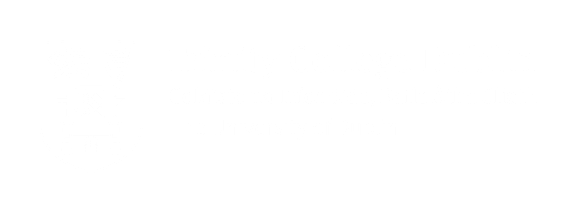


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| Symposium Report    ***International Litigation in Ireland – Comparative perspectives*** |
| Transnational Commercial and Leasing Law Project |
| JUNE 2025  text divider  Aviation Working Group acting through its Irish Contact Group: A&L Goodbody, Arthur Cox, Mason Hayes Curran, Matheson, and McCann FitzGerald in association with Trinity College Dublin |



**Second Symposium Summary**

***International litigation in Ireland - Comparative perspectives***

The event was hosted on June25,2025,by*Arthur Cox LLP.* The Symposium focused on the following issues:

1. The public availability of pleadings and submissions (lack of public dockets)
2. Right to assign a cause of action
3. Litigation funding
4. Recognition and enforcement of judgments

Each of the issues was analysed from a comparative perspective. The speakers first identified common problems faced by each jurisdiction and then looked at the approaches adopted in Ireland, England and Wales, and New York. In considering the advantages and disadvantages of these solutions, the symposium hoped to find the best practices and issue recommendations for enhancing the Irish litigation system.

**14.00 – 14.05: Welcoming words from Arthur Cox, and introduction of the opening speaker**

**Ms. Ruth Lillis**, partner at *Arthur Cox LLP*, started by welcoming all guests and acknowledging the importance of the symposium. After the welcoming words, the Attorney General of Ireland, **Mr. Rossa Fanning**, began his intervention by stating that the Irish economy could be affected by headwinds that eventually could impact the multinational sector.

He referred to the legacy of Mr. Tony Ryan, who, in the context of the 1973 oil crisis, was the first to imagine a model by which airlines would lease a percentage of their fleet. What was then a complete novelty soon became the preferred business model. Mr. Ryan established Guinness Peat Aviation (‘GPA’), and from the first leasing, it took off from there. The early years of GPA and dominance in the embryonic aircraft leasing business gave Ireland a level of local expertise that still pays dividends. Today, Ireland is an undisputed leader in aircraft leasing. Of the 15 biggest aircraft lessors in the world, 14 have operations in Ireland. In 2019, over €159 billion of aircraft assets were managed in Ireland. Ryanair, also founded by Tony Ryan, is currently Europe’s biggest airline.

In recent years, Dublin Airport has become a key transatlantic hub connecting multiple destinations in the US with mainland Europe. As a result, Ireland can boast of leading practitioners in asset financing and associated legal services. Furthermore, Ireland has a robust regulatory framework, English-speaking, and an independent and effective judiciary. Also, there is a common language among lawyers practicing in the US, Canada, and the UK. The legal systems are mutually intelligible. Also, Courts litigate fairly, and the judiciary is independent. All these factors have contributed to Irish law becoming a popular choice in international commercial transactions.

In recent times, the imposition of sanctions on the Russian government and retaliatory seizure of Irish-leased aircraft by the same government led to one of the most significant litigations in the history of Irish commercial courts. The case[[1]](#footnote-1) of stranded aircraft in Russia was a fantastic test for the Irish litigation system, one that it has generally passed, although there are lessons to be learned from a litigation at such a scale. The concentration of high-value commercial transactions and the disputes associated with them has required the growth of the legal services sector to support them.

As a way of summary, Mr. Fanning underlined the significant role the Irish legal system played in the success story that has been the growth of the aviation sector. He added that the government is committed to increasing the resources of the courts.

