

Kozyris on Rome II: Tort Conflicts on the Right Track! A Postscript to Symeon Symeonides' "Missed Opportunity"

Prof. John Phaedon Kozyris (Universities of Thessaloniki and Ohio State) has published a very interesting article on Rome II in the latest issue of the American Journal of Comparative Law (Vol. 56(2), 2008): **Rome II: Tort Conflicts on the Right Track! A Postscript to Symeon Symeonides' "Missed Opportunity"** (56 *Am. J. Comp. L.* 471). As the title explains, the article discusses the new European conflict regime on torts, in the light of the assessment made by *Prof. Symeonides* in his recent works (see in particular "Rome II and Tort Conflicts: A Missed Opportunity", and the other articles cited in our related post, and "The American Revolution and the European Evolution in Choice of Law: Reciprocal Lessons"). While rejecting some of the critiques addressed by Symeonides to the final text of Rome II, Kozyris commends the EC co-legislators for adopting a "traditional" European approach:

Rome II must be praised for eschewing the "revolutionary" methodologies, especially of the American variety, and for employing definitive, recognizable, and practical connecting factors to determine the applicable law.

In analysing the conflict rules, special attention is given by the author to the provision on product liability (or, as the author deems it more appropriate, "producer liability").

The abstract reads as follows:

Regulation 864/2007, covering tort conflicts, concludes a long process that had started in the late 1960s to cover the entire field of obligations in the European Community. The author expresses his satisfaction that the final text, with its emphasis on the lex loci damni, with some habitual residence exceptions, escaped the shoals of the so-called "American conflicts revolution" with its parochial and pro-forum implications and its uncertainties. Further, he

comments favorably on the particularized treatment of certain areas such as producer liability and environmental protection and on the inclusion of the in-between topics of unjust enrichment, negotiorum gestio and culpa in contrahendo. However, a closer and more detailed study of the key field of producer liability leads him to considerable reservations on the contacts selected and their prioritization.