Third Issue of 2013's Journal of Private International Law

The latest issue of the *Journal of Private International Law* contains the following articles:

Richard Garnett, Coexisting and Conflicting Jurisdiction and Arbitration Clauses

> *It is increasingly common for parties to an international contract to include both jurisdiction and arbitration clauses. While in some cases the clauses can be reconciled by principles of contractual interpretation, in other circumstances a true conflict between the clauses exists. The main contention of this article is that it is not appropriate, as many common law courts appear to have done, to resolve such a conflict by choosing arbitration over litigation based on some presumed superiority of the arbitral process. Instead, courts should adopt an evenhanded approach and apply a version of the 'more appropriate forum' test.*

Pippa Rogerson, Problems of the Applicable Law of the Contract in the English Common Law Jurisdiction Rules: The Good Arguable Case

> *English law as the applicable law of the contract is a basis for jurisdiction in English service out cases (ie cases involving foreign defendants that are not covered by the Brussels I Regulation or the Lugano Convention). It is also a factor in the exercise of jurisdiction. In both instances the determination of the applicable law and the assessment of its relevance raise difficult legal and practical questions. The courts use the "good arguable case" test to resolve those difficulties. Many recent decisions illustrate that the test*

is insufficiently clear. This article discusses those questions. It concludes that the differences between the existence and the exercise of jurisdiction have been overlooked. Further it suggests that the problem lies in the competing objectives underlying the decision on jurisdiction.

Uglješa Grušic, The Right to Strike Versus Fundamental Economic Freedoms in the English Courts, Again: Hiding Behind the "Public Law Taboo" In Private International Law

This article notes the High Court's decision in British Airways Plc v Sindicato Espanol de Pilotos de Lineas Aeras, a case concerning the relationship between the right to strike and fundamental economic freedoms guaranteed by the TFEU. The court declined jurisdiction on the ground that the case involved the enforcement of foreign public law, thus falling outside the scope of the European rules of adjudicatory jurisdiction. By analysing the CJEU case-law on the concept of "civil and commercial matters", and the nature and detailed rules on which the claim in BA v SEPLA was based, this article concludes that the High Court was wrong in hiding behind the "public law taboo" in PIL. The discussion, in turn, underlines the relevance of PIL for the relationship between the right to strike and fundamental freedoms and, more generally, the role of this discipline in the EU legal framework.

Verity Winship, Personal Jurisdiction and Corporate Groups: *Daimlerchrysler AG v Bauman*

This article proposes a framework for understanding what is at stake in the US Supreme Court's upcoming decision in DaimlerChrysler AG v Bauman. Argentine plaintiffs sued a German corporation in US courts, alleging violations of the Alien Tort Statutes. The outcome and consequences of the Supreme Court's decision depend on how the Court analyses three aspects of personal jurisdiction. The first is the extent to which a subsidiary's contacts with a forum state can be attributed to the corporate parent. The second is whether the contacts are so extensive that the court may exercise jurisdiction over a defendant for any cause of

action, even one unrelated to the contacts. The third is whether jurisdiction is "reasonable". The opinion promises to provide either much-needed guidance about jurisdictional attribution within corporate groups, or an example of the discretionary, policy-driven analysis of when jurisdiction is reasonable in the context of multinational businesses.

Chukwuma Okoli, The Significance of the Doctrine of Accessory Allocation As a Connecting Factor Under Article 4 of the Rome I Regulation

The doctrine of accessory allocation is given special significance as a connecting factor by the framers of Rome I Regulation (through Recitals 20 and 21) in utilising the escape clause and principle of closest connection under Article 4. This article analyses the application of the doctrine under the Rome Convention; the possible reasons why the framers of Rome I gave the doctrine special significance; the nature of inquiry a Member State court would be faced with in applying the doctrine especially in very closely related contracts such as back-to-back contracts; and the dilemma faced by the court in determining the quantum of weight to attach to the application of the doctrine as it relates to displacing the main rule(s). The author concludes by stating that there is need for more clarity on the significance of the doctrine of accessory allocation as a connecting factor under Article 4 of Rome I.

Sharon Shakargy, Marriage by the State or Married to the State? on Choice of Law in Marriage and Divorce

The paper suggests reshaping the choice of law rules for marriage and divorce and basing them on the parties' will rather than on the will of the parties' home country. The paper discusses the evolution of choice-of-law in matters of marriage and divorce in relation to that of substantive marriage law in Western legal systems prior to WWII and today. It argues that the early view of marriage and divorce

as matter of state concern was reflected in the choice of law rules. However these current rules have not internalized changes that have occurred in the way national laws treats marriage today, according to which marriage is regarded far more as a private matter. The paper therefore agues that while in the early period there was a close correlation between the substantive regulation of marriage and divorce and the choice-of-law rules in this field, this correlation no longer exists. In order to re-establish the correlation between substantive law and the choice of law rules, the paper identifies leading theoretical features of modern-day marriage law, including the principle of party autonomy. The paper concludes by suggesting ways of incorporating the modern view of marriage and divorce in choice of law.

Elena Rodríguez-Pineau, Book Review: Brauchen Wir Eine Rom 0-verordnung? (Do We Need a Rome 0 Regulation?)