

# Out now: RabelsZ 83 (2019), Issue 1

The latest issue of RabelsZ has just been released. It contains the following articles:

*Kutner, Peter, Recognition and Enforcement of Foreign Judgements - The Common Law's Jurisdiction Requirement, pp. 1 et seq*

*The "Dicey Rule" has been treated as canonical in England and elsewhere. However, it has changed over time, it has been based in part on UK legislation, and it does not reflect other possible bases of jurisdiction that have been accepted in some cases. This article will set forth what the common law (the law without specific alteration by statute) has been and now is on the subject of "jurisdiction in the international sense". Drawing on case law and authoritative writing from across the common law world, the article will identify and examine established and debatable grounds for jurisdiction and how they have been applied. As will be seen from references to cases in courts outside England and writings on conflict of laws in countries other than England, for some countries the law on jurisdictional "competence" is or may be different from what is stated in the current version of the Dicey Rule.*

*Lehmann, Matthias and Eichel, Florian, Globaler Klimawandel und Internationales Privatrecht - Zuständigkeit und anzuwendendes Recht für transnationale Klagen wegen klimawandelbedingter Individualschäden (Climate Change and Private International Law - Jurisdiction and Applicable Law in Transnational Litigation Concerning Individual Losses Caused by Global Warming), pp. 77 et seq*

*Increasingly, victims of global warming venture outside their own jurisdiction to sue polluters. Following the example of the United States, the phenomenon has now reached Europe. This article addresses the many questions raised by climate change litigation in a cross-border context. Starting from the treaty framework for greenhouse gas emissions, it analyses issues in respect of court jurisdiction and the applicable law from a European perspective. The authors argue for a balancing of the legitimate interests of, on one hand, private*

individuals who suffer the consequences of climate change and, on the other, industrial firms that have acquired and relied on emission rights. With regard to the competent court, they suggest limiting court jurisdiction under Art. 7(2) Brussels Ia Regulation to those places where it was foreseeable, from the perspective of the polluter, that damage would occur. With regard to the applicable law, they propose tempering Art. 7 Rome II Regulation by an analogous application of Art. 5(1) para. 2 of the same Regulation. While the victim can generally choose between the law of the country where the damage originated and where the damage occurred, the latter option should be restricted in the case of climate change litigation because the place of damage is typically unforeseeable for the tortfeasor. Furthermore, a valid authorization by the state of emission should be taken into account under Art. 17 Rome II Regulation insofar as appropriate. The law of the country where the damage occurred could apply to liability where an authorization does not exist, was obviously invalid, obtained by fraud or where such authorization has been consciously transgressed.

**Wendelstein, Christoph, „Menschenrechtliche“ Verhaltenspflichten im System des Internationalen Privatrechts (The Role of Human Rights in Private International Law), pp. 111 et seq**

*The article examines the significance of human rights in the field of private law and conflict of laws. The author points out that human rights per se have no relevance in the field of private law. However, human rights are suitable for modifying the content and scope of subjective private rights, particularly through the (judicial) elaboration of behavioural duties. With regard to Art. 4(1) Rome II Regulation and the question of determining the place where the damage occurs, the author proposes to distinguish between “subjective private rights with a physical reference object defined also via the duty side” (e.g. property) and “subjective private rights without a physical reference object defined only via the duty side” (e.g. personality rights). As to the former, rights are located at the place where one finds the reference object (e.g. “things” in the case of property law). As to rights associated with the latter, a further distinction is offered: (i) If the duty limits another subjective right having a physical reference object, the non-objective subjective private right is located at the place where the reference object of the restricted subjective right is found. (ii) If the duty limits a subjective right without a physical reference object, the*

*habitual residence of the bearer of the right should be decisive. A deviation from the designated law through escape clauses (Arts. 4(3), 17 Rome II Regulation), the public policy exception (Art. 26 Rome II Regulation) or mandatory rules (Art. 16 Rome II Regulation) is excluded for methodological reasons. Moreover, a correction is not required as the connecting factor of Art. 4(1) Rome II Regulation leads to just and reasonable results even in constellations with a link to human rights.*

**Rupp, Caroline S.,** Verliebt, verlobt, rückabgewickelt? – Ansprüche bei der Auflösung von Verlobnissen aus grenzüberschreitender Perspektive (Enamoured, Engaged, Annulled – Broken Engagement Claims from a Cross-Border Perspective), pp. 154 et seq

*Even in the twenty-first century, financial claims after a broken engagement to marry play an important role and can cause difficulties, especially in cross-border relationships. Firstly, damages may be claimed for financial losses due to wedding and marriage preparations; secondly, the fate of engagement gifts, especially the ring, needs to be determined. This article examines engagement-related claims under German, French and English law, deriving a suggestion for useful contemporary rules from their comparison. A comparative inquiry into the conflict of laws rules then shows that the current rules pose various problems due to lacunae and disputes. The article develops a proposal to resolve these problems through clear, specifically engagement-related conflict of laws rules.*