Brexit and the Future of Private International Law in English Courts - EU Law Live

With the UK now committed to purge any trace of its 40+ years of EU membership (via the freshly published Retained EU Law (Revocation and Reform) Bill), understanding the impact that the European instruments on private international law have had on English law remains key for any lawyer working on cross-border cases. There is hardly a better resource for this purpose than Mukarrum Ahmed's recent book on Brexit and the Future of Private International Law in English Courts.

In its first chapter, the book, which focusses entirely on civil and commercial matters, retraces the development of English private international law as it starts to disentangle from a range of European instruments – and from several decades of the Court of Justice case law. The chapter recounts 'the rise and fall' of European private international law in English courts before providing an overview of the individual EU instruments, most importantly the Brussels Ia, Rome I, and Rome II Regulations, other relevant texts such as the 2007 Lugano Convention, and of the legal framework negotiated post-Brexit as it stood in mid-2021.

In the following three chapters, Ahmed discusses how existing common-law rules will fill the gap – where EU instruments now have ceased to apply – or will reestablish themselves in other ways – where EU law has been retained (for now). The book follows the traditional distinction between international jurisdiction (chapter II), recognition and enforcement of foreign judgments (chapter III), and the applicable law (chapter IV).

As far as the question of international jurisdiction is concerned, Ahmed rightly deplores the lack of any conclusive treaty beyond the 2005 Hague Choice of Court Convention to replace the Brussels Ia Regulation as the EU refused to consent to the UK's accession to the Lugano Convention. At the same time, he also notes a certain simplification resulting from the Brussels Ia Regulation's disappearance. He then provides a detailed overview of the common-law regime on international jurisdiction, putting an emphasis on those elements that are most noticeably different from the Brussels Ia Regulation, such as the *forum (non) conveniens* test (considered incompatible with the Regulation by the Court of Justice in *Owusu*) and the availability of anti-suit injunctions (considered equally incompatible with it in *Turner*). Importantly, these features of English law will also apply to cases governed by the Hague Choice of Court Convention, which, unlike the Brussels Ia Regulation, is not subject to the Court of Justice's jurisprudence, as Ahmed rightly points out.

Concerning recognition and enforcement, Ahmed explains how the loss of the Brussels Ia Regulation will reduce the mobility of English judgments in Europe (and vice versa), emphasizing the potential benefits of the UK joining the 2019 Hague Judgments Convention, of which the EU and Ukraine have recently become the first two parties.

As for the applicable law, Ahmed welcomes the UK legislator's decision to keep the Rome I and Rome II Regulations in the statute books as retained EU law (for now) but also describes some of the challenges that may result from diverging interpretations between the CJEU and the English courts.

In his final reflections on the post-Brexit regime, Ahmed offers some critical thoughts and concerns about the revived common-law rules as opposed to, most importantly, the Brussels Ia Regulation – some of which have arguably meanwhile been confirmed by the UK Supreme Court's decision in *Brownlie II* [2021] UKSC 45. These final thoughts conclude what can only be praised as a highly valuable resource for anyone trying to find their way through the continuously evolving landscape of English private international law post-Brexit. The fact that the book has been published with the ink under the Withdrawal Agreement barely having had time to dry, only makes it an even more impressive achievement.

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