CROSS-BORDER ART CASES: DELOCALIZED LITIGATION DESPITE LOCAL PROVENANCE?

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Private international lawyers can share a passion for works of art and, indeed, works of art—as high-value mobile assets—are a fascinating research topic for private international lawyers. This paper derives from ongoing litigation in the United States about a painting created by a French artist and exhibited in Spain—the Cassirer et al. v. Thyssen-Bornemisza Museum *case. The focus is on choice of law issues. The paper sets out the reasoning that was central to the U.S. Supreme Court in its ruling about the relevant conflict rule in this case. It then compares this rule with the treatment that the same choice of law issue would have received if the case had been litigated in European continental courts. In civil law systems, a specific property action (rei vindicatio) typically leads to a different PIL characterization than in common law. An action in tort seems to be the preferred route for such cases in U.S. case law. It is of course no surprise that a different characterization of the dispute leads to a different choice of law analysis and may eventually result in a different substantive outcome. Simply put, this is the perfect scenario for forum shopping, where the key question (i.e., who owns the painting?) can receive diametrically opposed answers depending on the litigation venue. More conceptually, however, this disparity is an invitation to explore the need for unification efforts for choice of law rules in the area of transnational art litigation.*

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I. Introduction

I dare to hope that private international law giant and art lover Linda Silberman will enjoy the topic of this paper, written with the deepest admiration and respect I have for her.

When delivering his Opinion for a unanimous Supreme Court judgment, Justice Kagan depicted well the sharp contrast between a legal technicality (the relevant choice of law rule) and the massive consequences of the *Cassirer et al. v. Thyssen-Bornemisza Museum* judgment for transnational art litigation.[1] She stated: "Although the legal issue before us is prosaic, the case's subject matter and background are anything but. At issue is the ownership of an Impressionist painting depicting a Paris streetscape."[2] Indeed, what makes this controversy about a painting's ownership especially significant is of course its historical background, as the Pissarro painting is one of the many artworks whose ownership is disputed as an indirect consequence of its confiscation during the Nazi regime in the period of 1933–1945.

Can an underrated choice of law analysis cater to the often high political, cultural, or societal stakes characterizing such international art law cases? Answering this question would likely require more time and effort than the limited goals of this brief paper. For our current purposes, it suffices to say that choice of law (and more generally, private international law) is gradually gaining weight in the settlement of global contemporary challenges and, as such, it increasingly has recourse to mechanisms specifically designed for the protection of public interests (e.g., the sovereign immunity exception, the act of State theory, or the application of overriding mandatory provisions). This trend is readily noticeable in international art law cases because they may involve public (or mixed public-private) entities, such as a completely state-funded museum, as a party to the litigation. More importantly, such cases often carry a loaded historical background and cannot be fully detached from convoluted episodes of human relations over time and space.

However, this trend is far from being unique to art litigation, as contemporary international relations often implicate a

1. Cassirer v. Thyssen-Bornemisza Collection Found., 142 S. Ct. 1502 (2022).

2. *Id.* at 1506.

confluence of public and private interests. Think for instance of current global challenges like migration governance or the regulation of online platforms.[3] Against such societal challenges, the role and operation of private international law has been questioned. At best, our discipline is in the process of being revisited.[4] Perhaps the new "conflict of laws revolution"[5] should be about recalibrating the discipline for its function of "international system of global ordering"[6] characterized by the "commingling of public and private authority."[7] However, the *Cassirer* litigation provides a clear illustration of the difficulties encountered in practice and the need for better law connectivity,[8] at least with respect to the transnational art market.

The focus of this contribution is indeed art, and more specifically a piece of art that travelled across borders over

3. *See* Verónica Ruiz Abou-Nigm, *Unlocking Private International Law's Potential in Global (Migration) Governance*, *in* Private International Law: Contemporary Challenges and Continuing Relevance 196, 199–200 (Franco Ferrari & Diego P. Fernández Arroyo eds., 2019) (discussing the contributions that private international law can provide to the phenomenon of global migration); *see also* Hannah Bloch-Wehba, *Content Moderation as Surveillance*, 36 Berkeley Tech. L.J. 1297, 1299 (2021) (discussing the mix of private and public interests implicated by online platforms).

