Just published: RabelsZ Vol. 81 No. 2 (2017)

The second issue of Rabels Zeitschrift für ausländisches und internationales Privatrecht (RabelsZ) Vol. 81 (2017) has just been published:

Wolf-Georg Ringe, *Das Beschlussmängelrecht in Großbritannien* (Contesting Shareholder Resolutions in Great Britain)

> *The contestability of shareholder resolutions is a perennial problem in corporate law – effective minority protection needs to be carefully balanced with the risk of abuse. An analysis of the approach of English law may inform the policy debate in other legal systems. English law has effectively eliminated the risk of abuse with a number of simple and pragmatic steps.*
>
> *In a nutshell, errors in formal resolutions can hardly ever be challenged, unless the claimant can demonstrate an underlying intentional disadvantage. But even substantive errors in resolutions are rarely conducive to a successful challenge. Instead, English law has developed a number of alternative mechanisms – often beyond our traditional understanding of law – which address the problem.*
>
> *Minority shareholders of a UK company have a variety of ways to make their concerns heard. They may seek a declaratory judgment confirming the invalidity of the shareholders' resolution due to procedural irregularities. Further, they may rely on the traditional shareholder lawsuit (derivative action) or the remedy for unfair prejudice. For each of these remedies, English law succeeds in limiting actionable situations to those where the claimant has been substantially wronged, while also filtering out those situations where a challenge would be arbitrary or vexatious. The more developed capital market in the UK and informal strategic shareholder influence are additional considerations that allow for greater flexibility in the British context.*

Holger Fleischer & Peter Agstner, *Grundlagen, Entwicklungslinien, Strukturmerkmale* (Civil and Commercial Partnerships in Italy and Germany – Foundations, Developments, Distinctive Features)

This paper explores the trajectories of partnership law in Italy and Germany, firstly tracing its origins back to both the classical societas in Roman law and the late medieval commenda and compagnia in Northern Italy. It moves on to analyse the key characteristics of partnerships on both sides of the Alps, beginning with their legal nature and the organisation of partnership property either as joint property or as a community of collected hands (Gesamthand). Further topics include the liability of partners vis-à-vis third parties and the principles of management and the legal representation of partnerships in both jurisdictions.

Frederick Rieländer, *Ein einheitliches „Unfallstatut" für Passagiergemeinschaften? – Methoden der Statutenkonzentration im Internationalen Personenbeförderungsrecht* (A Uniform "Accident Act" for Passenger Carriers? – Statutory Concentration Methods for Passenger Carriage in International Law)

Despite extensive harmonisation of the substantive law relating to personal injuries arising out of traffic accidents during passenger carriage by air, rail, road and sea, the various legal systems in the EU still present striking differences with respect to the recoverability of non-economic damage for "secondary victims" in the case of death or injury to the "primary victim". In terms of mass casualty incidents, the relevant EU conflict of laws rules provide for a useful "concentration effect" by designating a manageable quantity of national legal systems governing the carrier's (extra-)contractual liability against fatally injured passengers and their surviving dependants. Nonetheless, since the claims of passengers and their survivors may be governed by different national legal systems, the amount of damages awarded may vary according to the applicable substantive law. At first glance, applying a single body of law governing the claims of all fatally injured passengers and their survivors against the carrier facilitates claims management and promotes equality between the victims who have shared the same misfortune. This article elaborates on the preconditions for an adaptation of EU conflict of laws rules as a possible means of ensuring the application of a single regime of (extra-)contractual liability for mass casualty incidents. In essence, it could be justified to develop a new concept of adaptation in the EU conflict of laws sphere if applying different national legal systems to a mass casualty incident infringes the principle of equal treatment under EU law. A closer analysis of the

respective conflict of laws rules reveals that applying the law of habitual residence of the individual passenger is justified as a legitimate aim of consumer protection. Despite its harmonising effects, the legal concept of adaptation cannot guarantee the application of a sole body of law without exception, as the example of aircraft collisions demonstrates. On the other hand, adopting an artificial conflict of laws rule designating the applicable law for personal injuries arising out of passenger carriage necessarily contravenes the principle of identifying the closest connection and causes unequal treatment between individual victims of comparable tragic scenarios.

Corjo Jansen, *Der Einfluss des deutschen auf das niederländische bürgerliche Recht zwischen 1840 und 1940* (The Influence of German Civil Law on Dutch Civil Law Between 1840 and 1940)

From 1840 onwards, Dutch civil law demonstrated a fundamental openness to influences from foreign, especially German, civil law. In fact, German civil law was one of the main sources of inspiration for the Dutch judge, scholar and legislator at the end of the nineteenth century and during the first two decades of the twentieth century, as were the ideas contained in the works of German luminaries such as Friedrich Carl von Savigny, Rudolph von Jhering and Bernhard Windscheid. The Dutch lawyers felt a close kinship to their German colleagues, due to a common historical background in Roman law. This common tradition, which formed the basis of German and Dutch law, made it attractive to borrow German legal concepts for introduction into the Dutch legal system, a process called legal transplant. The concepts of "security ownership" and "legal act" found a warm welcome in Dutch literature and legal practise and helped Dutch law develop, or, in other words, effected the necessary changes so that Dutch business and patrimonial law could meet the requirements of the time. Apparently German lawyers were confronted with problems in connection with extending credit, new technological developments, crises, and so on, several decades earlier than Dutch lawyers, and their solutions seamlessly found their way into Dutch legal practise.

Similarly, following the introduction of the German Bürgerliches Gesetz- buch (BGB) in 1900, its influence on Dutch private-law literature, legislation and justice and on Dutch civil lawyers was considerable in the first decades of the twentieth century. The Dutch legislative system was faltering, and so there was

every reason to look to the German codification for inspiration and lessons. The comparison with German law in the first decades of the twentieth century breathed new life into the small world of Dutch civil law, even influencing the New Dutch Civil Code which entered into force in 1992. The designer of that Code, the Leiden professor of Civil Law, E. M. Meijers, used his extensive knowledge of German law to design the new Civil Code, an assignment given to him by the Dutch government in 1947.