

Pretelli on Fraudulent Conveyances

Ilaria Pretelli, who is a research fellow in private international law and the Director of the Centro Studi Giuridici Europei at the Carlo Bo University of Urbino, Italy, has published a monograph on *Garanzie del credito e conflitti di leggi - Lo statuto dell'azione revocatoria*.

The author has kindly provided the following English abstract:

In private international law of obligations, few topics are so neglected as fraudulent conveyances. The book fills the gap in Italian and continental conflict of laws, while keeping an eye on the new sources of law provided by the European Union. In continental law three judicial remedies are essentially appointed for creditors to prevent ineffective execution: the actio pauliana, the action oblique (indirect action) and the action declaring a transaction simulated on the purpose of defrauding creditors. Such remedies are deeply rooted in continental and common law, coming from Roman law principles and from the Statute of Elizabeth 13 (1571), however their characterization is still unclear, because of their ties with contract law, torts law, procedural law and even real estate law. These connexions disclose the rationale of invoking different methods to solve private international law problems: from the German Interessenjurisprudenz, reacting to the dogmatism of the Begriffsjurisprudenz; towards the “new” American ideas arising from the storm called “American conflicts revolution” criticizing some consequences and interpretations of the continental approach to conflicts of laws. Comparing the solutions and their rationale we see

these arising from an eclectic method, combining concepts and interests analysis: as a matter of facts the problem of the applicable law is still subject to debate in the absence of a clear European framework. The Brussell I/Rome I/Rome II system seems to imply the issue of the pauliana in its scope, but if we turn to the letter of the text it is hard to find any clue in order to solve the conflict between the creditor and the third party within the scheme of the aforementioned actions. The question of jurisdiction is not, however, dramatic and more and more precisions are coming from the ECJ decisions (Deko Marty and C-213/10, F-Tex SIA v Lietuvos-Anglijos UAB ‘JadecLOUD-Vilma’ still

pending). On the other hand, in order to fill the gap of the applicable law, while national systems cannot but address the question with an unilateralistic approach, it is possible to suggest a universal solution at the European scale by means of the only common value to the different legal systems dealing with the pauliana and similar remedies: good faith.

More details can be found [here](#).