

STUDIES IN PRIVATE INTERNATIONAL LAW

INTERNATIONAL
COMMERCIAL
DISPUTES

Commercial Conflict of Laws
in English Courts

FOURTH EDITION

Jonathan Hill
and Adeline Chong

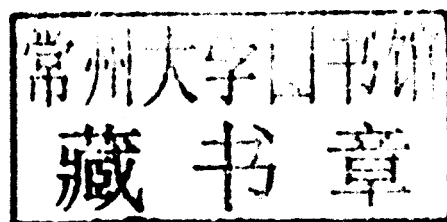


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INTERNATIONAL COMMERCIAL DISPUTES

This is the fourth edition of this highly regarded work on the law of international commercial litigation as practised in the English courts. As such it is primarily concerned with how commercial disputes which have connections with more than one country are dealt with by the English courts. Much of the law which provides the framework for the resolution of such disputes is derived from international instruments, including recent Conventions and Regulations which have significantly re-shaped the law in the European Union. The scope and impact of these European instruments is fully explained and assessed in this new edition.

The work is organised in four parts. The first part considers the jurisdiction of the English courts and the recognition and enforcement in England of judgments granted by the courts of other countries. This part of the work, which involves analysis of both the Brussels I Regulation and the so-called traditional rules, includes chapters dealing with jurisdiction *in personam* and *in rem*, anti-suit injunctions and provisional measures. The work's second part focuses on the rules which determine whether English law or the law of another country is applicable to a given situation. The part includes a discussion of choice of law in contract and tort, with particular attention being devoted to the recent Rome I and Rome II Regulations. The third part of the work includes three new chapters on international aspects of insolvency (in particular, under the EC Insolvency Regulation) and the final part focuses on an analysis of legal aspects of international commercial arbitration. In particular, this part examines: the powers of the English courts to support or supervise an arbitration; the effect of an arbitration agreement on the jurisdiction of the English courts; the law which governs an arbitration agreement and the parties' dispute; and the recognition and enforcement of foreign arbitration awards.

PREFACE

It is five years since the publication of the third edition of this work (the first by Hart Publishing). This fourth edition sees a variety of changes from the previous one—not least the addition of a co-author.

Although, since the last edition, there have been numerous minor changes throughout the topics considered in this work, there has also been a number of significant developments at the European level. First, two long-awaited instruments in the field of choice of law have finally been adopted: Regulation (EC) No 593/2008 on the law applicable to contractual obligations¹ (commonly known as the Rome I Regulation) and Regulation (EC) No 864/2007 on the law applicable to non-contractual obligations² (referred to as the Rome II Regulation). Secondly, the Lugano Convention of 1988 was revised in 2007—to bring it into line with the Brussels I Regulation. Although the revised Lugano Convention has not yet come fully into force, it is expected that it will do so in the not too distant future.³ Accordingly, the text assumes that the revised Lugano Convention is in operation and readers who are interested in the position under 1988 Convention should refer to the third edition of this work.

Although the Brussels I Regulation and the revised Lugano Convention are, in substance, almost identical, in certain respects the terminology of the Convention differs from that of the Regulation. Whereas the Brussels I Regulation is divided into ‘Chapters’ and refers to ‘Member States’, the Lugano Conventions is divided into ‘Titles’ and refers to ‘States bound by this Convention’. Throughout the book, the text takes the Brussels I Regulation as its starting point, only referring to the Lugano Convention (in footnotes) when it differs in some respect from the Regulation. If the text does not expressly refer to the Convention the reader should assume that it follows the Regulation (making appropriate allowances for differences in terminology). So, where the text states that ‘the basic structure of Chapter II is to distinguish those bases of jurisdiction which apply regardless of the defendant’s domicile from those which apply only to defendants who are domiciled in a Member State’, the reader can also assume that the basic structure of Title II of the Lugano Convention is to distinguish those bases of jurisdiction which apply regardless of the defendant’s domicile from those which apply only to defendants who are domiciled in a state bound by the Convention. Similarly, if there is nothing in the text or a footnote to indicate the contrary, where it is stated that ‘Article 6(1) only applies if the proceedings are brought in the Member State in which one of the defendants is domiciled’ the reader should conclude that Article 6(1) of the Convention only applies if the proceedings are

¹ [2008] OJ L177/6.

² [2007] OJ L199/40.

³ The revised Lugano Convention entered into force between the EU and Norway on 1 January 2010. Switzerland has indicated that it will apply the Convention as from 1 January 2011.

brought in the state bound by the Lugano Convention in which one of the defendants is domiciled. And so on.

In structural terms, this edition largely follows the last one. However, we have re-structured the chapters which address choice of law issues and, prompted by the (positive) criticism of a reviewer of the previous edition, we have added three chapters dealing with international insolvency.

With a view to making the text easier to read and digest, we have taken a number of shortcuts in our use of terminology. In the context of the recognition and enforcement of foreign judgments and arbitral awards, the court which granted the judgment is referred to as the 'court of origin' or the 'original court'; the country (or state) in which the court of origin sits or in which the arbitral tribunal has its seat is referred to as the 'country of origin' (or 'state of origin'). The court in which recognition or enforcement of a foreign judgment or arbitral award is sought is referred to as the 'court addressed'; the country (or state) in which the court addressed sits is referred to as the 'country addressed' (or 'state addressed'). In addition, throughout the text, 'England' is used to signify 'England and Wales' and 'he', 'his' and 'him' to signify 'he or she', 'his or her' and 'him or her'.

We extend our thanks to Richard Hart and his team for the support and assistance they have provided. We are also grateful to the publishers and editors of the *International and Comparative Law Quarterly* for permission to reproduce material which appeared in that journal under the titles 'Some Private International Law Aspects of the Arbitration Act 1996' (1997) 46 *ICLQ* 274 and 'Choice of Law in Contract under the Rome Convention: the Approach of the UK Courts' (2004) 53 *ICLQ* 325. In addition, we would like to thank Prof Paul Torremans and Dr Sandra Frisby for helpful comments made. Adeline Chong would like to thank her family for their support, especially her father, Chong Poh. Jonathan Hill extends his usual thanks to Sheila.

As far as possible, we have tried to state the law as on 1 December 2009; we have, however, been able to incorporate some later material.

Bristol

JONATHAN HILL

Singapore

ADELINE CHONG

1 February 2010

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