**14.15 – 14.25: Framing comments by moderator, Jeffrey Wool, Adjunct Professor of Law,TCD**

**Prof. Jeffrey Wool** emphasized that the international registry under the *Cape Town Convention* (‘CTC’) operates out of Ireland, furtherly strengthening the position of the Irish judiciary in the world of aviation litigation. In this context, the CTC International Moot Court 2025, conducted by the Aviation Working Group and *Trinity College Dublin* (‘TCD’), in which three judges participated, was a wonderful opportunity to engage students in this topic. Therefore, special gratitude was given to all of the legal firms involved in this project.

This second symposium is a comparative perspective of litigation. Prof. Wool announced that the next event will focus on assessing jurisdictional risk around the world. Also, post-symposium steps will be discussed, including further research topics. We hope that, at these events, we take an academic approach utilizing a comparative method. This involves identifying common problems that everyone is facing, examining how different systems address these problems, considering the advantages and disadvantages of these approaches, as well as evaluating the best practices.

The *Transnational Commercial and Leasing Law Project* objectives include the development of legal theory, an assessment of dispute resolution practice and litigation, and public policies.

**14.25 – 14.55:     Topic 1: The public availability of pleadings and submissions (lack of public dockets)**

**Mr. Cillian O’Boyle** and **Ms. Julie Murphy O’Connor** (*Matheson LLP*) opened the second Symposium with an engaging presentation on the question of public availability of litigation documents and the way different legal systems strike a balance between public interest and privacy. The approach they adopted first identified the common problems raised by public availability of pleadings and then analysed how different jurisdictions have addressed these problems.

The analysis was split into three headings: (i) access to documents filed in court; (ii) public evidence documents, and (iii) implied undertaking/collateral use of documents in court. The jurisdictions examined were Ireland, England and Wales, and New York.

(i) Access to documents filed in court:

On access to documents filed in court, Ireland has certain rules applicable. Non-parties to the case do not have access to the court documents unless they have obtained a letter of consent from the parties. Accordingly, members of the public must either attend the court proceedings or rely on journalistic reporting. Journalists tend to enjoy special privileges, which may include access to court records that are not publicly available on the court service website. At the High Court and Supreme Court of Ireland, there is limited access to written submissions (including pleadings). This access only exists after judgment has been given and requires the payment of an application fee. It is subject to approval by the registrar of the respective Court.

In England, non-parties are permitted to access documents that have not been filed in court, and this access does not require permission from the Court. The access application can be made through a statement of case documents and may cover the claim form, pleadings, and counterclaims. However, access to the documents filed in court requires permission, and parties to the case reserve the right to make a pre-emptive application to restrict access to certain documents that they have filed.

Unlike the Irish and English approaches, the approach under the New York law is a lot less restrictive, and the public can gain access to any document filed in court unless it has been marked as either sealed, restricted, or confidential. Documents can be easily accessed on the e-filing system on the New York State Portal, on payment of an application fee. If the document is not available on the e-filing system, a written request can be made.

(ii) Public evidence documents:

In terms of the nature of public evidence documents, the Irish position is that once a document is opened in Court, it automatically becomes a public record. And as a public record, it requires an application for its use, and it remains subject to the discretion of the Court. In England and Wales, the position is similar. A document opened in court is seen as a public evidence document; however, the access to public evidence documents is not automatic and requires proof that such access will advance the principles of open justice. The English Courts will weigh the right to privacy and the right to public interest to determine if access should be given.

In contrast, the speakers noted that New York law does not recognise a similar distinction. This is because there is a presumption that anything filed is public. However, there are still exceptions for certain types of public records, such as documents that have been sealed by the Court.

(iii) Implied undertaking/collateral use of documents in court:

The final heading discussed was the implied undertaking/collateral use of documents in Court. In Ireland, it is subject to an implied undertaking that the documents are not to be used for other purposes. In England and Wales, a common law rule reflected in the Civil Procedure Rules states that the implied undertaking is not absolute and may be subject to certain exceptions, especially in cases where the document has been opened in Court. Finally, in New York, there is no similar blanket provision for the implied undertaking or collateral use of documents in Court. A trial Court may utilise a protective order, which will limit collateral use of documents in discovery. This could be bypassed with a subpoena and adequate notice.

