

Dornis on the Local Data Theory in European Private International Law

Professor Dr. *Tim W. Dornis*, who teaches law at the Leuphana University (Lüneburg/Germany), has published a very interesting article on the application of the local data theory in European private international law in the Swiss Review of International and European Law (SZIER/RSDIE): *Tim W. Dornis, Die Theorie der local data: dogmatische Bruchstelle im klassischen IPR, SZIER/RSDIE 25 (2015), p. 183*. The author has kindly provided us with the following English summary:

“Quite often, the applicable law in international torts is not the law of the place where the tortfeasor acted. Indeed, both article 17 of Rome II and article 142 of the Swiss PIL provide for a consideration of “local rules of safety and conduct” instead of an application of the *lex causae*. Nevertheless, many questions around this so-called local-data doctrine remain unanswered—in particular, the distinction between rules that are “strictly territorial” and rules that are deemed to allow for more “flexibility” is problematic.

An oft-enunciated illustration of the first category is a traffic accident between two German tourists in England. While the German *lex domicilii communis* may be applied with respect to the liability of the tortfeasor, the English rule of driving on the left side of the street must provide for the standard of conduct. Of course, the tortfeasor cannot claim that he was acting in accordance with German traffic laws while driving his car in England. An example of the second, more flexible category can be found in rules on alcohol limits. These rules are supposed to be more adaptable insofar as parties from the same country are able to ‘carry’ their *lex communis* with them into a foreign jurisdiction.

If agreement exists—and it does—that considering local data serves lawmakers’ concern for maintaining the local order, this differentiation is questionable. Don’t alcohol limits also promote the safety of local traffic? A closer look at these and other problems reveals that the issue of local data lies at the heart of a debate confronting European choice of law in the Savignian tradition: the discussion on

the interrelation between substantive justice and conflicts justice. As this article suggests, a more policy-oriented view allows for modest changes in the categorization of local rules of safety and conduct. This ultimately paves the way for consistent and practically workable results.”