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The latest issue of "Rabels Zeitschrift für ausländisches und internationales Privatrecht – The Rabel Journal of Comparative and International Private Law (RabelsZ)" has just been released. It contains – among others – articles on the recent Chinese and Japanese Codifications on Private International Law. The table of contents reads as follows:

Articles:

Knut Benjamin Pissler, **The New Private International Law of the People's Republic of China: Cross the River by Feeling the Stones,** pp. 1-46

Abstract:

On October 28, 2010, the "Law of the Application of Law for Foreign-related Civil Relations" was promulgated in the People's Republic of China. The law aims to consolidate the Chinese conflict of laws regime and signals a new step towards a comprehensive codification of civil law in China. Drafting of the law started in the early 1990s and produced an academic model law in the year 2000. The Chinese legislator was reviewing a first draft in 2002. However, due to other priorities, it has only been since the beginning of 2010 that conflict of laws has been at the top of the legislative agenda. It comes, therefore, with little surprise that the law has some deficiencies and has been welcomed with mixed feelings by Chinese academics, who had only limited influence in the last stage of the drafting process.

The promulgated law emphasizes party autonomy and the closest connection as general principles. The law furthermore replaces nationality with habitual residence as the principal connecting factor for personal matters in Chinese private international law. However, some lacunas remain and new questions arise from the law. The legislative gaps concern the form of legal acts, the maintenance duties after divorce as well as the assignment and transfer of rights and duties in general. New questions arise from the provisions in the law establishing alternative connecting factors. In some cases the law requires application of the law which favours a particular party (in parent-child

relationships, maintenance and guardianship). Chinese courts will therefore be confronted with the demanding task of comparing the legal regimes of different states in this respect. In other cases the law does not stipulate how to choose between the alternative connecting factors and it remains to be seen on which principles courts will render their decisions. Regarding the free choice of law with regard to rights in movable property provided by the law, it is additionally questionable how the rights of third parties are protected where they are not aware of such a choice of law. The decision of the legislator to exclude renvoi will force Chinese courts to apply foreign law even if the foreign private international law refers back to Chinese law.

Some of the particular provisions in the law are also a source for further problems: This concerns the application of the lex fori in divorce cases, the conflict of laws rule on trusts and arbitration clauses as well as on agency. Another point of uncertainty stems from older provisions of private international law that can still be found in several laws such as the Maritime Commercial Law, the Civil Aviation Law or the Contract Law. Those norms are still in force formally, but their relation to the new law is not sufficiently clarified. This uncertainty is particularly pronounced given that the relation of the new law to several provisions in the General Principles of Civil Law and the Inheritance Law is expressly regulated whereas the others are not even mentioned. Relating to international contract law and tort law, the Supreme People's Court had issued some judicial interpretations in the past to solve certain questions, but it also remains uncertain whether these interpretations still apply after the enactment of the new law. It is expected that the Supreme People's Court will issue a further judicial interpretation on private international law in the near future to help Chinese courts applying the new law.

Qisheng He, **The EU Conflict of Laws Communitarization and the Modernization of Chinese Private International Law,** pp. 47-85

Abstract:

Since 2007 the EU has adopted the Rome I, Rome II and Rome III Council Regulations codifying and unifying the respective conflict of laws rules in contract, tort and divorce and legal separation. The EU conflict of laws

communitarization has attained great achievements. In 2010, China also adopted a self-contained statute – the Law of the People's Republic of China on the Application of Law to Civil Relationships Involving Foreign Interests – which marks a significant step forward in the codification of Chinese private international law (PIL). However, the sources of Chinese PIL are still scattered and diverse because the PIL rules in existing commercial statutes have not been incorporated into this separate PIL statute. In contrast with the EU PIL, there are three issues on which China should devote special attention in further developing its PIL: Firstly, because of a mixed mode of legislation and the scattered sources of Chinese PIL, maintaining harmony between the new statute and the other sources still remains an important task. It remains very important for China to enact PIL provisions in future commercial law legislation. Secondly, the draft of the new statute includes no documents or materials which suggest that the Chinese legislative authority appreciated the tension and need for equilibrium between certainty and flexibility. Thus, the new statute manifests some problems in this regard. Lastly, current Chinese PIL is mainly focused on jurisdiction-selection rules, meaning that the formulation of reasonable content-preference rules is still an important task necessary for the modernization of Chinese PIL.

