Issue 2010/1 Nederlands Internationaal Privaatrecht

The first issue of 2010 of the Dutch PIL journal *Nederlands Internationaal Privaatrecht* includes the following contributions:

Xandra Kramer – Editorial (Lissabon, Stockholm, Boek 10 BW en andere IPR-beloften voor 2010), p. 1-2

J-G Knot – Europees internationaal erfrecht op komst: het voorstel voor een Europese Erfrechtverordening nader belicht (on the Proposal for a European Regulation on Succession and Wills), p. 3-13; here is the English abstract:

> *On 14 October 2009 the European Commission published a proposal for a regulation on succession. This new instrument will harmonise all private international law rules regarding succession, viz. jurisdiction, applicable law and recognition and enforcement, on a European Union level. Furthermore, the Regulation creates a European Certificate of Succession. The rules of this Regulation will, after its entry into force, replace the current Dutch private international rules on succession. The Regulation grants general jurisdiction to the courts (a term which entails judicial as well as non-judicial authorities, such as notaries) of the Member State in which the deceased had his or her last habitual residence. Under certain circumstances it is possible to refer to courts of a Member State whose law has been chosen and who are better placed to hear the case. Courts may also have jurisdiction based on the fact that property of the deceased is located in that Member State, if the last habitual residence of the deceased was not in a Member State. The law applicable to the whole of the succession is that of the Member State of the last habitual residence of the deceased. A testator can also expressly choose the application of the law of his or her nationality to the succession of the estate. In this article the rules of the proposal are examined extensively. Differences between the proposal and the existing Dutch rules on private international law of succession are commented upon. One of the biggest changes will be that the different approach with regard to the devolution and the administration of estates in private international law, as currently employed in the Netherlands, will disappear under the European Regulation. The conclusion reads that, notwithstanding the*

fact that the proposal still needs several improvements, the introduction of a European Succession Regulation will in my opinion contribute to an easier and more effective administration of cross-border successions within Europe.

S.F.G. Rammeloo – Op de valreep… Eenvormige interpretatie door Hof van Justitie EG van artikel 4 EVO (case note on ICF/MIC, ECJ C-133/08), p. 20-26); here is the English abstract:

On 6 October 2009, the ECJ gave an interpretative ruling in case C-133/08 on Article 4 of the EC Convention on the Law Applicable to Contractual Obligations (Rome, 1980). The questions in the preliminary proceedings relate to the applicable law to a charter-party contract cum annexis in the absence of choice by the parties ('objective proper law test'), the seperability of the contract, and the connecting criteria of Article 4, subsection 4 in conjunction with subsections 1, 2 and 5. The main proceedings and the essential observations of the ECJ judgment are followed by a critical analysis as well as some considerations on its potential effects on the interpretation of Article 4 (objective proper law test) and Article 5 (contract on the carriage of goods) of EC Regulation 593/2008 which on 27 December 2009 replaced the 1980 Convention.

L.R. Kiestra – De betekenis van het EVRM voor de internationale gerechtelijke vaststelling van het vaderschap (case note on three Dutch judgments concerning 8 ECHR and the judicial establishment of paternity), p. 27-30; here is the English abstract:

This case note discusses three Dutch cases concerning the meaning of Article 8 ECHR for the judicial establishment of paternity ('gerechtelijke vaststelling van het vaderschap'). All three cases concerned a mother who wanted to establish the paternity of a man over her child(ren). In all three cases a foreign law was applicable to the situation, according to the relevant Dutch choice of law rules ('Wet conflictenrecht afstamming'). Under the applicable foreign laws in the three cases, it was not possible to judicially establish paternity over the child(ren). The Dutch judge had to decide whether this would result in a violation of the ECHR and consequently whether the applicable law had to be set aside on the basis of the public policy exception. In two of the three cases, the judge came to the

conclusion that the normally applicable foreign law had to be set aside, while in one of the cases the judge decided that this was not
necessary. This case note discusses the different outcomes in these three cases and examines a number of issues related to the possible impact of the ECHR on private international law. These include whether or not the ECHR can in fact be at all applicable to such private international law matters and the relationship between the public policy exception and the ECHR.

Richard Fentiman – Book presentation: 'International Commercial Litigation', Oxford University Press 2010, p. 31-32.

Trevor Hartley – Book presentation: 'International Commercial Litigation: Text, Cases and Materials on Private International Law', Cambridge University Press 2009, p. 32-33.