SSRN Max Planck Research Paper Series, Vol. 1, No. 4 (2011)

The latest issue of the Max Planck Institute for Comparative & International Private Law Research Paper Series was released on December 20, 2011. The papers are available on SSRN. The table of contents reads as follows:

Shoot-Out Clauses in Partnerships and Close Corporations – An Approach from Comparative Law and Economic Theory

Holger Fleischer, Max Planck Institute for Comparative and International Private Law, Stephan Schneider, Max Planck Institute for Comparative and International Private Law
forthcoming in: European Company and Financial Law Review 2012

This article analyses shoot-out clauses as a popular means of resolving deadlocks in two member partnerships or close corporations. It presents the different varieties of shoot-out clauses developed in Anglo-American legal practice that are being increasingly discussed on the European continent. It goes on to look at their advantages and disadvantages by exploring the rich economic literature on partnership dissolution mechanisms in game theory. Finally, it focuses on the permissibility of these clauses and the doubts cast upon them in Germany, Austria, England and the United States.

Challenges for the European Law Institute

Reinhard Zimmermann, Max Planck Institute for Comparative and International Private Law
forthcoming in: Edinburgh Law Review 2012

This is the text of a speech given on the occasion of the Inaugural Congress of the European Law Institute in Paris on 1 June 2011. It attempts to familiarize the audience with essential features of that Institute and it does so by highlighting a number of specific challenges facing the Institute. These challenges arise, inter alia, from the Institute's ambition to be comprehensive, as far as legal professions, legal disciplines, and legal traditions are concerned. Specific attention is devoted to the notion of legal tradition(s) and

the relationship between law and language. Finally, the position of the European Law Institute vis-à-vis other existing "networks" and organizations, the official organs of the European Union, and other organizations, worldwide, aiming at the harmonization of law, is highlighted. Throughout the speech, reference is made to the American Law Institute and the question is asked to what extent it can serve as a model for the European Law Institute.

Testamentary Formalities in Historical and Comparative Perspective

Reinhard Zimmermann, Max Planck Institute for Comparative and International Private Law, Kenneth Reid, University of Edinburgh – School of Law, Marius Johannes De Waal, affiliation not provided to SSRN
also published in: TESTAMENTARY FORMALITIES, COMPARATIVE SUCCESSION LAW, Vol. 1, pp. 432-471, Kenneth G.C. Reid, Marius J. de Waal and Reinhard Zimmermann, eds., Oxford University Press, October 1, 2011

This essay is the concluding chapter of a project analysing testamentary formalities in historical and comparative perspective. It provides an assessment of the overall development of the law in the countries surveyed, as well as some wider reflections on the nature and purpose of testamentary formalities. More specifically, the essay focuses on the salient features of holograph wills, witnessed wills, public wills, and special wills; it analyses shared features (such as the requirements of the testator's signature, witnesses, date, unitas actus, incorporation of formal documents, wills by disabled persons); and it discusses the steady shift away from strict formalism which is a significant theme in many legal systems.

Europäisches Privatrecht – Irrungen, Wirrungen (European Private Law – Delusions, Confusions)

Reinhard Zimmermann, Max Planck Institute for Comparative and International Private Law
also published in: Begegnungen im Recht: Ringvorlesung der Bucerius Law School zu Ehren von Karsten Schmidt anlässlich seines 70, Geburtstags, Mohr Siebeck, pp. 321-350, 2011

This essay critically examines the way in which European private law has developed over the past ten years. It emphasizes that we now have six sets of model rules which have not yet been subjected to critical and comparative

scrutiny. None the less, a new Group is busy drafting yet another text which is to obtain an authoritative status. The new Group is working under the same pressure of time that has bedevilled the drafts of the DCFR and the PCC. As far as consumer contract law is concerned, we have about the same number of textual layers. In addition, we seem to have two projects, running side by side. However, neither of them is based on a proper and critical revision of the acquis comunautaire. The essay also draws attention to a number of other peculiarities in both the arguments advanced by official actors and the processes chosen by them. And it expresses the hope that the establishment of a European Law Institute may help to avoid the present delusions and confusions.

Die Regelung der Willensmängel im Vorschlag für eine Verordnung über ein Gemeinsames Europäisches Kaufrecht (Defects in Consent in the Proposal for a Regulation on a Common European Sales Law)

Sebastian A.E. Martens, Max Planck Institute for Comparative and International Private Law
forthcoming in: Archiv für die civilistische Praxis

This article provides an in-depth analysis of Chapter 5 ‘Defects in consent’ of the optional Common European Sales Law that was proposed by the Commission 11th October 2011. The provisions of this chapter are put into perspective, and the author takes account of the developments of each norm from the PECL to the DCFR and the feasibility study of the Expert Group that was published in May 2011. Each provision is commented upon and, where necessary, detailed suggestions for changes are made. If, but only if, these suggestions are taken up, Chapter 5 of the optional Common European Sales Law will generally be in line with the modern development in the European legal systems and a wide consensus amongst legal scholars in Europe. In the present state, Chapter 5 could not yet serve as part of an acceptable Common European Sales Law.

Das neue Internationale Privatrecht der Volksrepublik China: Nach den Steinen tastend den Fluss überqueren (The New Private International Law of the People’s Republic of China: Crossing the River by Feeling the Stones)

Knut Benjamin Pissler, Max Planck Institute for Comparative and International Private Law
forthcoming in: Rabels Zeitschrift für Ausländisches und Internationales Privatrecht

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.

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. 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 private law refers back to Chinese law.