New issue alert: RabelsZ 2/2021

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

Horst Eidenmüller: Recht und Ökonomik des Extremsport-Sponsorings in vergleichender Perspektive, Volume 85 (2021) / Issue 2, pp. 273-325 (53), DOI: 10.1628/rabelsz-2021-0002

The Law and Economics of Extreme Sports Sponsoring in Comparative Perspective. – This article investigates the law and economics of extreme sports sponsoring in a comparative perspective. It is based on 40 structured interviews with sponsored athletes from various common law and civil law jurisdictions. The article demonstrates that the current contracting practice is unbalanced and inefficient. It entices athletes to take unreasonably high risks. There are ways to significantly increase the cooperative surplus compared to the status quo. The article further demonstrates that sponsor firms face increased and mandatory duties of care towards young and/or inexperienced athletes. In particular, such athletes should not be influenced by bonus systems in their risk-taking behaviour. The duties of care of a sponsor under contract and/or tort law are also determined by the degree of control exercised by a sponsor and the economic dependence of the athlete on the sponsor. This allows creating a finely tuned regulatory system that, unlike the dichotomy of an independent contractor and dependent worker, is better able to do justice to individual cases.

Arnald J. Kanning: Unification of Commercial Contract Law: The Role of the Dominant Economy, Volume 85 (2021) / Issue 2, pp. 326-356 (31), DOI: 10.1628/rabelsz-2021-0003

This paper is about the unification of commercial contract law. Showing that the legal rules preferred by the "dominant economy" frequently end up in uniform commercial contract laws does not show that those legal rules are inherently superior to any other legal rules. It will be argued that approval of a uniform commercial contract law by the "dominant economy" is the environmental factor that is crucial to its ultimate success, independent of the innate quality of the legal rules preferred by the "dominant economy". Within the conceptual framework of historical and comparative institutional analysis (HCIA), a study is offered of several well-known attempts to unify (and codify) divergent bodies of commercial contract law in the past two centuries. The argument is not so much that the American UCC Article 2 on Sales greatly influenced the CISG as that United States adoption of the CISG was crucial to its ultimate success, independent of the innate quality of the legal rules preferred by the United States.

Justus Meyer: Die praktische Bedeutung des UN-Kaufrechts in Deutschland, Volume 85 (2021) / Issue 2, pp. 357-401 (45), DOI: 10.1628/rabelsz-2021-0004

The Practical Significance of the CISG in Germany. – The UN Sales Law is in different respects a clear success: worldwide, reforms of contract law are oriented towards the CISG. In September 2020 Portugal became the 94th contracting state. The importance of international trade in goods is steadily increasing. However, there is still uncertainty about the acceptance of UN sales law by internationally operating companies and their legal advisors. The present study is based on a survey of 554 attorneys in Germany and compares the answers with results from 2004 as well as from Austria and Switzerland. According to this survey, the international sales contracts heard by courts and arbitrators are predominantly not subject to UN sales law and the proportion of those who regularly use a choice-of-law clause with CISG exclusion has even risen from 42.2 to 52.9 % since 2004. In Austria and Switzerland this proportion has also risen and is even higher than in Germany. Many lawyers

are well aware of the advantages of a neutral legal regime. However, it seems to be easier for them to recommend choice-of-law clauses that exclusively invoke domestic law.

Krzysztof Riedl: Natural Obligations in Comparative Perspective, Volume 85 (2021) / Issue 2, pp. 402-433 (32), DOI: 10.1628/rabelsz-2021-0005

A natural obligation (obligatio naturalis) is a legal construction whose roots stretch back to Roman law. This common source means that we will find similar solutions in legal systems descended from Roman legal culture – with respect to both the understanding of natural obligations and specific instances where they arise. The aim of this paper is to answer the question of whether these different systems define natural obligations in the same manner or whether the natural obligations encountered in these systems are distinct legal institutions sharing only a common name. In this paper, the various approaches of contemporary legal systems to this issue are characterized. Then, a comparative-law analysis focuses on three fundamental aspects of natural obligations: their legal construction (definition), a catalogue of instances, and their legal effectiveness. Under the constructional perspective, two basic models of obligatio naturalis are distinguished and discussed – the obligative model and the causal model – and it is around these two models which the particular conceptions converge. The analysis presented in the paper demonstrates that the similarities between the various models outweigh the differences. This permits us to refer to obligatio naturalis as a universal legal construction.