The speakers concluded their presentation by recognising that the difference in approaches to public access to court documents is rooted in cultural differences. Irish law ensures that parties retain discretion in determining whether the public should have access to the Court documents. England maintains a more balanced approach wherein basic pleadings are generally accessible and other court documents need a formal application to guarantee access. The Court retains discretion to grant such access and generally will require a good reason before it does so. New York places more emphasis on transparency over privacy, and that is reflected by the fact that Court documents are usually publicly accessible in this jurisdiction. While each approach has its advantages, clarity and certainty are prevailing considerations. There should be access to basic court filings. The balance between open justice and privacy must be improved, and privacy must be protected without compromising transparency. It was recommended that technological solutions could improve this balance and ensure ease of access to court documents.

General commentary on the topic featured concerns about media access to Court documents. There have been cases where the media gained access to the judge’s books, and a journalist was even given access to a hearing closed off to the parties. Going forward, it is likely that there will be complications posed by the *General Data Protection Regulation* (‘GDPR’). In the Irish context, the role of Article 34 of the *Constitution of Ireland* (*Bunreacht na hÉireann*)must be considered if liberalisation is to be adopted in the country. A balance will have to be carefully struck between transparency, privacy, and open justice.

**14.55 – 15.25:     Topic 2: Right to assign a cause of action**

**Mr. Gearoid Carey,** partner at *Mason, Hayes & Curran*, provided a comparative perspective on the assignment of claims under the New York, Irish, and UK legal systems. An assignment is the act of transferring one’s rights to another party, including litigation claims. The issue has been historically linked to torts of maintenance[[2]](#footnote-2) and champerty[[3]](#footnote-3).

(i) New York:

In the state of New York, assignments are transferable, except when prohibited (i.e., injury claims). The applicable law is the *General Obligations Law* (Title 13). The state of New York is one of the most restrictive with regard to champerty. For example, the *Judiciary Law* §489 prohibits the assignment or purchase with the purpose of bringing an action, although case law has stated that assignment is not champertous if this intent is merely incidental or if it is based on a pre-existing interest. The champerty doctrine seeks to prevent opportunistic parties that could profit from litigation claims. New York Courts have adopted a purpose-centred approach. For example, in the *Justinian Capital SPC v WestLB AG[[4]](#footnote-4),* the Court concluded that the assignment was champertous since the acquisition of notes was done for litigation purposes.

(ii) England and Wales:

In a more intermediate position, England and Wales allow assignments if certain conditions are met under Section 136 of the *Law of Property Act 1925*. The legislation provides that an assignment is effectual in law or valid, provided there is notice to the counterparty as the assignment takes effect from this notice. In *Trendtex Trading Corp v Credit Suisse*[[5]](#footnote-5) the House of Lords has relaxed its hostility against assignment provided that the assignee can present a genuine commercial interest in the assignment. The genuine interest has to be demonstrated to prevent the trafficking in litigation in a manner that could undermine the administration of justice. Such an interest was successfully demonstrated in the case of *Massai Aviation Services v Attorney General & Bahamasair*[[6]](#footnote-6)*,* where the shareholding in the assignee was the same as that of the assignor.

(iii) Ireland (Republic of):

Ireland has the most restrictive framework with regard to assignment. Although there are exceptions (such as in the case of *Waldron v Herring,* where an assignee of a company’s interest in litigation was substituted as a plaintiff *in lieu* of the company), Irish law considers maintenance and champerty as crimes and torts.

The Irish case law on champerty has arisen with regard to funding arrangements, and the leading case is the Supreme Court decision in *SPV Osus v HSBC[[7]](#footnote-7)*. In this case, Judge O’Donnell underlined the importance of a legitimate and sufficient interest to justify assignment. For this, the Judge also referred to *Trendtex*[[8]](#footnote-8), where the House of Lords established that an assignment of the right to litigate is unenforceable unless a genuine commercial interest of an assignee can be proven.