4. *See generally* Cathalijne van der Plas, Professor, Leiden University, Inaugural Lecture: "Het IPR als onderdeel van de international architectuur: over een januskop en contact met de buren" ["The IPR as part of the international architecture: about a Janu's head and contact with neighbors"] (Mar. 24, 2023) (transcript available in the Leiden University Scholarly Publications) (discussing the speaker's view of the changing role of private international law).

5. Linda Silberman, *(American) Conflict of Laws Revolution*, *in* Encyclopedia of Private International Law 66, 69 (Jürgen Basedow et al. eds., 2017).

6. Alex Mills, The Confluence of Public and Private International Law 298–99 (2010). For further work on the regulatory potential of (public and private) international law, see generally H. van Loon, *The Global Horizon of Private International Law*, *in* 380 Recueil Des Cours: Collected Courses of the Hague Academy of International Law 12–108 (2015) (discussing the evolving nature of private international law); *see also* Linkages and Boundaries in Private and Public International Law (Veronica Ruiz Abou-Nigm et al. eds., 1st ed. 2018) (discussing the relationship between private and public international law and their role in solving issues in international law); *see also* Global Private International Law: Adjudication without Frontiers (Horatia Muir Watt et al. eds., 2019) (analyzing different issues private international law has faced).

7. *See* Wehba, *supra* note 3, at 1299 (characterizing what is meant by "commingling of public and private authority").

8. Marta Pertegás Sender, Professor, Maastricht Univ., Connectivity in Private International Law (Jan. 1, 2019), https://perma.cc/8NJ9-FED6.

time. Sections II and III further details about this journey and the time- and resource-consuming legal dispute it unlocked. Sections IV and V put the conflict of laws analysis of this legal dispute in a broader perspective. First, I consider whether the *Cassirer* litigation is representative of the international art law cases U.S. courts typically deal with. Next, I consider how the same case would have been resolved by private international law rules applicable in the EU instead.

Through her impressive writings and lectures, Linda Silberman has taught us how enriching the comparison of private international laws can be and how essential a comparative and transnational approach is to our discipline. Following her example, I venture into a Californian conflict of laws analysis (which I am unfamiliar with). I then hypothesize with the application of EU and Spanish private international law rules to the case under review. In light of the striking contrasts and ensuing international disharmony, I submit that further transnational research in this field is more than welcome.[9]

II. Background to an Ongoing Legal Dispute

In 2005, the California-based heir of a Nazi-looted painting sued a Spanish art foundation to recover the property of a painting. The defendant is the Thyssen-Bornemisza Collection Foundation with a seat in Madrid, Spain.

The piece of art at the center of this litigation is an 1897 oil painting by the French impressionist Pissarro entitled *Rue Saint-Honoré, Afternoon, Rain Effect* depicting a street in Paris. In 1900, the painting was sold to Paul Cassirer, a member of a prominent German-Jewish family that owned an art gallery. More than twenty years later, when the Nazi regime took power in Germany, Paul's granddaughter, Lily Cassirer, who had inherited the painting decided to flee to England to avoid persecution.

9. I am indebted to my colleague, Lars van Vliet, and our joint Ph.D. candidate, Livia Solaro, for awakening my curiosity for international art law cases. Livia's research project focuses on the study of Nazi looted art litigation in the United States, a topic on which she has already published a book: Livia Solaro, Il saccheggio nazista dell'arte europea: Uno Sguardo Comparatistico sul Contenzioso Transnazionale nei Restitution Cases [The Nazi Plunder of European Art: A Comparative Overview of Transnational Litigation in the Restitution Cases] (FrancoAngeli 2022), https://perma.cc/Q9L3-9RCW.

