

Preview: Zeitschrift für Vergleichende Rechtswissenschaft - Abstracts

The upcoming issue of the *Zeitschrift für Vergleichende Rechtswissenschaft* (German Journal of Comparative Law; Vol. 118 [2019], No. 3) features the following contributions:

40 Years Convention on the International Sale of Goods (CISG) - Even More Important Today than 40 Years Ago to Encourage Trade?

Petra Butler[1]

ZVglRWiss 118 (2019) 231-256

Taking note of the United Nations Convention on Contracts for the International Sale of Goods (CISG) upcoming 40-year anniversary the article discusses its success in light of empirical research into the contractual behaviour of small and medium-sized enterprises. The article argues that given the way small and medium-sized businesses manage their dispute resolution risk when contracting cross-border, the CISG is needed today more than ever before.

Anbahnung, Abschluss und Durchführung von Smart Contracts im Rechtsvergleich

Francesco A. Schurr

ZVglRWiss 118 (2019) 257-284

In Germany and worldwide the Smart Contract is a legitimate form that can be used to conclude and to exercise contracts. Due to the enormous relevance in all the world, it seems to be essential to use the method of legal comparison in this field. This seems to be important in order to distinguish the Smart Contract from the Distributed Ledger Technology (DLT) in general and more specifically the Blockchain. The comparative analysis of the paper shows, that the fundamental aspects of the Smart Contract, therefore the immutability, the self-enforcement and the unlimitedness, are understood differently in the various legal cultures.

Still there seem to be good reasons to assume, that software algorithms will change the contractual landscape in the future: maybe one day a contractual link will be feasible without law and this link will be allocated in a global space without national boundaries. The paper shows that the national law of the respective applicable jurisdiction, that is expressed in a natural language and not in a Code, is still essential. Without that, the features of a contractual relationship and the resulting rights cannot be determined. The most recent legislative initiatives in Italy and Liechtenstein can serve as examples for the future legal development in Europe.

Is the Law Ready to Face the Progressing Digital Revolution? - General Policy Issues and Selected Aspects in the Realm of Financial Markets from the International, European Union and German Perspective

Gudula Deipenbrock[2]

ZVglRWiss 118 (2019) 285-313

The progressing digital revolution is in full swing. It dramatically transforms economies, societies and law. To financial markets, cross-border business, opaque interconnections and rapid transformation are nothing new. It is however the accelerated high-speed growth of technical complexity and advanced levels of digitalisation that force financial markets actors in an unprecedented way to adjust to it. But is the law or - more specifically - are policy makers, legislators, and particularly regulators and supervisors ready to face the manifestations of the progressing digital revolution particularly in financial markets? Such readiness to respond entails at the outset to generally define and critically assess which policies are suitable and shall be pursued in finding adequate legal answers. This paper aims to contribute to this discussion. The paper concludes that the law plays a core part in framing, channelling, structuring and monitoring the progressing digital revolution in financial markets.

Grenzüberschreitende Musterfeststellungsklagen

Simon Horn

ZVglRWiss 118 (2019) 314-340

The paper discusses under which conditions the German Model Declaratory

Action allows international participation. The interaction of Sec. 606 et seqq. of the German Code of Civil Procedure and the Brussels Ibis Regulation (Regulation (EU) No 1215/ 2012) provides various possibilities for cross-border Model Declaratory Actions and generally allows international participation in all roles. However, as the Brussels Ibis Regulation is not suited for collective redress mechanisms and the Model Declaratory Action has been drafted from a strictly national perspective without sufficiently considering the problems arising from international participation, cross-border Model Declaratory Actions are a challenge for both German civil procedure and European conflict of jurisdiction rules.

[1] Professor Dr. Petra Butler, Victoria University of Wellington and Director Institute of Small and Micro States. – I am indebted to Chris Nixon, senior analyst (NZIER), Hanneke van Oeveren and Georgia Whelan (both former students at Victoria University Faculty of Law) for the vital empirical research they have done underlying this paper and my enthusiastic colleagues and fellow MSME researchers in Spain, Canada, Singapore, Hong Kong, Belgium, Australia, and the UK (see www.msmejustice.com). I would also like to thank my colleagues at the Max-Planck-Institute for International, European, and Regulatory Procedural Law for providing me with a stimulating and supportive research environment. The article is partly based on a paper delivered at the “The CISG as Middle Age” conference at the University of Pittsburgh in March 2019.

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