In *Scully v Coucal Limited*, the Irish Supreme Court reviewed the *Osus* and *Trendtex* cases and unanimously confirmed that a Polish judgment based on an assigned right to sue was not ‘manifestly contrary to public policy’ and could be recognized and enforced in Ireland.[[9]](#footnote-9)

Mr. Carey observed that a definition of a ‘genuine commercial interest’ is an issue open to interpretation and that this area might benefit from legislative attention.

**Mister Justice Maurice Collins** commented on this part by stating that limited funding, coupled with strict anti-assignment laws, may prevent certain claims from being pursued. On top of that, aggregated claims can lead to impractical application under Irish law. Individual claims of aggravated claims are allowed under Irish law, and it is a fairly established model in other countries as well, for example, in Germany.

But there is an assumption against the bear rights of action to litigate of the assignee. In *McCool v Honeywell*[[10]](#footnote-10), the plaintiff, McCool, could litigate as he was representing himself as an individual, not as a company. Honeywell, by contrast, was unable to afford litigation. In this regard, it is important to consider the proportionality of the individual and the value of the claim to determine the permissibility of an assignment. A shareholder does not have an action against the defendant from the corporation to the shareholder.

A further complication arises where judgments obtained abroad are assigned. In *Scully v Coucal Limited*, a judgment was obtained from Poland.[[11]](#footnote-11) Thus, Courts faced uncertainty in determining award assignment and the enforcement of the judgment. The possibility of award assignment meant it could be prosecuted under public policy. The assignment itself was permissible under Irish law.

Aggregation of litigation funding is possible if it is not a small claim and if it is not contrary to public policy. The aggravation of claims by assignment opens up competition for claims. The prohibition of litigation funding was contrary to the constitutional law. There is a conditional approach. An aggregation of small claims that may form into one large claim may be introduced under Irish law.

**15.40 – 16.10: Topic 3: Litigation funding - the facility (or lack thereof)**

The third part of the symposium concerned litigation funding in Ireland by way of comparison with the funding regimes in England and New York. It was presented by **Ms. Eve Mulconrey** and **Mr. Connell O’Shaughnessy**, both partners in litigation at *Arthur Cox LLP*.

Litigation funding involves an often uninvolved third party providing the capital needed to support litigation in return for a share of any financial proceeds of the suit. Some legal problems around litigation funding are caused by the medieval common law doctrines of champerty and maintenance. *Maintenance* involves a party encouraging or assisting litigation without having a genuine interest in the proceedings. *Champerty* is an aggravated form of maintenance whereby financial support is provided by a disinterested party on the proviso that that third party will share in the proceeds of the litigation.

Historically, both champerty and maintenance constituted crimes and torts at common law in order to prevent fraudulent or vexatious claims from being spurred on by unscrupulous intermeddlers and clogging up the court system. Nowadays, champerty and maintenance are generally not unlawful *per se*, though agreements or assignments of rights to litigate which are deemed champertous can be void or affect costs decisions.

Litigation funding rules serve the purpose of reducing the risk of frivolous or untenable lawsuits, causing congestion within the justice system. However, this is in tension with the public policy goal of providing access to justice. […] Litigation funding can allow individuals to pursue genuine claims where otherwise they might not have had the means to do so. One example given was the litigation that arose in the context of the UK subpostmaster scandal.[[12]](#footnote-12) Third-party funding in that case allowed 555 subpostmasters to bring a group action against Post Office Ltd; such a large-scale lawsuit would not have been possible for the claimants to fund themselves. In this way, litigation funding facilitated access to justice.

On the other hand, the majority of the settlement in *Bates* (£46 million out of £57 million) was applied to the legal costs, with the small remainder being divided amongst the claimants. The speakers commented that, notwithstanding the increased access to justice provided by litigation funding, there is a problem where the actual wronged party is only receiving a meagre proportion of the award.

