Gedächtnisschrift for Hannes Unberath

The publishing house C.H. Beck has recently released the "Gedächtnisschrift für Hannes Unberath". Edited by Stefan Arnold and Stephan Lorenz the volume contains, among others, four German language contributions relating to private international law and international civil procedure:

- *Frank Bauer,* Art. 59 EuErbVO: Verfahrensrechtliche Kollisionsnorm zur Sicherung des freien Verkehrs öffentlicher Urkunden (pp. 19 ff.)
- *Wolfgang Hau,* Zivilsachen mit grenzüberschreitendem Bezug (pp. 139 ff.)
- *Peter Kindler,* Der europäische Vertragsgerichtsstand beim Warenkauf im Lichte der Rechtsprechung des Europäischen Gerichtshofes (pp. 253 ff.)
- *Gerald Mäsch,* Patrick Battistons Jackettkronen und das Kollisionsrecht, oder: Das Deliktsstatut bei Verletzungen im Rahmen von internationalen Sportgroßveranstaltungen (pp. 303 ff.)

For more information see the publisher's website.

It's Taken 15 Years...

...For the Spanish lawmaker to fulfill the promise, made in 2000, of a *Ley de cooperación juridical internacional en material civil.*

The new Act can be downloaded here. It will come into force in twenty days.

Many thanks to Dr. Cristian Oró for the hint.

Out now: The Counterclaim in the Civil Procedural Law of the European Union and its Member States



Dr. *Agnieszka Okonska*, LL.M. (Leipzig), has just published a monumental comparative study on "The Counterclaim in the Civil Procedural Law of the European Union and its Member States" (Die Widerklage im Zivilprozessrecht der Europäischen Union und ihrer Mitgliedstaaten, Mohr Siebeck, Tübingen, 2015, XLVI, 672 pages; Veröffentlichungen zum Verfahrensrecht Vol. 118, € 99.00). The laws on civil procedure of all European Union member states and the contracting states of the Lugano Convention are familiar with the counterclaim. *Agnieszka Okonska* examines meticulously the interaction between national provisions and those contained in the EU Regulations on counterclaims (the Brussels I*bis* Regulation, Small Claims Regulation and the Maintenance Regulation). The author identifies pervasive conflicts and offers solutions to them. Her analysis is based on a thorough comparative analysis of various European legal orders, in particular Germany, Austria, France, England and Poland. The author also looks at the counterclaim in public international and ecclesiastical law. Her study was accepted by the law faculty of the University of Trier as a doctoral dissertation "summa cum laude" under the supervision of Professor Dr. *Jan von Hein* (now University of Freiburg/Germany). For further information, see here.

General Principles of Law: European and Comparative Perspectives – Celebrating 20 Years of the Institute of European and Comparative Law at the University of Oxford

The Institute of European and Comparative Law at the University of Oxford is organising a conference on "General Principles of Law: European and Comparative Perspectives" that will be held at St Anne's College Oxford and the Mathematical Institute, University of Oxford, on 25-26 September 2015.

The description of the conference on the Institute's website reads as follows:

" 'General principles of law' are one of the most visible areas of intersection between EU law and comparative law: as long as they are understood as 'the general principles common to the laws of the Member States' (Art 340(2) TFEU) their fleshing out requires careful comparative preparatory work. True, more often than not, the general principles of EU law were not developed on the basis of thorough and textbook style analysis. This does not make it less interesting to look at the interaction of EU law and comparative law in this particular field. Those working together in elaborating general principles of EU law tend to be responsive to input from national laws, and the laws of the Member States have no choice but to be responsive to the general principles developed at EU level.

It is the purpose of this conference to look at this particular interaction from the perspectives of EU law and comparative law alike. Leading scholars and practitioners from both fields will come together to discuss the most recent developments in the field.

The conference will be held on the occasion of the twentieth anniversary of the Oxford Institute. It will bring together current and former members, visitors and friends of the Institute, as well as those who might belong to one of these

categories in the future. Celebration will be an essential part of the proceedings!”

Further information, including the full programme and registration details can be found here.

Update: International Conference at the Academy of European Law: “How to handle international commercial cases – Hands-on experience and current trends”

It has already been announced on this blog that the Academy of European Law (ERA) will host an international, English-language conference on recent experience and current trends in international commercial litigation, with a special focus on European private international law (see our earlier post here). The event will take place in Trier (Germany), on 8-9 October 2015. A slightly revised programme has now been put online and is available here. Registration is still possible here – so don’t miss the early bird rebate (before 8 September 2015)!

Workshop on General Principles of European Private International

Law in Munich

Professor Dr. *Stefan Arnold* (University of Graz, Austria) is organising a workshop on general principles of European private international law in Munich on 18 September 2015. Renowned speakers will deal with pervasive problems such as the notion of a family in PIL, the applicability of religious law, general principles of attachment, party autonomy, renvoi and public policy. The programme may be downloaded here. The conference will be held in German at the Bavarian Academy of Sciences. Participation is free of charge, but prior registration is required here.

