New issue alert: RabelsZ 3/2021

The latest issue of RabelsZ is out. It contains the following articles:

Kai-Oliver Knops: Die unionsrechtlichen Voraussetzungen des Rechtsmissbrauchseinwands – am Beispiel des Widerrufs von Verbraucherdarlehens- und Versicherungsverträgen (The Requirements of EU Law on Abuse of Law and Abuse of Rights – the Example of the Right to Withdraw from Credit Agreements and Insurance Contract), Volume 85 (2021) / Issue 3, pp. 505-543 (39), https://doi.org/10.1628/rabelsz-2021-0023

> *In the European Union, it is apparently only in Germany that withdrawals by consumers and policy-holders are often rejected as invalid and abusive. Mostly it is argued that an objection of abuse is subject to national law and that application of the principle of good faith is a matter for the judge alone. In fact, the jurisprudence of the Court of Justice of the European Union sets strict limits on the objection of abuse and requires special justification, which the national legal system must comply with in accordance with the primacy of European Union law. Under EU law, withdrawal from consumer loans and insurance contracts will be vulnerable to an objection of legal abuse only in very exceptional cases and by no means as a rule.*

Bettina Rentsch: Grenzüberschreitender kollektiver Rechtsschutz in der Europäischen Union: No New Deal for Consumers (Cross-Border Collective Redress: No New Deal for Consumers), Volume 85 (2021) / Issue 3, pp. 544-578 (35), https://doi.org/10.1628/rabelsz-2021-0024

> *The recently adopted Directive on representative actions marks the beginning of a new era for collective redress in the European Union. However, applying the Brussels Ia and Rome Regulations for questions regarding jurisdiction, recognition, enforcement and the applicable law entails jurisdictional and choice-of-law-related problems inherent in cross-border aggregate litigation as such: European private international law, including its rules on jurisdiction and enforcement, is designed for bipartisan proceedings and thus shows a variety of inconsistencies, deficits and contradictions when faced with collective redress.*

Moreover, applying a multitude of laws to a single collective proceeding generates prohibitive costs for the plaintiff side, while generating economies of scale on the defendant side. It is unlikely that the parties to collective proceedings will enter a subsequent choice of law agreement to reduce the number of applicable laws.

Frederick Rieländer: Der »Vertragsabschlussschaden« im europäischen Deliktskollisions- und Zuständigkeitsrecht (Locating "Unfavourable Contracts" in European Private International Law), Volume 85 (2021) / Issue 3, pp. 579-619 (41), https://doi.org/10.1628/rabelsz-2021-0025

The inconsistent case law of the ECJ concerning the task of locating pure economic loss, for the purposes of Art. 7 No. 2 Brussels Ibis Regulation and Art. 4 para. 1 Rome II Regulation, is characterisedby the absence of a careful theoretical analysis of the protective purposes of the relevant liability rules. In this article, it is submitted that in the voluminous category of cases where a party has been induced into entering an unfavourable contract with a third party, "damage" for the purposes of Art. 7 No. 2 Brussels Ibis Regulation and Art. 4 para. 1 Rome II Regulation generally occurs at the moment when the victim is irreversibly bound to perform its obligation to the third party, whilst it is immaterial whether and, if so, where the contract is performed. Although the locus contractus appears to be the most appropriate connecting factor in the majority of the relevant cases of misrepresentation – particularly for the purpose of tying prospectus liability to the market affected – it needs to be displaced, for instance, in those cases where consumers are lured into purchasing faulty products abroad by fraudulent misrepresentations on the part of the manufacturer.

Raphael de Barros Fritz: Die kollisionsrechtliche Behandlung von trusts im Zusammenhang mit der EuErbVO (The Treatment of Trusts under the European Succession Regulation), Volume 85 (2021) / Issue 3, pp. 620-652 (33), https://doi.org/10.1628/rabelsz-2021-0026

Few legal institutions cause more difficulties in the context of the European Succession Regulation (ESR) than trusts. There is, for instance, hardly any agreement on the scope of the exception created for trusts in Art. 1 para. 2 lit. j ESR. There is also widespread support in academic literature for the application of Art. 31 ESR to trusts, although neither the precise contours of this enigmatic provision nor its exact functioning in connection with trusts has yet been established. The present article addresses, therefore, the question of how trusts are to be treated within the ESR. In particular, it will be shown how Art. 1 para. 2 lit. j ESR is to be understood against the background of Recital 13. In addition, the question will be raised as to what extent Art. 31 ESR has any importance at all in connection with trusts.