimately be effective.

Chapter 16 addresses enforcement jurisdiction, perhaps the area in which the special position of a sovereign state is most pronounced. Coercive measures—including injunctions, contempt proceedings, orders compelling employee reinstatement and execution against state property—are generally considered inappropriate without a sufficient statutory basis. Even where a claimant has successfully established jurisdiction and obtained judgment, enforcement may therefore remain impossible.

The principal exceptions arise where the state has expressly and unequivocally waived immunity from enforcement or where the relevant property is in use, or intended for use, for commercial purposes. A waiver of immunity from adjudication should not lightly be treated as a waiver of immunity from execution. This separation has major practical consequences: a claimant may win the legal dispute yet be unable to obtain the benefit of the judgment. The chapter reinforces the need for contracts involving states to contain carefully drafted and distinct waivers addressing jurisdiction, interim relief and enforcement.

Chapter 17 discusses the meaning of “the State” and the treatment of separate entities, central banks and constituent territories. Whether a body forms part of the state or is a separate entity may determine both the applicable test for immunity and the availability of assets for enforcement. Central-bank property receives particularly strong protection. These classification questions are often decisive in cross-border litigation, especially where commercial activity is conducted through state-owned corporations or other legally distinct bodies.

The remaining chapters address the power to amend Part I, savings and excluded

matters, statutory interpretation, foreign judgments, heads of state and related persons, and certificates concerning facts of state. Chapter 21's treatment of foreign judgments is particularly relevant to private international law, although the statutory mechanism considered there appears never to have been used against the United Kingdom. More generally, the relationship between foreign judgments and state immunity raises difficult questions: recognition of a judgment, adjudicatory jurisdiction over the state and execution against state property are separate stages and may be governed by different requirements.

Overall, this is a highly specialised work. A sound knowledge of public international law—and, to a lesser extent, private international law—is helpful if the reader is to appreciate its analysis fully. Yet the book is also valuable precisely because it demonstrates that the boundary between the two disciplines is permeable. State immunity is founded in public international law, but it operates through the machinery of private litigation. It affects jurisdiction, choice-of-court agreements, employment disputes, arbitration, service, foreign judgments and enforcement.

Before reading the book, I was sceptical about the practical force of public international law, particularly because powerful states sometimes appear able to disregard its principles without meaningful consequences. This book has caused me to reconsider that view. Public international law is not confined to prominent disputes about war or territorial sovereignty. In the field of jurisdictional immunities, it performs an important stabilising function by mediating between access to national courts and the sovereign equality of states. It thereby contributes to international comity and the orderly conduct of relations among states.

For a private international lawyer, the book's lasting lesson is that ordinary rules of transnational litigation cannot be applied to foreign states without accounting for their sovereign character. Conversely, public international law principles of immunity acquire practical effect through domestic rules governing civil proceedings. Dickinson and Thompson's work illuminates that relationship with considerable depth. It merits close attention from practitioners and scholars working on cross-border litigation, international commercial arbitration, employment disputes involving states, and the recognition and enforcement of judgments and awards. It is also a book to which I expect to return as my understanding of the relationship between public and private international law

continues to develop.

Political Immobilisation of Iranian Diaspora Property: Lex Situs, Human Rights and Public Policy

By Faraz Firouzi Mandomi

Iran’s use of property measures against critics abroad is no longer hypothetical. In March 2026, Iran’s Prosecutor-General’s Office warned Iranians living abroad that support for, or cooperation with, states regarded by Iran as hostile could result in confiscation of their property. Reuters reported the warning on the basis of statements carried by Iranian state media.

The policy has since acquired a more concrete form. In May 2026, Amnesty International reported judicial orders to identify, freeze and seize bank accounts, properties and other assets belonging to persons accused of cooperating with “enemy states” or “hostile media”. Iranian authorities had reportedly announced measures affecting more than 750 persons inside and outside Iran, including journalists living abroad.

Administrative measures adopted in 2026 have also brought security screening into the use of consular powers of attorney. A circular concerning power of attorney issued abroad required inquiries where such instruments were presented in Iran and contemplated prosecutorial action where the grantor was identified as an opponent of the Islamic Republic abroad.

For present purposes, this situation can be described as political immobilization. Ownership may formally remain intact, while access to the legal mechanisms required to sell, mortgage, partition or administer the property is conditioned by political or security considerations.

The immediate concern is one of human rights. A separate question arises in private international law once the consequences of such measures are relied upon before courts outside Iran.

Property and the Lex Situs

The conventional starting point is the lex rei sitae. Article 966 of the Iranian Civil Code provides that possession, ownership and other rights over movable and immovable property are governed by the law of the country in which the property is situated. Proprietary questions concerning land situated in Iran therefore fall, in principle, under Iranian law.

