Lehmann on Jurisdiction and Applicable law in Prospectus Liability Cases

Against the backdrop of the CJEU's judgment in Kolassa (Case C-375/13, see here and here for previous posts), Matthias Lehmann has written an article that is forthcoming in the August issue of the Journal of Private International Law. The article can be downloaded here.

The abstract reads as follows:

In its Kolassa judgment, the CJEU has for the first time decided which national court in the EU has jurisdiction for claims against an issuer of securities based on an allegedly false prospectus. This contribution analyses this fundamental and at the same time ambiguous ruling.

The ruling's most important part concerns tort jurisdiction, in particular the identification of the place where loss is suffered by the investor. The court's mixture between the domicile of the investor and the location of the bank that manages his account is unsatisfying and leads to problems, which will be analysed. With regard to the place of conduct, the decision will be criticized for hesitating between four different connecting factors, the relation of which among each other remains unclear. Moreover, this contribution argues that prospectus liability never falls under the consumer provisions or the contractual head of jurisdiction in the Brussels I(a) Regulation because such liability is delictual in nature. Contrary to the CJEU's assumption, the particularities of the securities holding system do not play any role in the determination of the competent court.

Finally, it will be shown that the judgment is not limited to the determination of the competent court, but also affects the governing law for prospectus cases. It will be argued that the consequences of the Kolassa judgment under the Rome II Regulation are so drastic that a legislative reform of this Regulation has become necessary.