RabelsZ, Issue 1/2020

The first 2020 issue RabelsZ has just been released. It features the following articles:

Magnus, Robert, Unternehmenspersönlichkeitsrechte im digitalen Raum und Internationales Privatrecht (Corporate Personality Rights on the Internet and the Applicable Law), pp. 1 et seq

> *Companies can defend themselves against defamatory and business-damaging statements made on the internet. German case law in this area is based primarily on the concept of a corporate right relating to personality, which has some similarities but also important differences to the personality rights of natural persons. A corresponding legal right is also recognised in European law. However, determining the applicable law for these claims proves to be difficult. First of all, it is an open though not yet much-discussed question whether the exception in Art. 1(2) lit. g Rome II Regulation for "violation[s] of privacy or personal rights" is limited to the rights of natural persons or whether it applies also to the corresponding claims of legal entities. Moreover, the determination "of the country in which the damage occurs" in accordance with Art. 4(1) Rome II Regulation is hotly debated with respect to violations of rights relating to personality, especially when the violations were committed via the internet. The thus far prevailing mosaic principle produces excessively complex results and therefore makes it unreasonably difficult to enforce the protected legal position. This article discusses alternative concepts for the determination of the applicable law for these actions and analyses the scope and background of the exception in Art. 1(2) lit. g Rome II Regulation.*

Thon, Marian, Transnationaler Datenschutz: Das Internationale Datenprivatrecht der DS-GVO (Transnational Data Protection: The GDPR and Conflict of Laws), pp. 24 et seq

> *This article analyses the territorial scope of the new General Data Protection Regulation (GDPR) and addresses the question whether Article 3 GDPR can be considered as a conflict-of-law rule. It analyses the possibility of agreements on the applicable law and argues that Article 3 GDPR qualifies as an overriding mandatory provision. It finds that the issue of the applicable national law is no*

longer addressed by the GDPR and that a crucial distinction should therefore be made between internal and external conflicts of law. It argues that the country-of-origin principle is the key to determining which national data protection law applies. Furthermore, the article analyses Article 3 GDPR in more detail from the perspective of private international law. It finds that the targeting criterion is helpful in mitigating the problem of information asymmetries in view of the applicable data protection law. However, it criticizes the establishment criterion because it puts European companies at a competitive disadvantage. Finally, the article proposes to incorporate a "universal" conflict-of-law rule into the Rome II Regulation which should be accompanied by a general conflict-of-law rule specifically addressing violations of privacy and rights relating to personality.

Voß, Wiebke, Gerichtsverbundene Online-Streitbeilegung: ein Zukunftsmodell? Die online multi-door courthouses des englischen und kanadischen Rechts (Court-connected ODR: A Model for the Future? – Online Multi-door Courthouses Under English and Canadian Law), pp. 62 et seq

Will conflict management systems based on the model of companies such as eBay and PayPal soon become a part of civil proceedings before German state courts? Recently, some thought has been given to the development of a new "expedited online procedure" designed to provide an affordable and fast alternative to traditional civil litigation for small consumer claims, thus broadening access to justice. After a brief outline of the current barriers to the justice system and the shortcomings of the private ODR platforms consumers often turn to instead, this article explores the concept of online procedures which other legal systems have developed in response to similar challenges. The analysis of typical, trendsetting examples of e-courts – the Civil Resolution Tribunal under Canadian Law as well as the Online Court that is currently being established in England – reveals a new model of court-connected ODR that is based on the integration of private ODR structures into the justice system. By harnessing digital technologies and integrating methods of dispute prevention and consensual dispute resolution into the state-based proceedings, such online courts offer enormous potential for lay-friendly, accessible civil justice while at the same time using scarce judicial resources sparingly. On the other hand, online technology alone is not a panacea. Establishing online procedures in Germany poses challenges which go beyond the technical

dimension. These procedures may conflict with constitutional requirements and procedural maxims such as the principle of open justice, the right to be heard before the legally designated court and the principle of immediacy. However, a well thought-out design and minor modifications of the English and Canadian models would avoid these conflicts without losing the benefits of the innovative procedure.

Monsenepwo, Justin, Vereinheitlichung des Wirtschaftsrechts in Afrika durch die OHADA (The Unification of Business Law in Africa Through OHADA), pp. 97 et seq

In the 1980s, legal and judicial uncertainty prevailed in most western and central African countries, thereby impeding local and foreign investments. To improve the investment climate and further legal and economic integration in Africa, fourteen western and central African States created the Organisation pour l'Harmonisation en Afrique du Droit des Affaires (Organization for the Harmonization of Business Law in Africa, OHADA) on 17 October 1993. As per the preamble of the Treaty on the Harmonization of Business Law in Africa, OHADA aims to harmonize business laws in Africa through the elaboration and the adoption of simple, modern, and common business law regulations adapted to the economies of its Member States. Nearly two decades after its creation, OHADA has developed ten Uniform Acts and three main Regulations, which cover several legal areas, such as company law, commercial law, security interests, mediation, arbitration, enforcement procedures, bankruptcy, transportation law, and accounting. This article analyses the historical background, the institutions, and the main provisions of some of these Uniform Acts and Regulations. It also recommends a few legal areas which OHADA should make uniform to increase legal certainty and predictability in civil and commercial transactions in Africa.