

Brand on Overlap between PIL and Substantive Law in the EU

Ronald A. Brand (University of Pittsburgh School of Law) has posted *The Evolving Private International Law/Substantive Law Overlap in the European Union* on SSRN.

This chapter, written for the FESTSCHRIFT FÜR ULRICH MAGNUS (Sellier European Law Publishers 2014), considers three areas in which, either through legislation or through the decisions of the European Court of Justice, private international law rules found in the Brussels I Regulation have overlapped with substantive law rules to create uncomfortable – and sometimes undesirable – results. These examples arise at the overlap of (1) the CISG Article 31 rules on delivery of goods and the Brussels I Recast Regulation Article 7(1) (original Article 5(1)) contract jurisdiction rules; (2) national rules on contract formation and the Brussels I Recast Regulation Article 25 (original Article 23) rules on choice of court; and (3) consumer protection and the rules of the Brussels I Recast Regulation on jurisdiction in consumer cases. After discussing each of these overlapping areas of law, the chapter provides comments on how, together, these concerns demonstrate the need to avoid using private international law rules for the purpose of either implementing substantive law goals or for creating new rules that conflict with their substantive law counterparts.

The author welcomes all comments, particularly from those that disagree with him.