However, upon departure, she was forced to surrender the painting to the Nazis in exchange for an exit visa.[10]

Lily Cassirer and her grandson Claude, the plaintiff in the current case, relocated to the United States. Coincidentally, the painting was transported to the United States after World War II and was part of a private collection in St. Louis, Missouri between 1952 and 1976. Unaware of the painting's whereabouts, Lily Cassirer agreed in 1958 to receive a compensation from the German Federal Republic (the amount appears to be much lower than the current market price of the painting). Two decades later, in 1976, Baron Thyssen-Bornemisza purchased the painting and brought it back to Europe. The painting hung at the Baron's residence in Switzerland until the early 1990s. Importantly for the painting's next destination, the Baron married a Spanish celebrity, Ms. Tita Cervera, in 1985. The painting, as part of the Baron's impressive art collection, was then sold to the Thyssen-Bornemisza Collection Foundation, a Spanish foundation created and controlled by the Kingdom of Spain. To date, the Foundation's main goal is to run the Thyssen-Bornemisza Museum in Madrid where the Thyssen-Bornemisza collection has been exhibited since the 1990s.[11]

It was not until 1999 that an acquaintance of Claude Cassirer recognized the painting in the museum's catalog and informed Claude about the painting's current location in Madrid.[12]

III. Proceedings in the United States

Claude Cassirer approached the Foundation to recover the painting but was unsuccessful. He decided to sue the Foundation in federal court in the Central District of California, close

10. Cassirer v. Thyssen-Bornemisza Collection Found., 142 S. Ct. 1502, 1505–06 (2022).

11. The Museum website contains a (not fully updated) note about the painting's provenance and the ongoing litigation. *Nota de la Fundación Fundación Colección Thyssen-Bornemisza sobre el fallo del Tribunal Supremo de Estados Unidos en el caso Cassirer v. Fundación Colección Thyssen-Bornemisza* [*Note from the Thyssen-Bornemisza Collection Foundation on the decision of the Supreme Court of the United States in the case of Cassirer v. Thyssen-Bornemisza Collection Foundation*], Museo Nacional Thyssen-Bornemisza [Thyssen-Bornemisza Natoinal Museum] (2022), https://perma.cc/35RU-V8KG.

12. *Cassirer*, 142 S. Ct. at 1506.

to the plaintiff's own domicile.[13] As this contribution focuses on choice of law issues, I will not comment on jurisdiction over a foreign legal person concerning a piece of art located abroad. There is also the claim of the Foundation's immunity as an "instrumentality or agency" of a foreign State in U.S. legal terms, which was ultimately resolved in favor of the Cassirer family because of the expropriation exception of the Foreign Sovereign Immunities Act (FSIA). This immunity aspect is not addressed in this paper either, nor is the question of the enforceability of a forthcoming Californian judgment in Spain.

Our focus here is thus the applicable law to this case, a contentious issue between the litigants in all stages of the proceedings up to the Supreme Court and back to the California courts. The current plaintiffs (who are Claude's heirs following his passing in 2010) submit that the choice-of-law rules of the forum state (that is, California) must be applied to determine the substantive law applicable to state law claims brought under the FSIA.[14] If the court applies the state law rules, the plaintiffs would likely succeed in their claim over the painting because under California common law, a holder of stolen property (such as the Spanish Foundation in this case) can never acquire clear title over a piece of personal property.[15] On the contrary, the defendant asserts that the court should apply the federal common law rule, in line with the 9th Circuit precedent.[16] It would result from the application of the federal common rule that Spanish substantive law applies. This, in turn, would be favorable to the Spanish Foundation because, under Spanish law, the defendant would be the rightful owner. Indeed, it seems that the Spanish Foundation acquired the painting without knowing that it was stolen and has held it long enough to gain title through possession. This is because under the civil law doctrine of "acquisitive prescription," as applicable under Spanish law,

13. Cassirer v. Kingdom of Spain, 461 F. Supp. 2d 1157, 1161 (C.D. Cal. 2006).

14. Emily Behzadi, *Introductory Note to* Cassirer v. Thyssen-Bornemisza Collection Foundation *(U.S. Sup. Ct.)*, 62 Int'l Legal Materials 100, 101 (2023).

