Second Issue of 2010’s Journal du Droit International

The second issue of French *Journal du droit international* (*Clunet*) for 2010 was just released.

It includes four articles and several casenotes.

Remarkably, one of the articles is actually written in English. It discusses Company mobility through cross-border transfers of registered offices within the European Union – A new challenge for French law. The authors are Didier Martin, who practices at Bredin Prat, and Didier Poracchia, a professor of law at Aix-Marseilles University. Here is the abstract:

> *Freedom of establishment is recognised by the Treaty on the Fuctioning of the European Union not only for private individuals, but also for companies which are formed in accordance with the laws of a Member State and which have their registered office, central administration or principal place of business within the European Community. This freedom relates to taking up and pursuing activities as self-employed persons and to setting up and managing undertakings, and in particular companies within the meaning of the second paragraph of article 54 of the Treaty of the Functioning of the European Union (former article 48 of the EC Treaty), subject to the conditions laid down by the law of the country of establishment for its own nationals.*

The second article (in French) is authored by Caroline Kleiner, who teaches at Geneva university. Its title is the Transfer of the Seat of Companies in PIL (*Le transfert de siège social en droit international privé*). The English

abstract reads:

> *The international transfer of seat is confronted to a lack of regulation at the national, communautary and international levels. Far from being a benign operation, the migration of seat entails important and burdensome consequences. In some cases, it subjects a company to the rules of another legal order, implying its transformation or the attribution of a new nationality to the said company ; in other cases, by transferring its seat, a company runs the risk of disappearing. These effects – transformation and naturalisation – should however be distinguished according to the connecting factors chosen by the State of origin and the host State in order to determine the law applicable to a corporation. The effects should also be distinguished on the basis of the type of migration, since the duality of the notions of « seat » is necessarily linked to the notion of transfer. In the present state of the law, and given the incoherent position of the Court of justice of the European Union, the lack of predictability and legal security obstructs international transfers and prevents companies from using a useful tool for their restructuration.*

Hélène Péroz, who lectures at Caen University, is the author of the third article, which discusses the Law Governing Registered Partnerships (*La loi applicable aux partenariats enregistrés*).

> *The law of may, 12th 2009 (n° 2009/526), created a conflicts rule for registered partnerships (now codified in article 515-7-1 of the Code civil). Those are governed by the law of registration authorities. Nonetheless, the scope of the applicable law remains to be defined.*

Finally, David Sindres, who lectures at Paris I University, has authored an article on Third Party Claims Based upon the Breach of Contracts in PIL (*La violation du contrat au*

préjudice des tiers en droit international privé).

> *The reasonings followed by the European Court of Justice and the French Cour de cassation in private international law regarding third party claims based upon the breach of a contract concluded by the defendant remain influenced by solutions of substantive law. The underlying assumption is that insofar as these claims are characterized as tort ones in substantive law -in France, the Cour de cassation adopted this solution in its famous Bootshop decision- they must be analyzed the same way in private international law. Although neglected in the classification process, the stakes of private international law reappear when it comes to implementing the applicable rules of conflict of juridictions and of conflict of laws. Some of the difficulties entailed by the implementation of the chosen rules are thereby avoided, at the risk of ascribing these rules the role of mere formal references.*