That rule does not dispose of every dispute connected with Iranian property. A transaction involving land in Iran may also generate questions of contractual liability, restitution, succession, matrimonial property or insolvency before a foreign court. Those questions require separate characterization and may be governed by a law other than the law governing title itself.

Suppose, for example, that an Iranian resident abroad contracts to sell property in Tehran but cannot complete the transaction because the authorities prevent the use of a power of attorney on security grounds. Proceedings may subsequently be brought abroad for repayment or damages. The foreign court would first have to determine the nature of the claim and the law applicable to it. An Iranian administrative instruction addressed to prosecutors, consular authorities, notaries or registries does not automatically govern contractual liability in another legal system.

An additional distinction is important. The Iranian restriction might appear before the foreign court simply as a fact explaining why performance could not occur. In that situation, public policy cannot make the factual impediment disappear. A different problem arises where a party asks the forum to attribute legal effect to the measure itself, whether through the applicable foreign law, a claimed proprietary consequence, or recognition of an Iranian decision.

Human Rights and Public Policy

Human rights do not replace ordinary conflicts rules, nor do they ordinarily operate as connecting factors permitting a court to disregard foreign law merely because its application produces an objectionable result.

Their influence is nevertheless visible within established mechanisms of private international law. A useful contemporary restatement appears in the Institut de Droit international's 2021 Resolution on Human Rights and Private International Law. Article 8 provides that, in assessing whether the application of foreign law designated by conflicts rules complies with international public policy, due consideration must be given to human rights, notably the principle of non-discrimination. Public policy therefore remains an exceptional control mechanism, not a competing choice-of-law rule. It may permit the forum to refuse effect to a consequence of otherwise applicable foreign law that is incompatible with its fundamental principles.

The distinction between territorial effectiveness and legal effect abroad is familiar in conflicts jurisprudence. In Luther v Sagor, English courts accepted the proprietary consequences of Soviet confiscatory legislation concerning property situated within Soviet territory. *Oppenheimer v Cattermole* demonstrated that such deference was not unlimited where foreign legislation was fundamentally incompatible with public policy. In Kuwait Airways v Iraqi Airways, the House of Lords likewise began from ordinary choice-of-law principles concerning proprietary rights but refused effect to Iraqi confiscatory legislation on public-policy grounds. Belhaj v Straw subsequently discussed *Oppenheimer* and *Kuwait Airways* within this public-policy line of authority.

The comparison is doctrinal, not historical. The Iranian measures are not equated with Soviet nationalization, Nazi persecution or Iraqi confiscation. These authorities instead illustrate that the territorial operation of foreign law and the legal consequences accorded to it by another legal system are separate questions.

Iranian law will ordinarily govern proprietary rights in assets situated in Iran. The private international law issue arises only when a consequence of the Iranian measure is invoked before a foreign court. The forum must first characterize the issue, determine the applicable law and establish the scope of the relevant foreign rule. Only then can public policy become relevant. Where the consequence for

which legal effect is sought rests on discrimination based on political opinion or opposition activity, human-rights considerations may properly enter that assessment.

Political immobilization thus becomes a private international law problem when a measure effective within Iran is invoked as the basis for legal consequences outside Iran.

The Demise of the Lex Domicilii Matrimonii in South African Private International Law

by Sibusiso Mabaso, Lecturer in Private International Law, University of South Africa

For many years, South African private international law relied on the *lex domicilii matrimonii* as connecting factor to determine the legal system applicable to the proprietary consequences of a marriage. The *lex domicilii matrimonii* is interpreted as the husband's domicile at the time of entering into the marriage. This rule was firmly entrenched in South African law since it was formally adopted in ***Frankel's Estate v The Master & Another*** **1950(1) SA 220 (A)** and reinforced in subsequent decisions, the latest being ***LE v LA 2024*** **(5) SA 539 (GJ)**. Despite the courts' reliance on this rule, it became increasingly evident that it is not compatible with South Africa's Constitutional commitment to equality, dignity and non-discrimination **(Constitution of the Republic of South Africa, 1996)**. The Westen Cape High Court has finally addressed this discriminatory connecting factor in a judgment delivered on 24 June 2026 in ***Pringle v Minister of Justice and Constitutional Development and Others*** **(2468 / 2024) [2026] ZAWCHC 343**.

The challenge to the *lex domicilii matrimonii* emerged from a divorce dispute

between *Nina Pringle* (applicant) and *Ian Norman Pringle* (third respondent), both of whom, at the time of their marriage, were domiciled outside South Africa. The marriage between the parties also took place outside South Africa, therefore South African private international law rules came into play in the case. The applicant challenged the application of the *lex domicilii matrimonii* rule on the basis that it automatically preferred the husband's domicile at the time of the marriage, which has the result that the rule discriminates against women and fails to accommodate same-sex marriages.

