Out now: Zeitschrift für Europäisches Privatrecht, Issue 4 (2018)

The latest issue of the Zeitschrift für Europäische Privatrecht has just been released. It contains the following articles:

Thomas Ackermann, Sektorielles EU-Recht und allgemeine Privatrechtssystematik

> *In the German tradition, private law is considered as a system of consistent rules that can be reduced to a unity formed by a small number of axioms. This idea has been the driving force behind huge efforts to overcome the fragmentation of EU private law. However, the concept of a private law system is unsuitable for a democratic polity whose supranational level is formed by the EU. Instead, the systematic quest for unity and consistency should aim at positioning private law rules in the entirety of our legal order. This leads to a better understanding of European legislation and case-law in the field of private law.*

Jürgen Basedow, Sektorielle Politiken und allgemeine Privatrechtssystematik

> *Following Ackermann the author elaborates on the distinction of horizontal and vertical EU legislation. The problems caused by the latter aggravate by the increasing use of regulations (instead of directives) and by the progressive adoption of rules on liability in acts aiming at market regulation. The author advocates renewed work on a Common Frame of Reference and the creation of a unit within the Commission that would be tasked with the survey of coherence of provisions of the private law acquis.*

Brigitta Lurger, Die Dominanz zwingenden Rechts – die vermeintlichen und tatsächlichen Schattenseiten des EU-Verbraucherschutzrechts

> *EU private law, in particular EU consumer law, has encountered heavy criticism: It was, for instance, accused of being one-dimensional – ie only*

market functional – or to transform contract law into a set of mostly inadequate or inefficient mandatory rules. The article analyses this criticism by creating links between several discourses: (behavioral) law and economics, paternalism, fundamental rights, competences, contract law versus regulatory law, and the conflict between self-interest and social responsibility.

Gerhard Wagner, Zwingendes Vertragsrecht

Modern contract law, as applied between businesses and consumers, operates in the form of mandatory law. This pattern dominates not only in Europe, but also in the United States. It is supported by strong normative reasons. However, it is time to rethink the relationship between mandatory law and court control over standard business terms: Court control over standard terms does better than mandatory law in reconciling consumer protection and private autonomy, and should thus be preferred.

Pietro Sirena, Die Rolle wissenschaftlicher Entwürfe im europäischen Privatrecht

The article deals with the projects of a European private law, which have been drafted in black letter rules, and their influence upon the laws of the Member States as well as that of the European Union. The author points out that a genuine European private law could not overlook the best developments of the national legal cultures, which have been flourishing in the last two centuries on the basis of the national codifications of civil law and the judge-made common law.

Reinhard Zimmermann: Die Rolle der wissenschaftlichen Entwürfe im europäischen Privatrecht

The creation of various sets of „model rules", „restatements", or „non-legislative codifications", particularly concerning contract law, is one of the most remarkable phenomena in the field of comparative private law over the last fourty years. The present essay argues that one important function of these model rules is to facilitate the discussion of legal problems beyond national borders and thus to stimulate the development of a truly European legal doctrine. They can thus help to achieve what Professor Sirena in his lecture is aiming for.

Horst Eidenmüller: Collateral Damage: Brexit's Negative Effects on Regulatory Competition and Legal Innovation in Private Law

> *This article attempts to assess the consequences of Brexit for English and European private law. More specifically, I am interested in how the level of legal innovation in private law will be influenced by Brexit. I argue that Brexit will reduce the level of efficiency-enhancing legal innovation in Member States' and European private law. Brexit will eliminate the UK as a highly innovative competitor on the European market for new legal products in private law, reducing the beneficial effects of regulatory competition. Further, private law-making on the European level will no longer benefit from the UK's efficiency-enhancing influence. I substantiate and illustrate the main thesis of this article with examples taken mostly from contract law and dispute resolution, company law and insolvency law.*

Marc-Philippe Weller/Chris Thomale/Susanne Zwirlein, Brexit: Statutenwechsel und Acquis communautaire

> *The Brexit will have considerable consequences for international private and procedural law. From an individual point of view, there will be changes to the applicable law that can be managed with the methods of the PIL. At a general and abstract level, the shape of the acquis will change in several respects.*

Lado Chanturia, Die Ausdehnung des Europäischen Privatrechts auf Drittstaaten am Beispiel Georgiens

> *Georgia signed an Association Agreement with the EU on 27.6.2014. According to the Association Agreement (AA) the reform of private law should be considered as further development of the Europeanization of Georgian law, which began in the early 1990s. The political decision in favor of the Europeanization of law is now turning into an obligation of legal harmonization. The pertinent areas as per the agreement are electronic commerce, intellectual property rights, competition, company law, accounting and auditing, corporate governance and consumer policy.*

Reiner Schulze, Die Ausdehnung des Europäischen Privatrechts auf Drittstaaten

Following the article by Lado Chanturia (‘Die Ausdehnung des Europäischen Privatrechts auf Drittstaaten am Beispiel Georgiens’, in this issue, page 919), this contribution analyses different ways of third countries adopting European Private Law beyond the institutionalized forms of approximation of law. In particular, it deals with the reception of the law of the Member States and the „acquis commun“ alongside the Acquis communautaire and criticizes the concept of a „legal transplant“ of European law in third countries.