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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 recently been released. It contains the following articles:

- **Klaus Bartels, Zum Rückgriff nach eigennütziger Zahlung auf fremde Schuld - Anleihen bei DCFR und common law für das deutsche Recht** (Recourse After Self-serving Payment on Another's Debt – German Law Borrowing From the DCFR and the Common Law) pp. 479-507(29)

Under German law, the self-serving payment on another's debt must be regarded as a performance (Leistung) of the payer to the creditor. The payment leads to a discharge of the debt (§ 267 of the German BGB). A cessio legis, being incompatible with discharge, takes effect only under the exceptions provided by law. A third party may claim reimbursement from the original debtor only under the regime of benevolent intervention in another's affairs (Geschäftsführung ohne Auftrag). But the criteria for determining the meaning of concepts such as “another's affairs” and the “intention of benefiting another” are widely challenged. And having a recourse plan in mind, also positive effects on the debtor's issues, which could support the criteria of § 683 sentence 1 BGB, are regularly missed.

The prevailing German doctrine is comfortable with the Rückgriffskondiktion (§ 812 (1) sentence 1, alternative 2 BGB), hereby enabling, subsidiarily, recourse to the benefit of the true debtor. The common law has traditionally been averse to this approach. And the Draft Common Frame of Reference avoids this conditio entirely. It is obvious that the English rules on legal compulsion (with their reservation vis-à-vis full restitution as under continental regimes) are substantially convincing. And despite its cautious approach, the Draft Common Frame of Reference offers similar solutions regarding payments of a third party, who did not consent freely (Art. VII.-2:101(1)(b) DCFR). In cases involving, for instance, an “execution interest”, a corresponding interpretation is needed, perhaps even an analogous application of this rule. A

similar approach is taken by the German doctrine following § 814 alternative 1 BGB by lowering the restitution barrier for cases of pressure caused by a conflict or compulsion. The already very narrow scope of application of the German Rückgriffskondiktion is thus further and markedly circumscribed: The law of unjust enrichment recognizes gratuitous interference in another's affairs only if the intervener presents substantial reasons to let his conduct be regarded as consistent.

- **Tanja Domej, Die Neufassung der EuGVVO - Quantensprünge im europäischen Zivilprozessrecht** (The Recast Brussels I Regulation - Quantum Leaps in European Civil Procedure) pp. 508-550(43)

In November and December 2012, the European Parliament and the Council adopted the recast Brussels I Regulation (Regulation 1215/2012). The main feature of the reform is the abolition of the exequatur procedure. With this step, one of the main political goals in the field of European judicial cooperation, the abolition of „intermediate procedures“ standing in the way of cross-border enforcement of judgments, has been achieved - at the price, however, of retaining the grounds for refusal of recognition and enforcement. In other respects as well, the changes introduced by the recast Regulation are modest, compared to the Commission's original political intentions. Instead of a “great leap forward”, the European legislator chose incremental change. The plans to extend the rules on jurisdiction to third-state defendants were largely abandoned. The attempt to create new rules on the interface with arbitration was also unsuccessful. The changes with regard to jurisdiction agreements and provisional measures turned out more moderate than proposed by the Commission. This article discusses the innovations introduced by the recast Regulation. It analyses the upsides and downsides of the new rules and points out lost opportunities and avenues for further reforms.

- **Claudia Mayer, Ordre public und Anerkennung der rechtlichen Elternschaft in internationalen Leihmutterschaftsfällen** (Ordre public and Recognition of Legal Parenthood in International Surrogacy Cases), pp. 551-591(41)

Through the use of gestational surrogacy modern artificial reproductive technology provides infertile couples with new opportunities to become parents

of children who are genetically their own. While surrogacy is lawful under certain circumstances in a limited number of countries worldwide, in others – including Germany – it is prohibited. Consequently, international surrogacy tourism to countries that allow surrogacy, such as India, the United States, or Ukraine, is booming. However, there is no legal regulation at the international level regarding this matter.

*Due to the current legal situation in Germany, infertile couples face severe difficulties in view of the recognition by German courts or by public authorities of their legal parenthood of a child born abroad through surrogacy: Not only is surrogacy illegal in Germany, its prohibition is also considered as part of the German *ordre public*. Based on this perception, German authorities deny the recognition of existing foreign judgments conferring legal parenthood upon the intended parents, as well as the application of more liberal foreign substantive law, thus paving the way for a recourse to German law: According to the relevant German provisions, the woman who gave birth to the child – i.e. the surrogate mother – is to be considered as the legal mother, and her husband is the legal father. As a consequence, in many cases the child does not acquire German nationality by birth and is thus denied the right to a German passport and the right to enter Germany. In the worst case, the child does not acquire any nationality at all, leaving him or her stateless, which constitutes an unacceptable situation. This article shows that the German *ordre public* should not be considered as an obstacle to the procedural recognition of foreign decisions on legal parentage, nor should it hinder the application of foreign substantive law (designated by the German conflict of law rules) conferring legal parentage on the intended parents. Instead, already *de lege lata* the welfare of the child must be considered the primary and decisive concern in surrogacy cases. This also results from Article 8 of the European Convention on Human Rights, guaranteeing the right to respect for one's family life.*

Regulation at the international level is overdue, and it is to be welcomed that international institutions have started to give attention to the matter. However, until an international consensus is reached, the national legislator should be called upon to revise the German law on descent, and to provide provisions legalizing surrogacy under certain conditions.

International Law- A Brief Introduction to Book 10 BW, pp.
592-614(23)