

### **MULTIPLE CHOICE PAPER. UNIT 3**

#### **1.-Automatic recognition:**

- a) Implies that the judgements handed down by an EU Member State will be treated in the other Member States as if they were internal judgements
- b) Implies that recognition of the judgement handed down by a Member State is carried out without the party against which it is being enforced being able to declare, at any time, whether he/she has any reason to object to this recognition
- c) Implies the direct enforcement of judgements from Member States which are enforceable in some way
- \*d) Implies that the judgement to be recognised does not require any type of special homologation procedure prior to its recognition or declaration of enforceability

#### **2.-Regulation 44/2001:**

- a) Is applied by the Member States both to determine international judicial jurisdiction and for the recognition of foreign judgements, in all cases, and instead of internal law
- b) \*Must be applied when its material, temporal, spatial and territorial scopes are fulfilled
- c) The Member States can choose between applying regulation 44/01 or their internal law
- d) The regulation is only applied when the parties are both EU nationals

3.- A Spaniard residing in Spain claims maintenance from his Colombian father residing in Austria. Which regulation would the Spanish judge have to use to determine his international judicial jurisdiction?

- a) Regulation 44/2001 which establishes a special forum in its article 5.2 with regards to maintenance
- b) Never regulation 44/2001 as family matters are excluded from its material scope
- c) Spanish internal procedural law provided that it is a matter protected by Spanish public order
- \*d) Community regulations stipulate on maintenance matters

4.- The Spanish company PLASTICS S.A. enters into a supply contract with an Austrian company. In this contract the Austrian company undertakes to supply 20 tonnes of plastic material to the Spanish company which will make a payment of 3 million Euros. The contract includes a clause of submission to the British courts. After differences arise with regards to the contract payment, the Austrian company sues for non-payment before the Spanish courts, do the latter courts have jurisdiction?

a) Yes, because they are based at the defendant's address

b) No, because they have no connection to the case

\*c) No, because through an agreement the parties have granted exclusive jurisdiction to the British courts

d) No, in this case only the Austrian courts would have jurisdiction in virtue of a special forum due to the matter in hand

5.- The company Mülchen, whose registered office is in Germany, enters into a contract with the company Pulciere whose registered office is in Italy, for the sale of a shipment of sausages. The delivery of the goods should have taken place in Milan. After a dispute arises with regards to the contract, Mülchen files an action against Pulciere with the Italian courts for its failure to pay for the goods on 3 April 2011. Pulciere also files an action with the German courts on 3 May 2011, alleging breach of contract as the sausages delivered were not of the quality and size required. After Mülchen was notified of the latter action it appeals to the German court seized of the action and requests the court stays the action due to international lis pendens. What would this court have to do?

a) It would continue to be seized of the action as it is not linked through submission of the action to a foreign court

b) It would continue to be seized of the action as there is no lis pendens, since the parties in both proceedings do not have the same procedural position

\*c) It will have to remit the case when it is verified that the first court has declared that it has jurisdiction to hear the case, since there is identity of the parties, subject-matter and cause, regardless of the procedural position of each of the different proceedings

d) It will act according to that stated in its internal procedural law.

6.-Marius, of Irish nationality and resident in Dublin (Ireland), owns a plot in Marbella (Spain). The adjacent plot is the property of Tom, also of Irish nationality and resident in Dublin. In January 2010, Marius decides to erect a fence on the boundary of his land. Tom serves a summons on him to remove part of the fence, so he may cross the land over which he claims he has right of way. Marius, responds stating that there is no right of way and that he is entitled to completely fence off his property. In the face of this response Tom files an action with the courts in Dublin in which he requests that the existence of the right of way is recognised in his favour. What should the Irish court

seised of the action do in the face of this suit?

a) As, in principle, it does not have jurisdiction due to regulation 44/01, it should serve notice on the defendant to verify whether it is granted jurisdiction due to tacit submission (article 24).

b) Declare itself to have jurisdiction, as although the property right in question is regarding a property located in Spain, both parties to the suit are Irish

c) Declare itself to have jurisdiction, as although the property right in question is regarding a property located in Spain, both parties to the suit reside in Ireland

\*d) Verify that it is exclusive jurisdiction of article 22 of regulation 44/01 and, without serving notice on the defendant, declare of its motion that it does not have jurisdiction.

7.-Antoine L., resident in Paris, enters into a contract with the company Espacios Distinguidos S.A. with registered address in A Coruña (Spain). In the contract Antoine undertook to carry out decorating work in a show home in A Coruña before 5 June 2009. The parties agree in the contract that if a dispute should arise the courts in Paris would have jurisdiction. On 30 June 2009 the flat was only partially decorated, and therefore, Espacios Distinguidos decides to bring proceedings against Antoine L. Before the courts in A Coruña. Antoine, duly notified, appeals against the jurisdiction of the Spanish Judge and subsequently responds to the merits, but the appeal regarding jurisdiction is submitted after the deadline expired outlined by Spanish domestic law for its submittal. Has Antoine tacitly submitted himself to the jurisdiction of the Spanish courts?

\*a) Yes because, although he appealed against the jurisdiction of the Spanish judge, he did so after the deadline established by domestic Spanish procedural law had expired

b) Yes, because although he appealed against jurisdiction, he also responded with regards to the merits of the case which implies tacit submission

c) No, because the Spanish courts would never have jurisdiction pursuant to the express clause of submission agreed on by the parties, which designates the courts in Paris as having exclusive jurisdiction

d) No, because submission is an independent concept of the regulation and the defendant appealed against jurisdiction, responding, in turn, to the merits of the case

8.-The Irish courts handed down a judgement dated 14 February 2011, in which they ruled on the existence of right of access on a plot located in Marbella (Spain) and which involved two Irish nationals resident in Dublin. The claimant is filing for the recognition of this judgement in Spain. The Spanish court:

a) Must recognise the judgement pursuant to the principle of community trust

b) Must recognise the judgement if the defendant has been duly notified

\*c) Is not obliged to recognise the judgement as the court of origin violated the exclusive jurisdiction of the Spanish courts

d) Is obliged to recognise the judgement, as, despite the fact that it was handed down by a court without jurisdiction according to the regulation, it is prohibited from reviewing the jurisdiction of the Community judge of origin

9.-The company Oui S.A. with registered address in France, brings an action before the French courts against the company Naranjas S.A. with registered address in Spain for breach of contract. The Spanish company should have delivered the goods (10 tonnes of oranges) to Valencia port. After the dispute arises the company Oui S.A. brings proceedings before the French courts, who notify the defendant at an incorrect address in Spain. The case is processed without the defendant aware that it is going on and a judgement is handed down ordering him to pay compensation for damages. The defendant is correctly notified of the judgement, and he decides not to appeal within the legal deadline as in the principal proceedings his rights to defence were not recognised. Could the judgement be enforced in Spain?

a) Yes, because he is from a Member State and there are no grounds to object to the enforcement

b) No, because the defendant was not duly notified of the filing of the proceedings and his rights of defence were not recognised

c) Yes, because, in virtue of the principle of mutual recognition between the EU Member States, enforcement is always compulsory

\*d) Yes, because despite the defendant's inability to defend himself in the proceedings, he did not appeal against the judgement when he had the chance

10.-The grounds for objection to the declaration of enforceability of the judgement:

a) Can be put forward by the person against which the trial court judge is previously requested to deliver judgement on

b) \*Can only be put forward by the person against which a judgement is enforced in the appeal stage

c) Are automatically considered by the judge

d) No grounds for objection of the declaration of enforceability are set forth in the regulation, only grounds for recognition