

Issue 2012.1 Nederlands Internationaal Privaatrecht

The first issue of 2012 of the Dutch journal on Private International Law, *Nederlands Internationaal Privaatrecht* includes the following articles on Recognition and Enforcement of US Punitive Damages and Documentary Credit under Rome I:

Csongor István Nagy, Recognition and enforcement of US judgments involving punitive damages in continental Europe, p. 4-11. The abstract reads:

The paper examines the recognition practice of US punitive awards in continental Europe from a comparative and critical perspective. After analysing the pros and cons of the recognition of punitive awards from a theoretical point of view, it presents and evaluates the judicial practice of the European (French, German, Greek, Italian, Spanish and Swiss) national courts and the potential impact of the 2005 Hague Choice-of-Court Convention and the Rome II Regulation. The paper ends with the final conclusions containing a critical evaluation of the present judicial practice and a proposal for a comprehensive legal test for the recognition of punitive damages.

Marc van Maanen en Alexander van Veen, Toepasselijk recht op documentair kredietverhoudingen onder het EVO en Rome I, p. 12-18. The English abstract reads:

A documentary credit contains a variety of contractual relationships between the applicant, one or more banks and the beneficiary. Usually the parties involved are domiciled in more than one country. Unsurprisingly, disputes over the governing law in documentary credit matters regularly arise. In a case where the letter of credit called for drafts drawn on the issuing bank, the Amsterdam Court of Appeal held that the legal basis for the claim of the Dutch beneficiary vis-à-vis the Iraqi issuing bank is the obligation to pay under the letter of credit, not the debt embodied in the drafts. The Court of Appeal held that pursuant to Article 4(2) Rome Convention (Rome, 19 June 1980) the relationship is governed by the law of the country of the party effecting the characteristic performance. Even though the letter of credit was available at a Dutch advising bank, the Court of Appeal

held that the characteristic performance was effected by the issuing bank and that consequently, Iraqi law applied. The Court of Appeal held that the limitation period under Iraqi law is 15 years. Therefore, the beneficiary's claim was not time barred. In similar cases, however, English courts have applied Article 4(5) Rome Convention instead. An English court would in this case probably consider that the credit was available in the Netherlands and hold that the relationship is more closely connected with the Netherlands than with Iraq. Therefore, an English court would probably apply Dutch law instead of Iraqi law and the beneficiary's claim would, consequently, have been time barred. In this article the judgment of the Court of Appeal is analysed and (some of) the differences between the Dutch and the English approaches are discussed. In addition, it is considered whether it is likely that the Rome I Regulation (EC No 593/2008) harmonises the different approaches.

Book Presentation: N.A. Baarsma, *The Europeanisation of International Family Law*, T.M.C. Asser Press, The Hague 2011 (p. 19-20)