# Book Symposium Introduction – Private International Law in Nigeria (Hart Publishing, 2020)

**By:**

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This Symposium focuses on the recent publication: Private International Law in Nigeria. For many, Nigeria needs no introduction: it is a federal country consisting of thirty-six states and the Federal Capital Territory, Abuja. With increased cross-border transactions and investments, the significance of private international law (or conflict of laws) – the body of law that aims to resolve claims involving foreign elements – has become more accentuated than ever. Indeed, private international law rules have sometimes been invoked in resolving disputes with inter-state dimensions within the federation, especially on jurisdiction and choice of law matters. Conflict of laws has also been used to resolve disputes involving internal conflicts between various customary laws and between customary laws and the Nigerian Constitution or enabling statues, especially in the area of family law. In essence, because of its federal structure,

private international law is relevant in both the inter-state and international litigation in Nigeria.

Prior to the publication of Private International Law in Nigeria, there was no comprehensive treatise on the subject in Nigeria. The Book aims to fill that academic void: drawing on over five hundred Nigerian cases, statutes, and academic commentaries, the Book examines mainly jurisdiction (in inter-state and international disputes), choice of law, and the recognition and enforcement of foreign judgments and international arbitral awards. It also examines remedies that affect foreign judicial proceedings such as antisuit injunction, and international judicial assistance to serve legal process and take evidence.

This Symposium brings together the reflections of four scholars on the book and explores some of the issues arising therefrom. In the Book, we examine the common law regime for enforcing foreign judgments in Nigeria and reveal the under-developed state of the law. Anthony Kennedy, a barrister at Serle Court, focuses on this aspect of the book to forcefully argue for a "reawakening of the common law action" to enforce foreign judgments. Kennedy is critical, and rightly so, of how the legal profession and the courts have treated the common law regime notwithstanding clear authority from the Supreme Court of Nigeria that the statutory regime for enforcing foreign judgments was not designed to kill of the common law regime. Kennedy argues that by not side-lining the common law regime, Nigeria may be able to partake in the judicial development of the regime that is going on in other parts of the common law world, as well as international projects such as the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, 2019.

Richard Mike Mlambe, an Attorney and Lecturer at University of Malawi- The Polytechnic, picks up the theme of reform and judicial development of private international law, in a comparative discussion on the bases of jurisdiction in an action to enforce a foreign judgment. Mlambe commends Canada's "real and substantial connection" basis of international competence. The real and substantial connection test promotes the liberal flow of judgments across borders. Mlambe calls on Nigeria and other common law jurisdictions to join Canada on its "lonely revolution".

Dr Abubakri Yekini, a Lecturer in Law at Lagos State University, explores the enforceability of jurisdiction agreements in Nigeria drawing on the Book's discussion which reveals, in the words of Yekini that "it is difficult to give a straight answer on whether jurisdiction agreements are enforced by Nigerian courts" – a state of affairs which he rightly argues creates uncertainties and is not good for international business transactions. Yekini examines three significant challenges to the enforcement of jurisdiction agreements in Nigeria, namely the courts' mischaracterisation of such agreement as "ouster clauses"; mandatory statutes vesting exclusive jurisdiction in Nigeria courts; and the misapplication of the doctrine of forum non conveniens in cases involving breach of jurisdiction agreement, instead of the strong cause test. Yekini makes an impassioned plea for Nigerian courts to "promote party autonomy", and a call on Nigeria to become party to the Convention on Choice of Court Agreements, 2005.

Orji Agwu Uka is a Senior Associate at Africa Law Practice (ALP), reflect of the state of private international law in Nigeria and calls for its wider study. Indeed, as Uka rightly acknowledges, for more than a decade, scholar have lamented the level of interest in private international law in Africa. Happily, private international law in Africa can hardly now be described as "the Cinderella subject seldom studied [and] little understood". Uka undertakes a broad but careful review of the book - highlighting various topics examined in the book but focusing especially on the law on jurisdiction in international and inter-state matters. Uka commends *Private International Law in Nigeria* for filling a significant academic void on the Nigerian legal landscape.

It is our hope that the Book and this Symposium, in addition to being a rich legal resource for lawyers, judges and legislators would spur on further study of private international law in Nigeria, and Africa. Indeed, the Nigerian Group on Private International Law ("NGPIL") has already been established and "set sail". NGPIL aims to "(1) to improve the law in Nigeria in matters relating to private international law ("PIL") (2) to persuade the Nigerian government to accede to the Hague Conventions on PIL (3) to liaise with other experts, groups, and research centres on PIL on a global level (4) to nurture, guide and develop the legal mechanism and framework for PIL in Nigeria (5) to be the collective voice of PIL experts for the Nigerian government, the judiciary, lawyers and other

relevant stakeholders and, (6) to improve the links and communication between PIL experts in Africa". The book: *Private International Law in Nigeria* will certainly make the work of NGPIL less daunting.

**Contributors**

Anthony Kennedy: The Recognition and Enforcement of Foreign Judgments at Common Law in Nigeria

Richard Mike Mlambe: Presence as a Basis for International Jurisdiction of a Foreign Court under Nigerian Private International Law

Dr Abubakri Yekini: The Practicality of the Enforcement of Jurisdiction Agreements in Nigeria

Orji Agwu Uka: A Call for the Wider Study of Private International Law in Africa: A Review of Private International Law in Nigeria

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