The speakers considered the litigation funding rules in three jurisdictions, New York, England and Wales, and Ireland.

(i) New York:

Here, maintenance and champerty are prohibited by state law. Litigation funding, however, is generally permitted as it falls outside champerty law, where its primary purpose is to advance a legitimate claim. New York is an important jurisdiction in this regard because of the magnitude of funding that flows through the state. In 2023, US$16 billion was used in commercial funding. […]

Litigation funding has received judicial support in the New York state courts. The court in the *Hamilton Capital* case highlighted its public policy benefits, including access to justice.[[13]](#footnote-13) The state senate has approved a consumer protection law for users of litigation funding. A wide variety of cases in New York make use of litigation funding, including contract, tort, intellectual property, and class actions generally. Detailed trends in the types of cases that receive funding are rare, however, because of a lack of rules on disclosure of funding.

## (ii) England and Wales:

In England and Wales, champerty and maintenance were abolished as crimes and torts in the *Criminal Law Act 1967*. However, certain funding agreements will be void. The Court of Appeal in *Factortame VIII* found that only agreements which ‘undermine the ends of justice’ should be prohibited.[[14]](#footnote-14) Generally, the regime is self-regulatory, with a Code of Conduct promulgated by the funding industry itself. […]

In 2005, the Court of Appeal held that third-party funders should only be liable for a counterparty’s costs to the extent of their own contribution to the litigation.[[15]](#footnote-15) This is known as the ‘*Arkin* cap’ and has been criticised as providing a safe harbour for bad-faith funding. In 2020, the Court of Appeal ruled that the *Arkin* cap was not a binding rule but amounted to one factor in a court’s discretion on third-party costs orders.[[16]](#footnote-16) The removal of the *Arkin* cap did not make litigation funding less attractive for financial institutions, but it did alter how funders think about their level of control over the process. Funders may seek more oversight of the litigation itself in the absence of guardrails such as the *Arkin* cap.

In 2023, the UK Supreme Court in *PACCAR* ruled that litigation funding agreements based on contingency arrangements amounted to ‘damages-based agreements’ (DBAs).[[17]](#footnote-17) DBAs are unenforceable unless they comply with stringent statutory requirements. It had previously been widely considered that such contingency arrangements were not DBAs. As a result, most of these contingency arrangements were not compliant with the legal requirements and therefore were unenforceable. This raised major questions about the recovery of damages from now-unenforceable funding agreements. In response, the UK government proposed legislation with retrospective effect in order to reverse the effect of *PACCAR*, though this fell due to the general election in 2024. New initiatives had been postponed by the government pending the Civil Justice Council’s (CJC) report in its review into litigation funding.

The CJC recommended immediate, retrospective legislation to reverse *PACCAR* followed by subsequent initiatives to regulate litigation funding agreements, including:

-Case-specific capital adequacy requirements;

-Codification of the requirement that litigation funders should not control funded litigation;

-Conflict of interest provisions;

-Anti-money laundering requirements;

-Disclosure at the earliest opportunity of the fact of the funding.

-Protections for ordinary consumers who seek litigation funding.

## (iii) Ireland (Republic of):

In Ireland, the doctrines of champerty and maintenance still apply. This was reaffirmed in 2015 by the Supreme Court in *Persona*,[[18]](#footnote-18) where professional third-party funding of litigation was said to offend the rule against maintenance and champerty.

In the wake of the Bernie Madoff Ponzi Scheme Scandal in 2008, several cases arose in Ireland concerning litigation funding. In one, Judge O’Donnell acknowledged the public policy benefits of litigation funding but found that the common law rules against maintenance and champerty were still good law. Funding is permitted when funders have a legitimate interest in the litigation. In another Madoff-related case, the courts permitted shareholders of a company to fund that company’s litigation. Chief Justice Clarkedistinguished those third parties who simply buy into the litigation and those who, while being strangers *sensu stricto* to the proceedings, have a legitimate interest in the outcome of the case.

