



WORKING GROUP 2 PM

RECOGNITION/ENFORCEMENT

**I. Read the case below, and provide the words missing.**

At 15 January 2015 a claim for (1) ..... was brought by CD and against Mr Albert at the High Court of Justice (England & Wales), Chancery Division.

- (1) a) damage                      b) damages                      c) restitution

On 26 February 2015, on application by CD, the High Court of Justice made an order which, on the one hand, restrained Mr Albert on a temporary basis from dealing with some of his assets ('freezing order') and, on the other hand, instructed him to (2) ..... details of his assets and certain documents in his possession concerning the principal claim ('disclosure order'). On 11 March 2015 that order was served by the Swiss authorities (3) ..... Mr Albert, who entered an appearance in the proceedings (4) ..... the High Court.

- (2) a) reveal                      b) unveil                      c) disclose

- (3) a) on                      b) to                      c) Ø

- (4) a) before                      b) in front of                      c) at

Mr Albert did not comply (5) ..... the disclosure order. The High Court then, on application by CD, an order which barred Mr Albert from taking any further part in the proceedings (6) ..... he complied, within the prescribed time-limit, with the obligations regarding disclosure of the information and documents requested ('unless order').

- (5) a) to                      b) before                      c) with

- (6) a) if                      b) even if                      c) unless



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Since Mr Albert, despite a second "unless order" , did not, within the prescribed time-limit, completely fulfill the obligations laid down in the new order, he was held to be in contempt of court and was excluded from the proceedings ('debarment').

By judgment of 10 December 2015, the High Court entered judgment as if Mr Albert was in default and allowed the application of CD, ordering Mr Albert to pay them damages of USD 129 974 770, with interest.

On application by CD, the Corte d'appello di Milano (Court of Appeal, Milan, Italy), by order of 17 December 2015, declared the High Court judgments to be enforceable in Italy.

Mr Albert appealed against that order. He claims that the High Court judgments cannot be recognised in Italy, on the ground that they are contrary to public policy, because they were made in breach of the rights of the defence and of the adversarial principle.

## **LEGAL ASSESSMENT**

### **II. Answer the following questions.**

1. The system of enforcement of Regulation 1215/2012 is applicable:
  - a) to judgments given after 10 January 2015, even if the legal proceedings were instituted before this date;
  - b) only to judgments given in proceedings instituted after 10 January 2015;
  - c) to 'any judgment', including provisional/protective measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter;



d) to ‘any judgment’, including provisional/protective measures, regardless if they are ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter or not.

2. The court of the State in which enforcement is sought may refuse the enforcement of provisional, including protective, measures on grounds of public policy in the following cases:

a) in case of an order issued by a court of a Member State, without a prior hearing of a third person whose rights may be affected by that order, even if that third person is entitled to assert his rights before that court by a further appeal.

b) when the court of the State of origin ruled on the applicant’s claims without hearing the defendant, who was excluded from the proceedings, if that exclusion measure constituted a manifest and disproportionate infringement of the defendant’s right to be heard;

c) for judgments which are delivered without the party against which they are directed having been summoned to appear;

d) provisional, including protective, measures were ordered by a court without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement.



**III. Based on your case study, fill in with the appropriate words or phrases:**

defence, to envisage, public policy, principle, to infringe, breach, fair trial

The recourse to a ..... clause can be ..... only where recognition or enforcement of the judgment delivered in another Contracting State would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought inasmuch as it ..... a fundamental ..... The infringement would have to constitute a manifest ..... of a rule of law regarded as essential in the legal order of the State in which enforcement is sought or of a right recognised as being fundamental within that legal order.

With regard to the exercise of the rights of the ..... , this occupies a prominent position in the organisation and conduct of a ..... and is one of the fundamental rights deriving from the constitutional traditions common to the Member States and from the international treaties for the protection of human rights.

**IV. Explain the following words and phrases or provide synonyms or near-synonyms for them.**

- (1) in contempt of court
- (2) in default of appearance
- (3) adversarial principle
- (4) enforcement is sought
- (5) defendant



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(6) right to be heard

**V. Rephrase the following sentences using your own words.**

- (1) judgments which are delivered without the party against which they are directed having been summoned to appear;
- (2) provisional, including protective, measures were ordered by a court without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement.