Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts" (1/2009)

Recently, the January/February issue of the German legal journal "Praxis des Internationalen Privat- und Verfahrensrechts" (**IPRax)** was released.

It contains the following **articles/case notes (including the reviewed decisions)**:

- *H.-P. Mansel/K. Thorn/R. Wagner:* "Europäisches Kollisionsrecht 2008: Fundamente der Europäischen IPR-Kodifikation" – the English abstract reads as follows:

The article gives an overview on the developments in Brussels in the judicial cooperation in civil and commercial matters from September 2007 until October 2008. It summarizes the current projects in the EC legislation and presents some new regulations as the regulations on the law applicable to contractual and non-contractual obligations and the regulation on the service of documents. Furthermore, it refers to the national German laws as a consequence of the new European instruments. With regard to the ECJ, important decisions and some pending cases are presented. The article concludes with an outline of the European position regarding the Hague Conference and some Conventions, with regard to which the competence is split between the EC and its member states.

- *P. Mankoswski:* "Ist eine vertragliche Absicherung von Gerichtsstandsvereinbarungen möglich?" – the English abstract reads as follows:

Under the Brussels I regime, the value of agreements on jurisdiction as a means of guaranteeing legal certainty is severely challenged by Turner because the anti-suit injunction as the instrument to enforce agreements on jurisdiction has been inhibited in European cases. Yet this might leave room to look for other tools of enforcement. At least in England, damages have become a big issue

inosfar as agreements on jurisdiction can be regarded as ordinary contract terms and their breach would thus amount to a breach of contract. Liquidated damages clauses, clauses stipulating for a reimbursement of costs and penalty clauses could be the next steps. All claims which directly or indirectly sanction a claim not to sue in a forum derogatum militate against the ratio underpinning the inhibition of anti-suit injunctions since a right not to be sued abroad is not recognised under the Brussels I regime. If there is no primary claim, consequentially there cannot be a secondary claim sanctioning it. But, notwithstanding a closer check under the law against unfair contract terms, penalty clauses survive this test since they are established by a separate contractual promise. Insofar as claims for the breach of an agreement on jurisdiction are permitted such claims ought to be pursued in the forum prorogatum.

- *A. Flessner:* "Die internationale Forderungsabtretung nach der Rom I-Verordnung" – the English abstract reads as follows:

The paper explains the assignment of claims under Article 14 of the Regulation Rome I. The relationship between assignor and assignee is to be governed by the law applicable to the contract between them and the position of the debtor is to be determined by the law governing the assigned claim. Moreover, the law applicable to the relationship between assignor and assignee is meant to govern the proprietary aspects of the assignment, which opens these to choice of law by the parties; this inevitably includes the assignment's effect on third parties – an issue highly controversial before and in the making of the Regulation. The author analyzes and welcomes the new set up and discusses its consequences for a number of issues. He pleads for letting the new law prove itself in practice and for making only cautious use of the special review clause on the third party effects in Article 27 of the Regulation.

- *W. Hau* on two decisions of the Higher Regional Court Stuttgart (5 November 2007 – 5 U 99/07) and the Higher Regional Court Munich (17 April 2008 – 23 U 4589/07) dealing with the requirements of jurisdiction agreements under Art. 23 Brussels I as well as the determination of the place of delivery in terms of Art. 5 Nr. 1 (b) Brussels I in the case of contracts involving carriage of goods: "Gerichtsstandsvertrag und

Vertragsgerichtsstand beim innereuropäischen Versendungskauf"(*Remark: The question whether – in the case of contracts involving carriage of goods – the place where under the contract the goods sold were delivered or should have been delivered is to be determined according to the place of physical transfer to the purchaser, or according to the place at which the goods were handed over to the first carrier for transmission to the purchaser has been referred to the ECJ by the German Federal Supreme Court for a preliminary ruling: See C-381/08 (Car Trim GmbH v KeySafety Systems SRL and our previous post which can be found here.)*

- *O. L. Knöfel* on mutual assistance with regard to taking evidence in German-Turkish cross-border proceedings (Higher Regional Court Frankfurt, 26 March 2008 – 20 VA 13/07): "Beweishilfe im deutsch-türkischen Rechtsverkehr"

