

HANDBOOK ON CROSS-BORDER LITIGATION

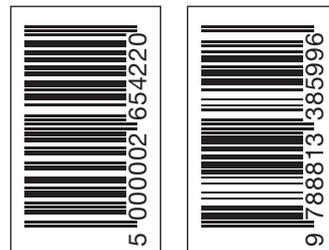
International litigation necessitates a distinct set of skills and a broad perspective that extends beyond national boundaries. This is why the Handbook on Cross-Border Litigation has been crafted with innovation at its core. By incorporating multimedia elements such as visual summaries, videos, and interactive exercises, this Handbook aims to provide readers with a dynamic and engaging learning environment. This approach goes beyond traditional teaching methods to ensure that students grasp the practical aspects of legal practice.

All materials are designed to offer thorough insights into litigating cross-border cases across various jurisdictions. Each topic addresses essential questions, shedding light on the key distinctions between domestic and cross-border litigation, as well as crucial considerations to be mindful of. Since theoretical knowledge alone may not suffice in preparing for the challenges of legal practice, significant emphasis is placed on practical case resolution strategies.

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HANDBOOK ON CROSS-BORDER
LITIGATION

Elena D'Alessandro
Davide Castagno

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2. Quiz on Cross-Border Litigation Issues

Practice on Case-Studies (Part II, Chapter 5). Solutions

Chapters 1, 2, 3, 4, 6, 9, and 11 of Part I as well as Chapters 2 and 4 of Part II are authored by Elena D'Alessandro.

Chapters 5, 7, 8, and 10 of Part I are authored by Davide Castagno.

Chapters 3 and 5 of Part II are co-authored by Elena D'Alessandro and Davide Castagno

Chapter 1 of Part II is authored by the group of students participating in 'Dallo studio alla ricerca' project

CHAPTER 1

What is a Cross-Border Dispute in Civil and Commercial Matters

SUMMARY: 1. Introduction. – 2. Key Features of a Cross-Border Dispute.

1. Introduction

In this Handbook, we focus on **cross-border disputes**, also referred to as **international** or **transnational** disputes, within the realm of civil and commercial law. The adjectives ‘international’ and ‘transnational’ are used synonymously with ‘cross-border’.

To start, it is crucial to highlight that a cross-border dispute in civil and commercial matters is not solely confined to courtroom settings. It **pertains to everyday life**.

Newspapers and television regularly refer to cross-border disputes. Here are some examples:

A. *BBC News, 24 August 2018**

A British couple who died on holiday in Egypt suffered from heart and respiratory failure, according to local authorities.

A., aged 69, and his wife B., aged 63, from Lancashire, a fit, healthy and active couple, were staying at the ‘Desert Resort’ of Hurghada. The daughter of a British couple who died within hours of each other during a family all-inclusive holiday in Egypt, who was also staying at the hotel, expressed suspicions about their deaths.

Local authorities stated that medical checks by a health inspector revealed ‘no criminal suspicions’.

* The names in the news report have been modified for compliance with GDPR Regulation.

The travel agent, based in Spain, announced it was evacuating all its customers from the Desert Resort as a 'precautionary measure', citing the 'unclear' circumstances surrounding the deaths.

Assume that the daughter of the deceased couple wishes to take legal action to seek compensation for the damages suffered due to their deaths. Which States involved in the dispute must you consider in order to determine in front of which court you will have to file the lawsuit?

B. The Costa Concordia Disaster

The Costa Concordia, an Italian luxury cruise ship owned by the Costa Crociere cruise company, a subsidiary of Carnival Corporation based in Miami (USA), experienced a tragic event on 13 January 2012.

While carrying 4,252 people from various countries on the first leg of a Mediterranean Sea cruise departing from Civitavecchia in Lazio, Italy, the vessel deviated from its planned route near Isola del Giglio and made contact with an object on the sea floor. This collision, audible to passengers and resulting in a temporary power outage due to flooding in the engine room, prompted the captain, F., an Italian domiciled in Naples, to order an evacuation after an hour of drifting as the ship began to list.

Regrettably, 32 passengers and crew members from various countries lost their lives.

Put yourself in the shoes of a surviving passenger on board, having lost clothes and jewellery worth thousands of euros in the shipwreck. If you wish to seek compensation for damages, which States involved in the dispute must you consider in order to determine in front of which court you will have to file the lawsuit?

C. The Germanwings Plane Crash

On 24 March 2015, a Germanwings (a German airline) plane carrying 150 people crashed in the French Alps on its way from Barcelona, Spain, to Dusseldorf, Germany. There were no survivors.

First Officer A.S. (of German nationality) appeared to intend to crash the aircraft carrying 150 people aboard Germanwings flight. After the captain left the flight deck, the cockpit door was closed behind him. Subsequently, A.S. entered commands into the flight computer to initiate the descent of the aircraft. The captain can be heard requesting entry, followed by attempts to forcibly open the door, while A.S. remains chillingly silent. Investigators determined that A.S. was still alive until the moment of impact, as his breathing can be heard.