15. Crocker Nat'l Bank of S.F. v. Byrne & McDonnell, 178 Cal. 329, 332, 173 P. 752 (1918).

16. About the circuit split prior to the Cassirer Supreme Court decision, *see* Charles T. Kotuby, *Cassirer v. TBC: Federal Common Law is Not Always a Common Denominator*, 26 Am. Soc'y of Int'l L. 1 (2022) (detailing the circuit split between the Ninth Circuit and the Second, Fifth, Sixth, and D.C. Circuits in applying choice-of-law doctrines to foreign entities).

possession vests ownership after three years have lapsed, provided the possessor did not actually know the property was stolen, or after six years of interrupted possession, event absent good faith (Articles 1955 and 1956 of the Spanish Civil Code).[17]

The California District Court[18] and the Ninth Circuit Court of Appeals[19] determined that, under Spanish law, the Foundation was the rightful owner.

The plaintiffs petitioned for a writ of certiorari, which the Supreme Court of the United States granted because of the split between the Ninth Circuit precedent and the more frequent preference of other Circuits for the choice-of-law rule of the forum state. The Court issued a ruling on this case on April 21, 2022.[20] It determined that 28 U.S.C. § 1606 (Foreign Sovereign Immunities Act) requires the use of California's choice-of-law rule. In short, if a foreign state or a state-owned legal entity like the Foundation is not immune from suit, it is subject to the same rules of liability, including the choice-of-law rules, applicable to a private party. If the defendant had been a private foundation, California's choice-of-law rule would have applied, so the same goes for a state-owned foundation.

The legal dispute continues in California and, at the time of writing, the case is still pending. The Ninth Circuit will eventually decide on the basis of California's choice-of-law rules whether California has such a governmental interest in the dispute to opt for California's substantive rules. The three-step analysis under California's choice-of-law rules examines, as a first step, whether the laws of each jurisdiction differ, which here is clearly the case. The second step examines whether these laws conflict, which is also undisputed. Thirdly and most importantly, it has to be determined which jurisdiction's interests would be substantially more impaired if subordinated.[21]

The painting's location since the late 1990s as well as the state-owned nature of the Foundation may very well lead to the

17. Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil [Royal Decree of July 24, 1889 by which the Civil Code is published] art. 1955 (B.O.E. 1889) (Spain), https://perma.cc/7X7Z-G3VJ.

18. Cassirer v. Thyssen-Bornemisza Collection Foundation, No. CV 05–3459-JFW, at 34 (C.D. Cal. 2019).

19. Cassirer v. Thyssen-Bornemisza Collection Foundation, 824 F. App'x 452, 455 (9th Cir. 2020).

20. Cassirer v. Thyssen-Bornemisza Collection Foundation, 142 S. Ct. 1502, 1508 (2022).

21. Kearney v. Salomon Smith Barney, Inc., 137 P.3d 914, 922 (Cal. 2006).

application of Spanish substantive law. This would be so if the court were to determine that Spain's interests should prevail over California's interests. Interestingly, the state of California rushed to file an *amicus curiae* brief in support of the Cassirer applicants by arguing that California's governmental interest in this dispute is certainly not lesser.[22]

At the time of writing, it is not even clear which court will eventually decide the central ownership issue, as the Ninth Circuit requested the California Supreme Court to certify the choice-of-law issue in May 2023. Not surprisingly, the third step of the test which leads to the application of the "law of the jurisdiction whose interest would be the more impaired if its law were not applied" was considered of difficult application in a case of contested ownership of Nazi-looted art. In spite of the dissenting opinion of Judge Bea, the majority was of the view that the California Supreme Court's guidance was needed, because the existing California caselaw applying the comparative impairment analysis to tortious, and typically physical, injuries is not helpful in the context of property law.[23] Furthermore, the requesting court noted that this case raised important, unresolved public policy ramifications regarding the ownership of stolen property. The court also noted that the final decision awarding the specific high-value property to one claimant or the other directly concerns two private parties but has a broader relevance for a whole community. In particular, the California legislature had expressed a particular policy interest in stolen art.[24] As a result of this referral to the California Supreme Court, it was uncertain which court would have the last word on the *Cassirer* litigation. In August 2023, the California Supreme Court denied the request for certification without explanations, which means that the Ninth Circuit is back in charge of the interpretation of the Californian

