First Issue of 2012's Journal of Private International Law

The last issue of the *Journal of Private International Law* was just released. It includes the following articles:

Review of the Brussels I Regulation: A Comment from the Perspectives of Non-Member States (Third States), by Koji Takahashi

> *The review of the Brussels I Regulation is in progress. Quite naturally, the discussions have been centred on the viewpoints of the Member States. Yet, both the current Regulation and the Commission's proposal have significant implications for non-Member States. In fact, stakes for non-Member States are higher in Brussels I than in Rome I or II. This analysis evaluates the current regime and the proposed reform from an angle of non-Member States, focusing on three issues of particular relevance to the interests or positions of such States. They are (1) recognition and enforcement of judgments founded on exorbitant bases of jurisdiction (2) denial of "effet réflexe" and (3) lis pendens between the courts of a Member State and a non-Member State. The analysis reveals that views from inside and outside the Union do not necessarily diverge on the desirable contents of reform but may differ on the priorities of reform. While the EU is entitled to construct its internal legal regime in whatever manner it sees fit, to the extent there are implications for the outside world, it is hoped that due consideration will be given to views from outside.*

Recognition and Enforcement of Judgments in Carriage of Goods by Road Matters in the European Union, by Paolo Mariani

> *This article discusses the relationship between Brussels I Regulation and The Convention on the Contract for the International Carriage of goods by road (CMR). The Court of Justice in TNT Express Nederland decision (case C-533/08) confirms the international specialised conventions' primacy on the Regulation, provided the respect of the principles underlying judicial cooperation in civil and commercial matters in the European Union. The Court also acknowledges its lack of jurisdiction to interpret the CMR.*

TNT Express Nederland contributes in the elaboration of the EU principles underlying judicial cooperation. Unfortunately, this contribution risks being useless for national courts since the decision fails to answer the question as to how CMR provisions should be applied lacking the compliance with the European standard.

The article concludes by supporting the Court of Justice power to provide the interpretation of the Brussels I Regulation in the context of the application of Article 31 CMR in order to enable the national court to assess whether the CMR can be applied in the European Union.

Avoid the Statutist Trap: The International Scope of the Consumer Credit Act 1974, by Christopher Bisping

This article takes a fresh look at the role statutes play within the conflict of laws. The author argues that statutes can only ever apply within the framework of conflict-of-laws rules. Parliament's intention must be taken to subject legislation to the conflict-of-laws system. The opposing view would commit the mistake of falling into the 'statutist trap' and overload statutes with meaning, which they do not have. The author uses the Consumer Credit Act 1974 and the House of Lord's decision in OFT v Lloyds to illustrate the argument.

Preliminary Questions in EU Private International Law, by Susanne Goessl

Whenever a rule contains a legal concept, such as "matrimony", rarely are the legal requirements for the concept clarified in the same rule. Determining the meaning of such a concept (preliminary question) is often necessary to resolve the principal question. In an international context, one can apply the lex fori's or the lex causae's PIL to determine the law applicable to the preliminary question. This article analyses which of those two approaches is preferable in the PIL of the EU.

Traditional advantages of the lex causae approach loose its cogency in the European context, esp. the deterrence of forum shopping, the presumption of the closer connection and the international harmony. On the other hand, many traditional and new reasons support the lex fori approach, eg national harmony, foreseeability, practicability and further integration.

The article comes to the conclusion that, no matter whether the concept occurs in a PIL or a substantive rule the lex fori approach is the better solution. Only in limited cases with an urgent need of international harmony the lex causae approach should prevail.

Statutory Restrictions on Party Autonomy in China's Private International Law of Contract: How Far Does the 2010 Codification Go?, by Liang Jieying

The "Law on the Application of Laws to Foreign-Related Civil Relationships of the People's Republic of China" became effective on 1 April 2011. This is the first statute in China that specifically addresses private international law issues. The party autonomy principle is positioned in the first chapter as one of the "General Provisions". This article provides a critical commentary on the relevant rules in the new law concerning the restrictions on party autonomy in contractual choice of law. The author investigates how the new Codification responds to the problems existing in the previous legal rules and judicial practice, and argues that, although the Codification has provided several rules to resolve some previously unclear questions, it fails to address comprehensively the more critical issues relating to the operation of the party autonomy principle.

The Law Applicable to Intra-Family Torts, by Elena Pineau

Courts increasingly face at the domestic level cases of intra-family torts. Two kinds of answers are provided to the question whether there is a right to reparation and, if so, to what extent: either the answer is given by the same family law rules which are infringed; or resort is had to the general system of tort law as a default solution. At the conflict rules' level, European judges dealing with intra-family torts are confronted with an interesting problem since the Rome II Regulation expressly excludes damages arising out of family relationships out of its scope of application. This being so, the case is posed which are the possible solutions. Two options have been considered: either applying the same law which governs the 'family duty' allegedly infringed, ie, the underlying lex causae; or considering whether it would be reasonable to extend the application of the Rome II Regulation to these cases. It is contended that the first option is to be preferred.

Unmarried Fathers and Child Abduction in European Union Law, by Pilar Blanco

The treatment that the laws of some Member States of the European Union give to the custody rights of unmarried fathers should be regarded as contrary to the European Convention of Human Rights and the Charter of Fundamental Rights, insofar as the unmarried father who is responsible for the child cannot prevent the removal of said child to another State because of the absence of automatic acquisition of rights of custody under national law. Although the Charter only applies to Member States expressly when they are implementing European Union law, this paper has argued for a broad construction of a uniform EU law meaning of "custody rights" under Brussels IIa, including the inchoate custody rights of unmarried fathers, influenced by a desire to avoid unnecessary and disproportionate restrictions on the right to non-discrimination on the grounds of sex in the application of the right to object to a child abduction by fathers compared to mothers.