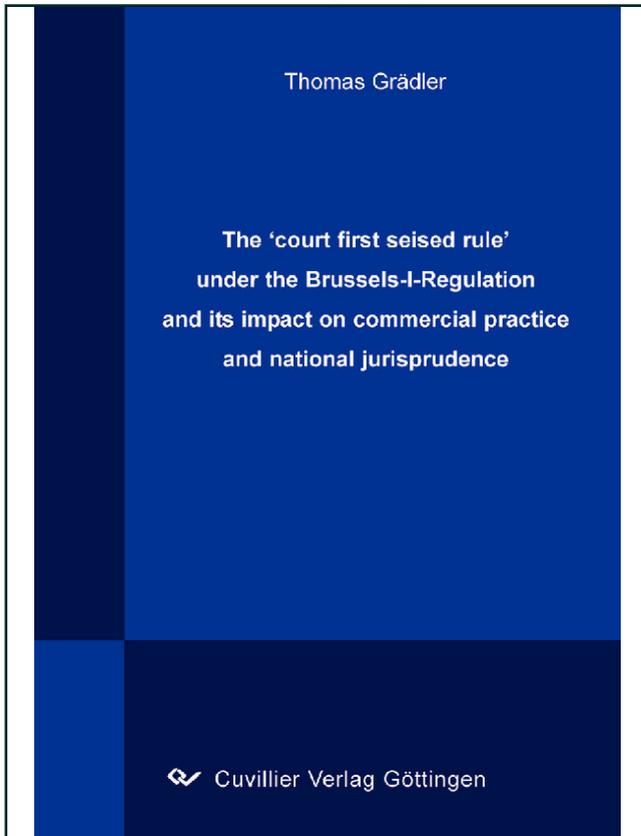




Thomas Grädler (Autor)

The 'court first seised rule' under the Brussels-I-Regulation and its impact on commercial practice and national jurisprudence



<https://cuvillier.de/de/shop/publications/1546>

Copyright:

Cuvillier Verlag, Inhaberin Annette Jentzsch-Cuvillier, Nonnenstieg 8, 37075 Göttingen, Germany

Telefon: +49 (0)551 54724-0, E-Mail: info@cuvillier.de, Website: <https://cuvillier.de>

Table of Contents

	Page
A. Introduction	1
B. The ‘court first seised rule’ under the Brussels-I-Regulation	2
1) The phenomenon of <i>lis pendens</i>	2
2) Procedural effect of the ‘court first seised rule’: ‘first come, first served’	3
3) Preconditions to trigger the ‘court first seised rule’	4
a) Specific conditions under Article 27	5
α) Same cause of action	6
β) Same objects	6
γ) Same parties	7
b) Article 28 – the ‘fallback provision’	8
C. The impact on commercial practice – the need to start proceedings first	9
1) Situation for the prospective claimant	9
2) Situation for the prospective defendant	10
3) Abuse of the ‘court first seised rule’ – torpedo proceedings	12
4) Effect on jurisdiction clause practice	14
5) Impact on out-of-court negotiations and the frequency of litigation	16
6) Mitigation of the problem determining the exact time of ‘being seised’	17

	Page
D. The impact on national jurisprudence	19
1) Impact on national jurisprudence in the United Kingdom	19
a) Teleological approach for interpretation	19
b) The role of exclusive jurisdiction clauses	20
c) No room for the doctrine of <i>forum non conveniens</i> anymore	22
d) Reactions to the decision that negative declarations are covered by Article 27	23
e) Proceedings <i>in rem</i> versus proceedings <i>in personam</i>	24
2) Impact on national jurisprudence in Germany	26
a) Denial of possible exceptions to the ‘court first seised rule’	26
b) Determination of the point of time for ‘being seised’	27
c) Recognition of the foreign judgment as a precondition	28
d) Torpedo proceedings unknown in Germany	30
e) Strict application of the <i>lis pendens</i> rule in Germany	31
3) The impact on English and German jurisprudence compared	32
E. Need for an amendment of the ‘court first seised rule’?	35
1) Possible solutions to encounter the abuse of the <i>lis pendens</i> rule	35
a) Exclusion of negative declaration from the scope of Article 27?	35
b) Exceedingly long proceedings	37
c) Intentional abuse in the form of torpedo proceedings	40
2) Further need for amendment or altered application of Article 27	43
a) Power of referral for the court first seised	43
b) Introduction of a recognition test	44
F. Conclusion	47
Bibliography	49