

BRIEF OUTLINE – ROLE OF THE JUDGE AND THE TAKING OF EVIDENCE ABROAD

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EJTN, 5th February 2020

1.- INTRODUCTION

2.- A NEVER ENDING DEBATE IN THE JUDICIARY: TEXTUALISM AND OTHER APPROACHES TO THE APPLICATION OF THE LAW

3.- CONCEPTUAL AND CULTURAL DIFFERENCES ABOUT THE EVIDENCE SYSTEM. COMPARISON BETWEEN COMMON LAW AND CIVIL LAW TRADITIONS

- 3.1. Private/Public nature of evidence activities
- 3.2. Adversarial/Inquisitorial principle
- 3.3. Differences in the structure of the proceedings. Pre-trial discovery
- 3.4. Initial pleadings and *res iudicanda*
- 3.5. Degree and burden of cooperation with courts of litigants and third parties
- 3.6. Privacy and confidentiality
- 3.7. The truth and the judge

4.- MAIN DIFFICULTIES IN THE TAKING OF EVIDENCE ABROAD. THE FAILURE OF THE 1970 HAGUE CONVENTION ON THE TAKING OF EVIDENCE ABROAD IN CIVIL AND COMMERCIAL MATTERS

- 4.1. The American experience. The *Aerospatiale* case and the extraterritorial application of the Federal Rules of Civil Procedure. The ALI Restatement of Law.
- 4.2. The blocking statutes and the use of conventional reservations (art. 23)
- 4.3. The lesson to be learned in the EU: flexibility and trust (full faith and credit)