22. Brief of Amicus Curiae State of California in Support of Plaintiffs-Appellants in Support of Reversal, Cassirer v. Thyssen-Bornemisza Collection Foundation, 142 S. Ct. 1502 (2022) (No. 19-55616), 2022 WL 2543650 (C.A.9).

23. Order Certifying Question to the California Supreme Court at 3, Cassirer v. Thyssen-Bornemisza Collection Foundation, 142 S. Ct.1502 (2022) (No. 19-55616).

24. *Id.* For a commentary, see Suzanna Sherry, *Family seeking to recover Nazi-stolen art notches small victory—but still might not get the painting back*, SCOTUSblog (Apr. 21, 2022, 5:30 PM), https://perma.cc/4GWT-PDE9 (providing an opinion analysis on *Cassirer v. Thyssen-Bornemisza*).

choice-of-law rules.[25] Meanwhile, some commentators have anticipated that the Cassirer family may have limited chances of re-acquiring ownership of the *Rue Saint-Honoré* painting after decades of litigation.[26]

IV. Is *Cassirer* a Standard Case in U.S.-Bound International Art Litigation?

Despite the current uncertainties about the painting's ownership, the interest of the *Cassirer* litigation is evident for our current purposes.

First, this is not an isolated instance: this case illustrates a U.S.-bound trend for international art litigation of cases with foreign provenance and high-stake public-private interests. Other notorious examples include the dispute between an Austrian-born U.S. citizen, Maria Altmann, and the Austrian State and an Austrian art gallery, about the ownership of six paintings attributed to Gustav Klimt.[27] The dispute was eventually resolved by an arbitral award (in favor of Mrs. Altmann) after the United States Supreme Court ruled on the applicability of the FSIA to the claim of sovereign immunity raised by Austria.

Another example of such cases is *De Csepel v. Republic of Hungary*,[28] which also involves a seven-decade effort to recover art expropriated during the Second World War. Prior to the war, a Hungarian-Jewish art collector named Baron Mór Lipót Herzog had amassed one of Europe's greatest private collections of art and, after his death in 1934, his children inherited that collection. Then, in accordance with the orders of Nazi Germany, Hungary ordered the confiscation of valuable artwork owned by Jewish citizens. The Herzog art collection was

25. Zachary D. Clopton, *Update on Cassirer*, Transnational Litigation Blog (Aug. 16, 2023), https://perma.cc/QJ5C-W8CA.

26. *See* Sherry, *supra* note 24 (indicating the painting will not be recovered as more litigation continues, particularly if the Ninth Circuit decides that Spanish law applies); The United States Court of Appeals for the Ninth Circuit ruled in favor of the Spanish museum on 9th January, 2024: https://cdn.ca9.uscourts.gov/datastore/opinions/2024/01/09/19-55616.pdf; *see also* Charles T. Kotuby, *Cassirer v. TBC: Federal Common Law is Not Always a Common Denominator*, 26 Am. Soc'y of Int'l L. 1, 4 (2022) (explaining that if the district court again concludes that Spanish substantive law applies, the museum owns the painting).

27. Republic of Austria v. Altmann, 541 U.S. 677, 680–81 (2004).

28. de Csepel v. Republic of Hungary, 27 F.4th 736, 739–41 (D.C. Cir. 2022).

seized by Nazi officials. After the war, the Herzog descendants attempted to recover the Herzog collection. In 2001, they initiated suit in the U.S. District Court for the District of Columbia against Hungary, three Hungarian art museums, and one Hungarian university. After decades of litigation, the U.S. Court of Appeals for the D.C. Circuit issued a third decision on this case and confirmed that the expropriation exception did not confer jurisdiction over the claim against Hungary, but did confer jurisdiction over the claims against the other Hungarian parties (the museums, the university and an asset management company).

