Article on Jurisdiction and Choice of Law in Economic Perspective

An article by *Katrin Lantermann* and *Hans-Bernd Schäfer* (both Hamburg) has recently been released on SSRN:

"**Jurisdiction and Choice of Law in Economic Perspective**".

Here is the abstract which can be found on the SSRN website:

> *This article looks at choice of law rules from an economic perspective.The aim is to understand whether particular choice of law norms are wealth creating or wealth destroying and which of different norms should be preferred from this point of view. In this article we do not try to understand the forces that generate and sustain particular choice of law rules. We restrict ourselves to an efficiency analysis of existing or proposed choice of law rules. In the first part of the paper we argue that a free choice of law should be granted, whenever the choice causes no third party effects. We show that this criterion would extend free choice beyond the present scope. Free menu choice of law increases the wealth of the parties and creates institutional competition. It should be extended to fields of the law other than contract and tort law. In the second part we proceed with choice of law rules if the choice leads to positive or negative third party effects. To take care of these effects mandatory choice rules are sometimes but not always necessary. Methodologically choice of law rules should be market-mimicking rules, which reflect the interests of a grand coalition of the parties and all third parties affected by the choice rule. In the third part of the paper we discuss existing rules for the choice of tort law and refer to the discussion on a draft proposal for a European Council regulation of the law applicable to non-contractual obligations . In the fourth part we discuss whether the German or the US approach of international comparative law is preferable from an economic perspective. The US approach gives more judicial discretion for the choice of law than the German approach. We argue that the choice of law rules should lead to precise and clear legal commands with escape clauses for the judiciary only in exceptional and obvious cases. As Guzman pointed out it is striking that choice of law scholars have paid virtually no attention on how choice of law rules affect individual behaviour. But any*

economic analysis has to focus on this aspect as otherwise the social consequences of legal norms remain unknown and consequently little can be said about whether the consequences of one rule are socially better than those of another rule .

The full PDF version of the article can be downloaded here.