The Law Reform Commission (‘LRC’) is engaged in an ongoing policy review. The European Parliament has adopted a resolution recommending pan-European legislation on third-party litigation funding, including imposing limits upon the proceeds payable to funders. The European Commission similarly undertook a mapping exercise. The LRC took note of the Parliament’s resolution and acknowledged its significant implications for access to justice, equality of arms, and creditor recovery. It also noted the policy drawbacks of such legislation, which included the propagation of vexatious litigation and undercompensation for genuine litigants. The Representative Actions for the Protection of Collective Interests of *Consumers Act 2023*, when it comes into force, will disapply the torts of maintenance and champerty in the context of international commercial arbitration. The government is currently awaiting LRC recommendations before commencing the Consumers Act 2023.

The aviation industry in particular stands to benefit from these new rules, as transactions often take place across multiple jurisdictions. Financially distressed airlines will be able to use litigation funding as a lifeline. On the other hand, for passenger airlines, third-party litigation funding can aggravate the spectre of group claims for cancellations or disruption. This concern, however, is overstated: group litigation can lead to greater efficiency in dealing with such complaints, as there will no longer be a need to defend individual claims.

Prof. Wool asked about the policy justification for drawing a distinction between arbitration and litigation in terms of when litigation funding will be permitted. He wondered why there was significant movement in Ireland in respect of arbitration but not so in the case of litigation. Ms. Mulconrey replied that one explanation may be that the access to justice concerns in the two fields are different; arbitration, especially, is consented to by contract. Mr. Justice Collins noted that the common law has never imposed champerty and maintenance prohibitions on private arbitration. Concerns that litigation funding of arbitration may conflict with public policy considerations remain, the government has maintained that the underlying common law justifications for champerty and maintenance do not necessarily hold true in arbitration.

Prof. Wool further asked whether the judgment in *Scully v Coucal* effectively made it possible to circumvent Irish common law rules by bringing an action in a foreign jurisdiction and seeking enforcement in Ireland.[[19]](#footnote-19) Mr Justice Collins pointed out that the Polish litigation in question was not funded and that the aggregation of claims appeared to be for efficiency rather than strategic advantage. The Supreme Court in that case held that going to other states with laxer litigation finding rules and coming back to Ireland for enforcement may be contrary to public policy, but that if the judgment complies with local rules, the use of third-party litigation funding will not *ipso facto* be sufficient to refuse enforcement of a foreign judgment in Ireland.

**16.10 – 16.40:     Topic 4: Recognition and enforcement of judgments (substantive rule and grounds for non-recognition and non-enforcement)**

**Mr. Michael Murphy** and **Mr. Joshua Kieran-Glennon** (*McCann Fitzgerald*) gave an in-depth presentation on the legal and practical issues involved in recognising and enforcing foreign judgements. They noted that Ireland is a part of a complex global and European recognition framework and, a result, the topic is better approached through the analysis of these frameworks rather than a comparison with other jurisdictions.

Ireland remains a highly regarded destination for litigation and corporate restructuring. A key strength lies in its ability to combine the advantages of EU membership with a robust common law heritage. Within the EU, judgments benefit from near-automatic recognition under the Recast EU Insolvency Regulation which simplifies processes such as the recognition of main and secondary insolvency proceedings and is crucial in facilitating complex cross-border insolvency proceedings within the European Union. Thereby, the Centre of Main Interests (COMI) plays a central role, as it determines the jurisdiction in which main insolvency proceedings should be opened. Once insolvency proceedings have been opened based on the debtor’s COMI, they are automatically recognised by the courts of other EU Member States.