The applicant argued that the *lex domicilii matrimonii* is inconsistent with the Constitution in that it discriminated between spouses on the on grounds of sex, gender and sexual orientation. Historically, the rule developed from patriarchal assumptions that the husband was the head of the family and that the wife's identity followed his (*para 60* of the case). Although such assumptions show the legacy of earlier legal systems, they have long since been rejected by South African constitutional jurisprudence. What is also interesting is that, while the wife's domicile of dependence was abolished through the **Domicile Act 3 of 1992**, the *lex domicilii matrimonii* continued to determine the proprietary consequences of marriage according to the husband's domicile. The applicant therefore challenged validity of the *lex domicilii matrimonii*, that this rule no longer serves any legitimate purpose within a constitutional democracy founded on equality and human dignity (*para 3.1 of the Pringle case*).

The court concurred with the applicant's argument. It held that the *lex domicilii matrimonii* rule unfairly discriminates based on sex, gender and sexual orientation, which renders the rule inconsistent with the Constitution (*paras 70 & 72*). The court acknowledged that there exists no rational justification to continue employing the husband's domicile when South African law has already abolished the idea that a married woman's legal identity is dependent upon her husband (*para 64*). The court further acknowledged that the rule failed to accommodate same-sex marriages (*para 67*). In arriving at this conclusion, the court recognised that the common law must evolve to reflect the values enshrined in the Constitution, specifically where private international law rules perpetuate historical inequalities.

The court's declaration that the rule is unconstitutional and invalid in terms of s 172(1)(a) of the Constitution, means that it had to pronounce a just and equitable replacement (s 172(1)(b)) that will determine the legal system applicable to the

proprietary consequences of marriages with an international element. In this vein, the court used its powers to develop the common-law by drawing inspiration from international instruments such as the **1978 Hague Convention on the Law Applicable to Matrimonial Property Regimes and the European Union's Matrimonial Property Regulation 2016/1103** (*paras 85 – 93*). The court developed a new hierarchical applicable law framework. The new rule prioritises party autonomy by enabling spouses to choose the legal system that will govern the proprietary consequences of their marriage, this is subject to the chosen system having a substantial link to either or both spouses (*para 2.1. of the order*). Should there be no choice made by the spouses or their choice has no substantial connection to them, the applicable law is determined successively by the parties' common domicile, common habitual residence, common nationality and finally, the legal system with the closest connection to the spouses (*para 2.5 of the order*). The court also considered the South African Law Reform Commission's (SALRC) ***Project 100E, Review of Aspects of Matrimonial Property Law,* Discussion Paper 160**, that considered the constitutionality of the *lex domicilii matrimonii* and any suitable replacement. The court departed from the SALRC Discussion Paper 160 in respect of the choice of the applicable law. The court pronounced that there should be a substantial connection between the parties and the designated legal system (*para 95*).

The new common-law rule developed by the court has retrospective effect; subject to certain exceptions. Firstly, where spouses concluded an antenuptial contract choosing the law governing the proprietary consequences of their marriage, the new rule will not apply for two years from the date of the order, allowing the parties time to amend their contract if necessary (*para 3.1 of the order*). Secondly, in the absence of a choice of law by the parties, the new rule shall not apply if it would lead to substantial prejudice (*para 3.2 of the order*). Thirdly, the order will not disturb vested rights or invalidate transactions and decisions already taken under the previous *lex domicilii matrimonii* rule (*para 3.3 of the order*). Finally, the new rule will not apply to marriages already dissolved by death or divorce before the date of the order (*para 3.4 of the order*).

The court's declaration of invalidity and replacement of the *lex domicilii matrimonii* rule marks a significant development in South African private international law. Unlike the previous rule, which by default preferred the husband's domicile, the new framework recognises the equal status of spouses

while advancing legal certainty and flexibility in international marriages. The court's adoption of connecting factors internationally applied and recognised as best practice, advances harmonisation between South African private international law and other jurisdictions. It also promotes predictability for parties involved in cross-border relationships.

The judgement is widely welcomed, given the fact that many experts in the field have long criticised and called for the rule to be replaced. The courts did not wait for legislative intervention to align the South African law with internationally accepted principles. This indicates that the courts are prepared to ensure that common-law rules align with the constitution. Some aspects still need to be explored, namely the practical application of the concept of "closest connection" and the extent to which courts will interpret the requirement of a "substantial connection" when spouses exercise their right to choose a legal system. Another aspect that would need to be explored is the court's order that the new common-law rule shall not apply to existing marriages if it would lead to substantial prejudice. The meaning of substantial prejudice will require interpretation from our courts. These issues will undoubtedly be addressed through future scholarship and litigation.

Nevertheless, *Pringle* marks the demise of the *lex domicilii matrimonii* which was rooted in outdated patriarchal assumptions and confirms that South African private international law must develop in line with the Constitution.