

Out now: **RabelsZ**, Vol. 79 No 4 (2015)

The new 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 the following articles:

Giesela Rühl and **Jan von Hein**, *Towards a European Code on Private International Law?*

One of the most important dates in the history of European Private International Law is 2 October 1997. On that day the Member States of the European Union signed the Treaty of Amsterdam – and endowed the European legislature with near to full competences in the field of Private International Law. What followed was a firework of legislative actions leading to the adoption of no less than 15 Regulations on various aspects of choice of law and international civil procedure. The fact that the pertinent legal rules are scattered across various legal instruments that do not add up to a comprehensive, concise and coherent body of rules, however, gives rise to a number of concerns. Therefore, the European Commission as well as the European Parliament have called for a discussion on the future of European Private International Law in general and the merits and demerits of a European Code on Private International Law in particular.

Based on a study commissioned by the Committee on Legal Affairs of the European Parliament, the following article seeks to contribute to this debate. It is organized in four parts: The first part analyses the current state of European Private International Law (PIL), in particular its perceived deficiencies. The second part describes possible courses of action to overcome these deficiencies, including a European Code on PIL. The third analyses the merits and demerits of possible courses of action, including the adoption of a European Code on PIL. The fourth part suggests a course of action that will gradually lead to a more coherent legislative framework for European PIL.

Dieter Henrich, *Privatautonomie, Parteiautonomie: (Familienrechtliche) Zukunftsperspektiven* (Private Autonomy, Party Autonomy: (Family Law) Future

Perspectives)

Much as it previously dominated the law of contracts, private autonomy increasingly dominates the area of family law. Party autonomy, the right of the parties to select the applicable law, has found acceptance in international family law. The consequences in many areas are nothing less than revolutionary, including divorce by mutual consent, cohabitation instead of marriage, children having two legal fathers or two legal mothers or even three parents (sperm donor and a lesbian couple), surrogate motherhood, and impacts on divorce and maintenance in choice-of-law cases. Not all of these developments may be welcomed by all individuals. But in better serving self-determination, they are attractive to others and represent future perspectives.

Reinhard Zimmermann, *Das Verwandtenerbrecht in historisch-vergleichender Perspektive* (The Intestate Succession Rights of the Deceased's Relatives in Historical and Comparative Perspective)

*The intestate succession systems are based, everywhere, on the idea of family succession. The deceased's family consists of his (blood-)relatives as well as, possibly, his or her surviving spouse. The law, therefore, is faced with two central tasks: (i) to determine in which sequence the deceased's relatives are called to inherit and (ii) to coordinate the position of the surviving spouse with that of the relatives. The present paper analyses how the intestate systems of the Western world deal with the first of these tasks. In spite of differences in detail, they can be subdivided into three types: the "French system", the three-line system, and the parentelic system. Analyzing them in historical and comparative perspective reveals basic commonalities (e.g. the preference given to descendants, and succession per stirpes), but also curious relics of past ages (e.g. the concept of "representation", *paterna paternis materna maternis*, and *la fente successorale*). Other criteria relevant for a comparative assessment of the different solutions advocated by the three systems are consistency in the implementation of fundamental structural ideas, the avoidance of inconsistencies in evaluation, of arbitrariness, and of discrimination, the ability to forestall manipulations, and the preference for simplicity over complexity. The presumed intention of a typical deceased can be an important argument for deciding what might be the most appropriate solution, for the rules on intestate succession should, in case of doubt, reflect what those subject to these rules*

would typically regard as appropriate, as far as the distribution of their estate is concerned. But there are also issues where reliance on the presumed intention is misplaced. All in all, a reasonably limited parentelic system appears to be the superior intestate succession system. A strongly cultural impregnation of the rules on intestate succession is apparent only if Western and non-Western systems are compared. Within the Western legal world, the differences existing between the legal systems cannot be traced to differences in legal culture. All modern legal systems of the Western world attempt to take account of the deceased's relatives in a rational fashion. In that respect they build on the scheme established in Justinian's novels, the earliest one that can be labelled modern. The "French" system and the three-line system represent different manifestations of the Justinianic scheme, while the parentelic system implements its underlying ideas in an even more consistent manner, and inspired by Natural law ideas. Why the one system has taken root in one country, and the other in another, is a matter of historical contingency.

Alistair Price and Andrew Hutchison, *Judicial Review of Exercises of Contractual Power: South Africa's Divergence from the Common Law Tradition*

No English abstract available

François Du Toit, *The South African Trust in the Begriffshimmel? - Language, Translation and Taxonomy*

No English abstract available