Imagine you are a parent of one of the passengers who died in the impact. If you wish to seek compensation for damages, which States involved in the dispute must you consider in order to determine in front of which court you will have to file the lawsuit?

2. Key Features of a Cross-Border Dispute

The three examples provided in paragraph 1, drawn from everyday life (A, B, and C), make it evident that **a cross-border dispute in civil and commercial matters involves multiple States**. Consequently:

a) **Several State jurisdictions** may have the authority to adjudicate the case in court, leading to multiple *fora* being available;

b) Additionally, the application of **multiple substantive laws** to the merits of the dispute is possible, as the law governing the dispute is determined by the *lex fori*, specifically by the conflict of laws rules of the State where the proceedings are pending.



TO BEAR IN MIND

The term '*lex fori*' refers to the law of the *forum*, which is the legal system of the State in which a cross-border or a domestic civil action or proceedings are brought. It determines procedural matters, such as the rules governing international jurisdiction, evidence, and the conduct of legal proceedings, and also which conflict of laws rules apply.

Conflict of laws or private international law rules (which generally belong to the *lex fori*) determine which substantive law applies to the merits of a cross-border case (whether foreign or national law). However, **this Handbook does not cover this topic in detail**. For relevant concepts, please refer to your Private International Law course.



VISUAL SUMMARY: DOMESTIC DISPUTES

NATIONAL COURTS

**NATIONAL
PROCEDURAL RULES
(LEX FORI)**

**NATIONAL
SUBSTANTIVE LAW**



VISUAL SUMMARY: CROSS-BORDER DISPUTES

NATIONAL COURTS

**NATIONAL
PROCEDURAL RULES
(LEX FORI)**

**NATIONAL CHOICE
OF LAW RULES
ooo
NATIONAL OR
FOREIGN
SUBSTANTIVE LAW**



LET'S PLAY!

Check if you have understood correctly

Exercise 01. John

John is an American citizen, living in New York. He was part of a group of foreign passengers aboard the Costa Concordia cruise ship when it sank off the coast of Italy ('Isola del Giglio') in 2012.

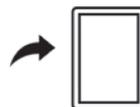
In the shipwreck John lost his baggage with his collection of luxury watches.

John is intensioned to bring an action for damages (personal injury, compensation for lost property) against Costa Concordia.

A Costa parent company – the Carnival Corporation – is based in Miami, USA.

Please, identify the cross-border issues presented by this fact scenario.

Look at the solution
in 'La Mia Biblioteca'

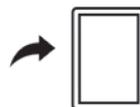


Exercise 02. Mary

Mary is the General Manager of Amazonia IT, which provides a 'virtual' platform for sellers and buyers to negotiate and complete transactions. Amazonia is not a seller and is not involved in the transactions between sellers and buyers. However, Mary needs to reduce the risks of being involved in transnational litigation due to her role. In particular, Mary is having some problems with a case concerning the selling of a used iPhone 13 by a French consumer from a Singaporean seller.

Please, identify the cross-border issues presented by this fact scenario.

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in 'La Mia Biblioteca'



Exercise 03. Anthony

Anthony is the General Manager of the RED Corporation, an affiliate of the University of Montreal (Canada) established to facilitate the commercialisation of technology developed by the University of Montreal faculty members. Among other things, his responsibilities include entering into intellectual property licenses with private industry and prosecuting patents on the inventor's behalf.

Bio is an Italian traded corporation that manufactures and markets products used primarily by musculoskeletal medical specialists in both surgical and non-surgical therapy, including orthopaedic devices such as prosthetic knees and hips.

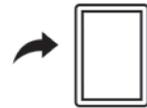
In January 2019, Bio approached Dr John Brown, a University of Montreal faculty member, expressing interest in licensing technology relating to an artificial knee now popularly known as the 'Finn Knee'.

On 31 March 2020, RED Corporation and Bio entered into a license agreement (the 'License Agreement'). Section 10.8 of the License Agreement required the parties to arbitrate any disputes 'in accordance with the rules of the American Arbitration Association'.

Bio commenced manufacturing and selling the Finn Knee. Though royalties in the early period were low, by 2021 they amounted to some \$400,000 per year. Bio continued paying royalties to RED. However, in January 2022 Bio wrote to Anthony affirming that its obligation to pay royalties had ended as of 31 March 2023, and that no further payments would be forthcoming.

Please, identify the cross-border issues presented by this fact scenario.

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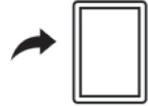


Exercise 04. Claire

Claire is a French citizen. She is a T-travel agency customer with an advance booking to stay at the Samba Hotel in Rio de Janeiro (Brazil) from 1 September to 14 September 2025. The booking was made via the Thomas Cook website (www.ttravel.fr). Due to the unavailability of the hotel, she has been offered alternative accommodation at no extra charge. However, she wants to cancel her booking and have her money back.

Please, identify the cross-border issues presented by this fact scenario.

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TAKEAWAY POINTS

- Identifying a 'cross-border' dispute.