Private international law issues concerning asset recovery actions

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I. Private international law issues

1. Characterisation of the action:
   a) Criminal action (Corruption offences)
   b) Civil claim (Actio Pauliana, Fraudulent Conveyances)
   c) Insolvency-Related action (Avoidance actions)

2. Conflict of Jurisdictions

3. Conflict of Laws

4. Recognition of Foreign Judgements
II. Conflict of Jurisdictions

1. **Exclusive Jurisdiction:**
   a) **Vis attractiva concursus**
   b) **Insolvency-Related Actions (Art. 6 ER 2015/848)**
   c) **Avoidance Actions:**
      • ECJ 12 February 2009, C-339/07, Seagon vs Deko Marty
      • ECJ 18 November 2018, C-296/17, Wiemer vs Tadzher
      • ECJ 4 December 2019, C-493/18, UB vs Tiger & others

2. **Forum Shopping:**
   a) **Lis Pendens**
   b) **Ancillary Proceedings (Chapter 15 US Bankruptcy Code)**
   c) **Preservation Measures, Anti-suit Injunctions**
   d) **Criminal offences (Art. 53 UN Convention against corruption)**
III. Conflict of Laws

1. General Rule: *lex fori concursus*
   a) Indirect Jurisdiction (Forum = Ius)
   b) *Vis attractiva concursus*
   c) Art. 7.1 ER 2015/848

2. Exceptions:
   a) Avoidance actions = *lex causae* (Art. 16 ER 2015/848)
   b) Set-off = *lex causae* (Art. 9 ER 2015/848)
      • ECJ 21 November 2019, C-198/18, CeDe Group vs KAN
   c) Public Order (Art. 33 ER 2015/848)

3. Harmonization of Avoidance rules:
   a) UNCITRAL (Model Law, Legislative Guide)
   b) European Union: proposal for future work
IV. Recognition of Foreign Judgements

1. Extraterritoriality of foreign judgements

2. International tools for recognition:
   a) UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018)
   b) European Union (Art. 32 ER 2015/848)
   c) Cape Town Convention & Protocols (2001)
   d) Bilateral Treaties
   e) Future multilateral Convention?

3. National tools for recognition:
   a) Limited Extraterritoriality
   b) Reciprocity vs Comity