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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:

Holger Fleischer, *Spezialisierte Gerichte: Eine Einführung* (Specialized Courts: An Introduction)

> *Specialized courts are on the rise. This introduction takes a look at different patterns and types of judical specialization both nationally and internationally. It also addresses potential advantages and disadvantages of a specialized judiciary.*

Anatol Dutta, *Gerichtliche Spezialisierung für Familiensachen* (Specialized Courts for Family Matters)

> *In many jurisdictions, matters of family law are dealt with by specialized family courts. After outlining the different approaches from a comparative perspective (section I.), the article argues that a specialization in the area of family law is desirable. Family matters are not only self-contained from a substantive as well as procedural law perspective and clearly distinguishable from civil and commercial matters, but they are also characterised by a considerable degree of complexity which justifies judicial specialization (section II.). Furthermore, the dangers connected with specialized courts do not materialise in this area of law (section III.). However, a sensible specialization in family matters requires certain conditions as to the organisational structure and staffing of the competent courts (sections IV.1. and IV.3.). These conditions depend upon the role substantive family law assigns to courts. The paper argues that modern family law has abandoned its therapeutic attitude – family law matters are no longer regarded as a potential indication of pathologic families – therefore necessitating a legally oriented and conflict-solving judge rather than a court with a "therapeutic atmosphere". Moreover, the jurisdiction of family courts has to be defined carefully – for example, regarding the question of whether matters of juvenile delinquency and succession matters are to be handled by*

family courts (section IV.2.). Finally, the paper alludes to a tendency to remove family matters from courts by shifting them to extra-judicial institutions or even to the parties and their party autonomy (section V.).

Matteo Fornaser, *Streitbeilegung im Arbeitsrecht: Eine rechtsvergleichende Skizze* (Dispute Settlement in Employment Matters: A Comparative Overview)

Labour disputes are resolved through a broad array of resolution mechanisms. Interests disputes which arise when collective bargaining fails to reach an agreement on the terms of employment are generally settled through extra-judicial conciliation and arbitration procedures. State courts have no role to play in this context since interests disputes are not adjudicated on the basis of legal norms. Rather, such disputes are settled by reaching a compromise which strikes a fair balance between the competing interests of the parties involved. Rights disputes, on the other hand, are generally resolved through specialized state courts and, though more rarely, private arbitration (e.g. in the U.S.). The emergence of these mechanisms has resulted from a general dissatisfaction with the performance of ordinary state courts in resolving labour disputes: employers have taken the view that ordinary state courts are not sufficiently acquainted with the customs and usages of employment, while employees have feared that the courts are biased in favour of employers. The creation of special courts, including lay judges appointed by employers and employees, has sought to tackle these problems and to meet the needs of labour and management. One important aim of labour courts is to facilitate access to justice for employees with a view to ensuring that litigants are on an equal footing. Thus, in most jurisdictions the labour court procedure is designed to reduce litigation costs, e.g. by expediting proceedings and by limiting the right of an employer to recover attorney's fees from the employee-plaintiff in the event the claim is dismissed. Another way to ensure that proceedings before labour courts are speedy and inexpensive is to provide assistance to the parties so as to facilitate their reaching an amicable settlement. With regard to substantive law, labour courts play a dual role. First, they facilitate the enforcement of employee rights and, thus, complement substantive employee protection rules. Second, the emergence of specialized courts for the settlement of employment matters has had a deep impact on the development of labour law as a distinct field of law both in scholarship and practice.

Wolfgang Hau, *Zivilprozesse mit geringem Streitwert: small claims courts, small claims tracks, small claims procedures* (Small Claims: Courts, Tracks, Procedures)

> *In principle, constitutional standards require courts to deal with actions irrespective of the amount in controversy. But this does not necessarily mean that it is appropriate to let ordinary courts apply the standard rules of civil procedure in small claims cases. Rather, it is commonly understood that petty litigation raises particular problems and deserves special solutions. The question of how to design such organizational and/or procedural rules seems to gain momentum perpetually and across all jurisdictions. A comparative and historical analysis reveals an amazing variety of approaches and solutions, i.e. small claims courts, small claims tracks and small claims procedures. When providing special rules for small claims disputes, law-makers normally purport to facilitate access to justice, but more often than not try to cut costs. The latter aim, however, is not to be disregarded since affordability of justice is of utmost importance; moreover, there are numerous examples illustrating that procedural rules which emerged by necessity rather than by design may stand the test of time. Yet one should accept that both goals – removing barriers to justice and relieving the burden on the justice system ? are unlikely to be simultaneously achieved: you cannot have your cake and eat it. Both aims can be reached only if one is willing to cut down on the quality in the administration of justice (in particular as regards factfinding, the legal assessment of the case and the respondent's rights to defend). But in a system governed by the rule of law, this is no less acceptable than the converse, i.e. restricting access to justice as a means of cost-efficiently providing a high-quality system to a reduced number of lawsuits. High standards of accessible justice come at a price: a reasonably funded and elaborated judicial infrastructure available even for small claims.*

Holger Fleischer, **Sebastian Bong** and **Sofie Cools**, *Spezialisierte Spruchkörper im Gesellschaftsrecht* (Specialized Courts in Company Law)

> *Specialized courts are on the advance in many locations. This development is on display also in commercial law and company law. The present article cannot address the topic in its entirety and focuses instead on those judicial bodies that adjudicate internal corporate disputes. Three historic and comparative examples illustrate the particular types of institutions that have been formed.*

At the outset, the venerable German Divisions for Commercial Matters (Kammern für Handelssachen) are analysed, followed by likely the two best-known special courts for company law matters: the Delaware Court of Chancery and the Companies and Business Court (Ondernemingskamer) of the Amsterdam Court of Appeals. These three case studies are followed by a number of comparative observations on specialized judicial bodies in company law.

Stefan Reuter, *Das Rechtsverhältnis im Internationalen Privatrecht bei Savigny* (Savigny and Legal Relationships in Private International Law)

In the legal system conceptualised by Savigny, legal relationships serve as the starting point. Savigny defines a legal relationship as a relation between two people or between one person and an object as determined by legal rules. Accordingly, a legal relationship always has two elements: a material element (the specific facts in question) and a formal element (the legal rules). For example, where the facts of a concrete case involving two people match the conditions of the contract law rules, a legal relation exists between these two people. As compared to a legal relationship, a legal institution consists only of formal elements, namely legal rules, having the same subject matter. For example, all legal provisions regarding marriage form the legal institution of marriage. Although Savigny uses legal relationships as the starting point in both substantive law as well as in private international law, he creates different categories of legal relationships for each of them. Whereas in substantive law Savigny distinguishes between four categories (law of property, law of obligations, family law and law of succession) he adds a fifth category for the sake of private international law: legal capacity. In substantive law, Savigny defines legal capacity not as a legal relationship but only as a pre-condition of a legal relationship. This seems logical given that legal capacity cannot be described as a relation either between two people or between one person and an object, with such a relation being an essential condition according to Savigny's definition of a legal relationship. Nevertheless, in private international law it is generally accepted that legal capacity needs its own, separate conflict rule. Legal capacity was therefore one of the subjects of private international law, and for this reason Savigny re-categorised it as a legal relationship for the purpose of conflict of laws. Ultimately, no advantages follow from having legal relationships serve as the starting point in private

international law – as opposed to legal institutions or legal rules. Legal relationships do not result in a greater number of connections nor in a de-politicization of private international law. Rather, difficulties result when attempting to classify legal relations unknown to the lex fori.