A third case concerns the Guelph Treasure (displayed in a Berlin museum), and at opposition are Germany and the heirs of Jewish dealers, who allegedly sold this medieval collection to the Prussian government under duress due to Nazi persecution. In this dispute, the FSIA plays a pivotal role once more: after the United States Supreme Court ruled that Germany rightfully raised the immunity defense, the long-running ownership dispute was definitively resolved by the U.S. District Court for the District of Columbia in favor of the German foundation. [29]

According to Herbert Lazerow, such cases, including the *Cassirer* litigation, illustrate a frequent pattern in international art cases filed before U.S. courts where the artwork is outside the United States in the possession of a museum owned—either directly or indirectly—by a foreign government.[30] The other two recurrent situations identified in his handbook are those where the artwork is in private hands outside of the United States or those where the artwork is normally outside the United States, but is present in the United States temporarily on loan. In each of these situations, litigation goes to a federal court because a U.S. citizen or resident, like in the *Cassirer* case, is suing a foreign citizen or foreign government. This creates diversity of citizenship jurisdiction in the federal courts if the value of the artwork exceeds the statutory amount of $75,000, which is easily the case in such high-profile art litigation.

It follows from these concise considerations that *Cassirer* is not an isolated instance—instead, it is one of many cases relating to art of foreign provenance that for a myriad of reasons

29. Philipp v. Stiftung Preussischer Kulturbesitz, 628 F. Supp. 3d 10, 14–15, 17 (D.D.C. 2022).

30. Herbert Lazerow, Mastering Art Law 389 (Carolina Academic Press, 2nd ed. 2020).

ended up before U.S. courts.[31] From the choice of law perspective chosen in this paper, the *Cassirer* case stands out because the claim is a proprietary one (i.e. it is based on the contested ownership) while most international art litigation in the United States typically has recourse to tort actions. In any event, the outcome of the *Cassirer* legal dispute in California may give further guidance as to how U.S. courts balance out conflicting interests for the determination of the applicable law to international art cases.

V. What if the Case Had Been Filed in the European Union?

Let us, for the purposes of our comparative exercise, assume that the *Cassirer* case had been filed before the Spanish courts.

If anything, asserting international jurisdiction on this side of the Atlantic appears unproblematic. The general jurisdiction rule under the Brussels I Regulation is the defendant's domicile and it is uncontested that the Thyssen-Bornemisza Foundation is domiciled in Spain. In light of the broad interpretation of a "civil and commercial matter" by the Court of Justice of the European Union (CJEU), it seems unlikely that an argument based on the public nature of the foundation as a State-owned entity would succeed. It would thus appear that the Brussels I Regulation is applicable and confers international jurisdiction to the Spanish courts on the basis of its Article 4.[32] The unproblematic access to the Spanish courts is of course still no guarantee of recovering the painting. The choice of law analysis is therefore the next step to take.

Turning to the choice of law issue, it is likely that the claim would revolve around whose property the Pisarro painting is. The preferred characterization would thus consider the

31. *See* Patricia Youngblood Reyhan, *A Chaotic Palette: Conflict of Laws in Litigation Between Original Owners and Good-Faith Purchasers of Stolen Art*, 50 Duke L. J. 955, 964 (2001) (providing that there has been an increase in such disputes in the United States, as American courts are often preferred by the claimant).

