



Private international law issues concerning asset recovery actions

Prof. Ángel M^a Ballesteros Barros
Union Internationale des Avocats

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