- *M. Fehrenbach* on a decision of the German Federal Supreme Court (29 May 2008 – IX ZB 102/07) holding that the opening of main insolvency proceedings by a German court is at least provisionally ineffective if the court was aware that main insolvency proceedings had been opened already in another Member State under the European Insolvency Regulation*:* "Die prioritätsprinzipwidrige Verfahrenseröffnung im europäischen Insolvenzrecht"

- *H. Roth* on a decision of the Federal Supreme Court (2 April 2008 – XII ZB 134/06) dealing with the question whether interim decisions according to Art. 15 (1) lit. b Brussels II *bis* can be challenged: "Zur Anfechtbarkeit von Zwischenentscheidungen nach Art. 15 Abs. 1 lit. b EuEheVO"

- *R. Geimer*: "Notarielle Vertretungsbescheinigungen aus ausländischen Unternehmensregistern und Sonstiges mehr aus dem internationalen Urkundsverfahrensrecht" (OLG Schleswig, 13.12.2007 – 2 W 198/07)

- *E. Eichenhofer*: "Einwohnerrenten im öffentlich-rechtlichen Versorgungsausgleich" (BGH, 6.2.2008 – XII ZB 66/07)

- *P. Huber* on a decision of the Austrian Supreme Court of Justice (19 December 2007 – 9 Ob 75/07f) dealing with the interpretation of Art. 39 (2) CISG: "Rügeversäumnis nach UN-Kaufrecht"

- *M. Weller:* "Ausländisches öffentliches Recht vor englischen Gerichten (Government of the Islamic Republic of Iran v. The Barakat Galleries Ltd., [2008] 1 All E.R. 1177)" – the English abstract reads as follows:

In its recent action to recover certain antiquities of its national heritage from the current possessor, the Barakat Galleries Ltd. in London, the Government of the Islamic Republic of Iran found itself confronted, by the court of first instance, with the declaration that any claim depending on the legal effects of Iran's legislation to protect its national heritage must fail for the sole reason that domestic courts would not enforce foreign public law. The Court of Appeal now reversed this holding and thereby approximated to the international consensus the English conflicts rules on the application of foreign public law to incidental questions of patrimonial claims. Most interestingly, the Court of Appeal applied this new finding not only to the claim for recovery on conversion on the basis of a proprietary interest, but also on the basis of a mere possessory interest, and this possessory interest may even arise from foreign public law, for example, the obligation of a finder of a cultural good in the ground of Iran to hand over this object to the competent authorities. English choice of law methodology, coupled with the English substantive law of conversion, therefore now seems to advance foreign interests in the protection of a state's cultural heritage to a surprising extent.

- *C. Mindach:* "Zum Stand der IPR-Kodifikation in der GUS" – the English abstract reads as follows:

The members of the Commonwealth of Independent States (CIS) adopted in the course of the last years new regulations on Private International Law. In the codification process, they mainly acted on the recommendations of the Interparliamentary Assembly of the CIS (IPA CIS), regulating the norms in this field within their new Civil Codes. Only three CIS members therefore enacted special laws. The Model Laws and Codes of IPA CIS have no compulsory nature; they are rather designed to give aid for the national legislation. The short overview shows the status and sources of the relevant national legislative acts.

Further, this issue contains the following **materials**:

Civil Code of the Republic of Armenia – Section 12 – Private International Law

(”Zivilgesetzbuch der Republik Armenien – Abschnitt 12 – Internationales Privatrecht”)

As well as the following **information:**

- *E. Jayme/C. F. Nordmeier* report on the session of the German-Lusitanian Lawyers’ Association in Heidelberg: “Die Person im Rechtssystem – Sachnormen und Internationales Privatrecht – Tagung der Deutsch-Lusitanischen Juristenvereinigung in Heidelberg”
- *J. H. Mey* reports on the conference on the occasion of the foundation of the International Investment Law Centre Cologne (IILCC): “Aktuelle Fragen des internationalen Investitionsschutzrechts – Gründungsveranstaltung des International Investment Law Centre Cologne (IILCC)”