32. *See* Regulation 1215/2012, of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (recast), 2012 O.J. (L 351) 7 (stating that Article 4 confers international jurisdiction to the courts of the State where the defendant is domiciled).

underlying dispute a proprietary question, and the applicable law would therefore be governed by the *lex rei sitae* (where the asset is located) conflict rule. There is no uniform instrument on property and proprietary rights in EU private international law (other than for cases arising out of matrimonial relationships, partnerships, or successions). The relevant conflict of law rules are those of the jurisdiction where the case is pending. If the case was pending in Spain, the Spanish conflict rule would apply to this case. According to Article 10(1) of the Spanish Civil Code, the law of the place where the asset is located (the *lex rei sitae* rule) applies.[33]

For a movable property like the painting under dispute, the *conflit mobile* question may complicate the determination of the painting's location: is it the place where the painting was exhibited when the claim was filed (i.e., Spain) or should we take into account the many previous "homes" of the Pisarro painting? The relevant moment in time is generally the moment where the relevant fact or transaction with regard to the allocation of title occurred.[34] This would then refer to the time of the Foundation's "acquisitive prescription" and at that time, the painting was in Madrid. This is also the only place where the painting has been exhibited since it became part of the Foundation's assets. Hence, Spanish law would be considered applicable as the *lex rei sitae* and, under Spanish law, the Foundation would keep the painting as its legitimate owner.

From a comparative perspective, the choice of law analysis under Spanish law, using the location of the good as the connecting factor, appear to be more straightforward than the assessment of the "law of the jurisdiction whose interest would be the more impaired if its law were not applied" under Californian law. On the other hand, the flexibility of the Californian rule seems more fit to cross-border ownership questions in

33. Real Decreto de 24 de julio de 1889 por el que se publica el Código Civil [Royal Decree of July 24, 1889 by which the Civil Code is published] art. 10 (B.O.E. 1889) (Spain), https://perma.cc/VH3H-A7PY.

34. Elena Rodríguez Pineau, *¿Retener o retornar? Reflexiones sobre la solución material del asunto Cassirer c. Fundación Thyssen-Bornemisza* [Retain or Return? Reflections on the Material Solution of Cassirer v. Thyssen-Bornemisza], *in* Holocausto y Bienes Culturales [Holocaust Cultural Property] 178, 185 (Luis Pérez-Prat Durbán & Gloria Fernández Arribas eds., Uhu.es Publicaciones 2019).

our contemporary global and digital settings. In any event, it would hence be paradoxical if the operation of both the Californian and the Spanish conflict of law rules would eventually lead to the application of the same substantive rules.

VI. Some Concluding Remarks

As the *Cassirer* litigation demonstrates, art can (illegally) be traded across the globe and eventually become the object of high-profile and high-cost transnational litigation. In sharp contrast to their ubiquitous value, works of art tend to have fragmented legal protection, which also differs from jurisdiction to jurisdiction.

The rules of private international law should ideally lead to more legal connectivity in cross-border art cases. Instead, forum and law shopping considerations may delocalize litigation, away from the provenance or the current location of the disputed work of art. The geographical distance between the place of litigation and the asset's origins inevitably accentuates the threat of conflicts of jurisdictions and laws, and erects additional hurdles and litigation costs at the recognition and enforcement stage. This "*chaotic palette*"[35] in the plastic terms of Youngblood, results from both conflicting substantive rules and diverging private international law settings, against a fragile framework of international relations.

While private international law cannot resolve all intricacies of international art law cases, one should at least hope that its operation would not entail additional layers of endless and costly cross-border litigation. Unfortunately, the *Cassirer* litigation saga proves us wrong in that regard and it shows the limitations of domestic litigation and the incompatibilities of domestic (or regional) private international law solutions for assets with global value such as the disputed pieces of art in transnational art litigation. More academic reflection and tailor-made proposals may eventually facilitate the development of binding coordination instruments, ideally at the multilateral level. What, if any, is the relevance of the 2019 Judgments Convention for a better coordination of international art law cases? Should such cases be a priority

35. Youngblood Reyhan, *supra* note 31, at 955.

area for the ongoing Hague Conference's Jurisdiction Project? Is the question of the applicable law to international art law cases a pressing case study for the private international law community which strives for more harmonious international relations?