Ireland has made effective and strategic use of the Regulation, establishing itself as an attractive location for cross-border restructuring. Additionally, Ireland is one of the few EU countries that can rely on Section 426 of the UK's Insolvency Act 1986, which permits formal cooperation between Irish and UK courts in insolvency cases. This provision designates certain jurisdictions — mainly common law countries — for reciprocal assistance. Consequently, Irish courts can continue to cooperate directly with UK insolvency proceedings even after Brexit, unlike most other EU Member States, which lost the benefit of automatic recognition mechanisms previously available under EU law.

Ireland also supports modern restructuring tools, such as examinership, and has proven highly receptive to cross-border recognition requests under Chapter 15 of the US Bankruptcy Code, which facilitates the recognition of foreign insolvency proceedings in the US. There is also ongoing discussion about recognising US Chapter 11 processes in Ireland, with the courts exploring parallel procedural models to give effect to such schemes — an approach that is considered to be niche, but effective.

The speakers emphasised that there is no single global approach to the recognition of foreign judgments. Instead, several overlapping systems exist, including multilateral agreements, domestic legal principles and unique regional practices. Where no treaty or regulation applies, common law serves as a fallback. In both Ireland and the UK, courts generally enforce foreign judgments that are final and conclusive for a definite monetary sum. Irish courts adopt a measured and restrained approach when considering whether to refuse recognition of a foreign judgment. Refusals are generally limited to cases involving a clear violation of public policy, and such grounds are interpreted narrowly and cautiously.

In contrast, the UK’s accession to the Hague Judgments Convention has introduced a new, albeit somewhat uncertain, recognition framework. While the Convention aims to promote the recognition and enforcement of judgments across Contracting States, it provides less coverage than the EU insolvency regime. Notably, it excludes interim relief, such as injunctions, and it may encounter interpretative issues as courts begin to apply it.

In the United States, New York law (CPLR) provides for the recognition of foreign judgments irrespective of the jurisdiction of origin. However, the process may involve litigation risks and potential delays, particularly if the debtor raises procedural or substantive defences to enforcement.

In summary, Ireland benefits from a unique combination of a structured EU legal regime and a flexible common law system. This allows it to recognise and enforce foreign judgements across a wide range of jurisdictions. Through EU instruments such as the EU Insolvency Regulation, Ireland participates in a system of automatic recognition of civil and commercial judgements from other EU Member States. At the same time, Irish courts apply well-established common law principles to recognise judgments from outside the EU, such as those from the United States or the UK. Thus, Ireland has an advantageous position, combining the certainty of EU regulations with the flexibility and depth of common law principles. This makes its courts particularly well-equipped to enforce foreign judgments across borders.

The session concluded with Prof. Woolmaking a brief remark about the *Cape Town Convention* and highlighting its growing relevance in cross-border asset financing and insolvency.

**Final remarks**

This symposium, hosted by *Arthur Cox LLP* under the auspices of the *Transnational Commercial and Leasing Law Project*, provided a thought-provoking comparative analysis of international litigation frameworks in Ireland, England and Wales, and New York. The speakers underlined Ireland's leading position in aviation litigation, a status built on deep-seated expertise, as well as a favourable position combining the advantages of the EU regulatory framework with the robust common law tradition.

Key takeaways from the sessions include:

* Public Access to Court Filings: A notable divergence exists between New York's transparency-oriented system and the more restrictive approaches in Ireland and England, which prioritize litigants’ privacy and grant judges discretion to grant access. The symposium highlighted the need to modernize access guidelines, carefully striking a balance between the principles of open justice and privacy while at the same time respecting constitutional mandates.
* Assignment of Claims: The symposium revealed significant jurisdictional differences, with Ireland maintaining the most restrictive stance on maintenance and champerty. English courts will allow assignments based on a ‘genuine commercial interest’, similarly to New York courts, which will look for the primary purpose of the assignment. There is consensus that Ireland could benefit from legislative reform which would provide greater clarity and facilitate access to justice.
* Litigation funding: The symposium focused on the fundamental tension between promoting access to justice and the historical prohibitions of maintenance and champerty. New York’s market-driven, lenient approach contrasts with England’s regulatory uncertainty following the PACCAR decision and Ireland’s conservative stance confirmed in the Supreme Court's ruling in Persona. However, recent reforms, such as the legislative carve-out for commercial arbitration and an ongoing Law Reform Commission review, may suggest that Ireland is about to re-evaluate its traditional stance in light of modern commercial needs.
* Recognition and Enforcement of Judgments: Ireland's unique position merges the benefits of EU-wide automatic recognition mechanisms, such as the Recast EU Insolvency Regulation, with a distinct cooperative relationship with the UK courts post-Brexit. This dual framework, alongside impressive efficiency of Irish judicial processes, made Ireland a popular choice for cross-border restructuring and insolvency proceedings.

