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The latest issue of RabelsZ has just been published. It contains the following articles:

Olaf Meyer, Parteiautonomie bei Mehrrechtsstaaten (Party Autonomy in States with More than One Legal System), pp. 721 et seq

> *Where parties' choice of law in private international law is limited to states with which they have reasonably close ties, similar restrictions usually apply to their choice of local law in states having more than one legal system. However, applying the same limits to both contexts is not mandatory. On the international level there is already a connecting factor that has designated the applicability of the law of a multi-law state. At the local level it is then a question of fine-tuning within that state's legal order. To undertake this fine-tuning exercise on the basis of purely objective criteria is, however, more difficult within a single non-unified legal system than it is between two different states. This is because the relevant facts are packed more densely together and people are more mobile within the same state. Hence, the habitual residence of a person or the closest connection to the facts of a case tends to be more difficult to localise than in cases with connections to different states. Here lies an essential difference between international and inter-local conflicts of laws, which would justify a different approach to resolving them.*

Zufall, Frederike, Shifting Role of the "Place": From *locus delicti* to Online Ubiquity in EU, Japanese and U.S. Conflict of Tort Laws, pp. 760 et seq

> *This article examines the evolution of conflict rules in their perception of "place": the basis for determining jurisdiction and the applicable law. To examine this topic from a global perspective, the legal systems of the EU, Japan, and the U.S. are analyzed and contrasted as representative legal systems from around the world (I.). Europe can be seen as the cradle of the concept of locus delicti, upholding it, albeit with reinterpretation, until today. Like other Asian countries, Japan received locus delicti as a legal transplant, implementing and adapting it in its own way. Finally, the U.S. is known for pursuing a different approach and different connecting places as a result of its conflicts revolution. This study, then, aims to combine a comparative approach with*

conceptual analysis, tracing the evolution of locus delicti as first received from Roman law (II.), through its reinterpretation to address cross-border and multi-state torts (III.), and the adoption of different connecting approaches (IV.), to questions arising from the ubiquity raised by the Internet (V.). To ensure a comprehensive approach, this paper will cover aspects of both the applicable law and jurisdiction, while at the same time having cognizance of their conceptual differences. It will be shown that in seeking "connecting factors", "contacts", or "interests", connection to a place is increasingly lost, blurring territoriality and provoking the question of whether pursuing a fair balance between the parties should, instead, lead our legal reasoning (VI.).

Oliver Mörsdorf, Private enforcement im sekundären Unionsprivatrecht: (k)eine klare Sache? (Private Enforcement under Secondary EU Private Law: (Not) a Clear Matter?), pp. 797 et seq

National private law is increasingly determined by EU legislation which either directly establishes standards of conduct between individuals or obliges Member States to do so. However, such legislation often lacks clarity as to whether private law remedies are granted in cases of non-compliance. In Van Gend & Loos the EJC held that the EEC (now EU) creates individual rights that are directly enforceable before national courts. The Court later developed this principle of direct effect into a far-reaching duty for Member States to ensure the enforcement of individual rights by providing remedies such as a right to invoke the nullity of legal provisions or contract clauses and a right to claim damages from public authorities and private persons. Most legal writers take a functional approach to the question of which EU laws contain individual rights, arguing that the involvement of individuals in enforcement of EU law calls for over-all recognition of individual rights. This private enforcement approach might fit primary law but cannot be transferred to secondary law, where the ECJ's recognition of individual rights goes along with a reduction of EU lawmakers' prerogative to decide on the enforcement standard. The question of whether a secondary law provision contains an individual right thus must be answered strictly by interpreting that provision, taking into account not only its wording and context but also the legislative process preceding its adoption. A prerogative to decide autonomously on the creation of individual rights should be rejected, however, regarding EU provisions that give specific expression to individual rights deriving from primary law. Even if one accepts EU lawmakers'

power to define the scope of primary law to some extent, this power cannot include the very character of provisions as individual rights.

Leon Theimer, The End of Consumer Protection in the U.S.? –Mandatory Arbitration and Class Action Waivers, pp. 841 et seq

Historically, in the early twentieth century, mandatory arbitration was almost non-existent due to the judiciary's widespread refusal to enforce arbitration agreements. This began to change slowly when Congress passed the Federal Arbitration Act (FAA) in order to provide a forum for merchants to settle fact-based contractual disputes. […] The sweeping change towards individual arbitration in consumer disputes is underpinned by the Supreme Court's jurisprudence, which over the last forty years has overwhelmingly favoured the party seeking to arbitrate. While it is beyond the scope of this article to analyse the entirety of the Supreme Court's FAA jurisprudence, Part II will trace arbitration's ascent from the enactment of the FAA in 1925 to the prominent status it enjoys today, particularly focusing on and critically analysing key decisions rendered in the last four decades. Part III will discern some of the most important implications of the status quo and discuss what is left of consumer protection in the arbitration context in the United States today. Lastly, Part IV will explore some approaches that would enhance consumer protection in arbitration along with their prospects, criticisms and justifications.