Yoshiaki Sakurada & *Eva Schwittek*, **The Reform of Japanese Private International Law,** pp. 86-130

Abstract:

Japan has reformed its Act on the Application of Laws. On 1 January 2007, the Hô no tekiyô ni kansuru tsûsoku-hô came into effect, a revised and renamed version of the Hôrei that dates from 1898. This article traces the legislative process and analyses the changes in the law, referring to the way they have been implemented in the court rulings rendered so far.

In sessions dating from May 2003 to July 2005, the Subcommittee for the Modernisation of the Act on the Application of Laws (part of the Legislative Commission of the Ministry of Justice) worked out fundamental innovations that were approved by the Legislative Commission of the Ministry of Justice on 6 September 2005. Based on this report, the Ministry of Justice, in cooperation

with the Legislative Department of the Cabinet, drafted a bill that passed the Upper House on 19 April 2006 and the House of Representatives on 15 June 2006.

The reform is comprehensive. The only parts of the law that were exempt from amendment were international family and inheritance law, those already having been reformed in 1989. The present renewal focuses on the provisions concerning international contract law (Arts. 7-12) and the international law of torts (Arts. 17-22). Both sets of rules were further differentiated in their basic principles and complemented by special rules.

As for international contract law, the basic connecting factor is still the parties' choice of law (Art. 7). A fundamental change in determining the law applicable to contracts was implemented by introducing a new subsidiary objective connecting factor in Art. 8. It provides that in the absence of a choice of law by the parties, the law of the place with which the contract was most closely connected should apply, and it specifies criteria for determining the closest connection. The newly created rules on consumer and labour contracts in Arts. 11 and 12 contain major innovations aiming at the protection of the weaker party. However, they impose upon the weaker party the burden of stipulating the effect of the protective provision in question, an aspect which was much criticised as it limits such protective effects.

The lex loci delicti, as the basic connecting factor for the law of torts, formerly stipulated in Art. 11(1) Hôrei, is maintained in Art. 17. Multilocal torts are governed by the law of the place where the results of the infringing act are produced (Art. 17 sentence 1). However, if it was not foreseeable under normal circumstances that the results would be produced at that place, the law of the place where the infringing act occurred shall apply (Art. 17 sentence 2). Special rules on product liability and on infringements of personality rights were added to the law in Arts. 18 and 19. The lex loci delicti as connecting factor can be deviated from in cases where a manifestly more closely connected place exists (Art. 20) or where the governing law is changed by the parties (Art. 21). The principle of double actionability, stating that Japanese law should be applied cumulatively to the applicable law regarding the grounds of and the compensation for damages incurred by a tort, was upheld in Art. 22 against severe criticism.

Apart from the points of critique addressed above, the new law provides for a differentiated set of rules that keep pace with the latest international developments.

Anne Röthel, **Family and Property in English Law: Developments and Explanations**, pp. 131-160(30)

Abstract:

In continental jurisdictions, there is still a strong link between family and property. Intestate succession, imperative inheritance rights as well as the concepts of matrimonial property regimes and in some aspects also tax law are designed to attribute property rights along personal relationships. The position of English law is often described as a contrasting concept, especially due to the deeply rooted reservations against fixed shares. However, continental lawyers often may be surprised with the actual outcome, especially in divorce cases. The article therefore explores the present state of English law concerning family and property. Is there a convergence in concepts as well? Is English law nowadays more favourable towards general normative models for the attribution of property within family relationships? Or is the 2010 decision of Radmacher v. Granatino another turning-point? The author argues that the inner explanation of these – at first glance – diverging steps lies in the recognition of equality in horizontal relationships. The outcome of cases like White v. White or Stack v. Dowden is only partly the effect of a generally altered view on family and property in English Law. Nonetheless, they reflect a different understanding of how and how much the state should regulate the family. Although all European legislations experience broadly similar demographic trends and social challenges, there remain decisive differences in legal concepts. The distance between English Law and the continent may be somewhat reduced – but it is far from disappearing.

Material:

Volksrepublik China: Erlass des Präsidenten der Volksrepublik China Nr. 36: Gesetz der Volksrepublik China zur Anwendung des Rechts auf zivilrechtliche

Beziehungen mit Aussenberührung vom 28. 10. 2010, pp. 161-169 *(Peoples Republic of China: Order of the President of the People's Republic of China No. 36: The Law of the Application of Law for Foreign-related Civil Relations of the People's Republic of China, 28/10/2010)*

Japan: Gesetz Nr. 78 über die allgemeinen Regeln über die Anwendung von Gesetzen (Rechtsanwendungsgesetz) vom 21. 6. 2006, pp. 170-184 (*Japan: Act No. 78* of 2006 about General Rules for Application of Laws, 21/06/2006)