The insights generated from this event will inform the next steps for the *Transnational Commercial and Leasing Law Project*. Future plans include an event focusing on assessing jurisdictional risk and the continued development of legal theory and policy recommendations in transnational commercial law. The ultimate objective is to continue applying a comparative academic method to identify best practices and address common challenges faced by the international legal community.

This report was completed by the Project Student Associates of the Transnational Commercial and Leasing Law Project. The students are: Keelan Daye, Yunqiu Ma, Ewhomazino Otuorimuo, Alejandro Fredes, Julia Tomasiak, and Anna Witte. Contributions of Caroline Nolan Finnegan are acknowledged.

1. This refers to the trial that began in June 2024 in the High Court of Ireland, involving claims of approximately € 2.5 billion. This case was among the most high-value commercial disputes in the Irish legal system. See *Irish Legal News*, 'Analysis: Success for RDJ in landmark Russian aviation insurance trial' (2025) <https://www.irishlegal.com/articles/analysis-success-for-rdj-in-landmark-russian-aviation-insurance-trial> accessed on 31 August 2025. [↑](#footnote-ref-1)
2. Third-party support of litigation without interest. [↑](#footnote-ref-2)
3. Third-party support in return for profit. [↑](#footnote-ref-3)
4. *Justinian Capital SPC v WestLB AG* (Court of Appeals of New York) [↑](#footnote-ref-4)
5. *Trendtex Trading Corporation and Another Appellants v. Credit Suisse* (House of Lords) [↑](#footnote-ref-5)
6. *Massai Aviation Services v Attorney General* (Privy Council) [↑](#footnote-ref-6)
7. *SPV Osus v HSBC Institutional Trust Services (Ireland) Ltd* (Supreme Court) [↑](#footnote-ref-7)
8. *Trendtex Trading Corporation and Another Appellants v. Credit Suisse* [↑](#footnote-ref-8)
9. *Scully v Coucal Ltd* (Court of Appeal) [↑](#footnote-ref-9)
10. *McCool v Honeywell Control Systems Ltd* (Supreme Court) [↑](#footnote-ref-10)
11. *Scully v Coucal Ltd* [↑](#footnote-ref-11)
12. *Bates v Others v Post Office Ltd* [2019] EWHC 606 (QB) [↑](#footnote-ref-12)
13. *Hamilton Capital VII, LLC v Khorrami, LLP* 2015 NY Slip Op 51199 (U) [↑](#footnote-ref-13)
14. *R (Factortame) v Secretary of State for Transport (No 8)* [2002] EWCA Civ 932 [↑](#footnote-ref-14)
15. *Arkin v Borchard Lines Ltd (Nos 2 and 3)* [2005] EWCA Civ 655 [↑](#footnote-ref-15)
16. *Chapelgate Credit Opportunity Master Fund Ltd v Money and others* [2020] EWCA Civ 246 [↑](#footnote-ref-16)
17. *R (PACCAR) v Competition Appeal Tribunal* [2023] UKSC 28 [↑](#footnote-ref-17)
18. *Persona Digital Telephony Ltd v Minister for Public Enterprise* [2017] IESC 27 [↑](#footnote-ref-18)
19. *Scully v Coucal Ltd* [↑](#footnote-ref-19)