One Name throughout Europe: A Conference in Marburg (Germany) on a Draft for a European Regulation on the Law Applicable to Names

Professors *Anatol Dutta* (University of Regensburg), *Tobias Helms* (University of Marburg) and *Walter Pintens* (University of Leuven) are organising a conference on a draft for a European regulation on the law applicable to names in Marburg (Germany) on Friday, 27 November 2015; for the programme, further information and registration, see here. The background of this event lies in the fact that, in spite of the far-reaching Europeanization of private international law, common conflicts rules on this matter are currently lacking. As a consequence, natural persons moving from one Member State to another may suffer from a non-recognition of a name that they have acquired abroad. In order to cure those "limping" legal relationships, a Working Group was convened by the Federal Association of German Civil Status Registrars in order to elaborate a proposal for

a European Regulation. The resulting proposal has been published in English in the Yearbook of Private International Law XV (2013/14), pp. 31-37 and in French in the Revue critique de droit international privé 2014, pp. 733 et seq. The aim of the upcoming conference is to present and analyse the Working Group's proposal and to trigger further academic discussion on the subject. The conference language will be German. Participation is free of charge, but registration is required before or on 31 October 2015 at the latest.

Beaumont and Trimmings on Human Rights and Cross-Border Surrogacy

Paul Beaumont and *Katarina Trimmings* (Director and Deputy Director of the Centre for Private International Law, University of Aberdeen, respectively) have just published a highly interesting paper on "Recent jurisprudence of the European Court of Human Rights in the area of cross-border surrogacy: is there still a need for global regulation of surrogacy?". The article is the second paper in the Working Paper Series of the Centre for Private International Law (University of Aberdeen) and is now available on the Centre's website here.

The first part of their paper examines the recent decisions of Chambers of the European Court of Human Rights in cases of *Mennesson v. France* (on this case, see the earlier post by *Marta Requejo*), *Labassee v. France* (cf. the earlier post by *F. Mailhé*), and *Paradiso and Campanelli v. Italy*. It then makes some suggestions as to how the Grand Chamber should deal with the *Paradiso and Campanelli* case before analysing the likely consequences of the *Mennesson* and *Labassee* judgments for national authorities in the context of surrogacy. The article then explores whether, following these decisions, there is still a need for an international Convention regulating cross-border surrogacy.

For those interested in recent developments in German case law on cross-border

surrogacy, I also recommend an earlier post by *Dina Reis*.

Surveys on European Order for Payment and Small Claims Procedures

PhD Researcher Elena Alina Ontanu (supervised by Prof. Xandra Kramer) from Erasmus University Rotterdam is conducting an empirical and comparative research on the functioning of the European Order for Payment and the European Small Claims Procedure in **England and Wales**, **France**, **Italy** and **Romania**. Practitioners from these jurisdictions having experience with (one of) these procedures are warmly invited to fill in the surveys by clicking the links below. The collected data aim to gain a better insight into the use and functioning of these procedures in the selected Member States.

England and Wales
– European Order for Payment
– European Small Claims Procedure

France
– Injonction de payer européenne
– Règlement européen des petits litiges

Italy
– Ingiunzione europea di pagamento
– Procedimento europeo per le controversie di modesta entità

Romania
– Somatia europeana de plata
– Procedura europeana privind cererile cu valoare redusa

The surveys are divided in several sections regarding various aspects of the

procedures. Please note that some questions might not be relevant for all legal professions. The time necessary for filling in a survey ranges between fifteen to thirty minutes, and participation will remain anonymous. Multi-session access to the surveys is possible from the same computer. The survey will remain open until **30 September 2015**.

We thank you for sharing your invaluable experience and views.

The Ninth Circuit Confirms High Hurdle to Establish General Personal Jurisdiction Over Foreign Corporations

On July 16, 2015, the often-thought-of-as-"liberal" (but it may surprise you) Ninth Circuit issued a decision confirming the high hurdles to bring suit against non-U.S. corporations in U.S. courts (and also confirmed how hard it can be to bring suit against U.S. corporations for alleged harms occurring abroad). The plaintiff in the case, Loredana Ranza (a U.S. citizen residing in the Netherlands at the time of suit and now living in Germany), brought suit against her Netherlands employer, Nike European Operations Netherlands, B.V. (NEON), and its parent corporation, Nike, Inc., for violations of federal law prohibiting sex and age discrimination. The questions before the Court were (1) whether NEON was subject to general jurisdiction in Oregon, (2) whether Nike's contacts with Oregon could be attributed to NEON to establish general jurisdiction, and (3) whether the case should be dismissed on forum non conveniens grounds.

As to NEON, the Ninth Circuit noted that merely doing business in the forum state cannot suffice for purposes of general jurisdiction. The Court deemed it insufficient to establish general jurisdiction that NEON employees traveled frequently to Oregon and entered into business agreements there. Thus, because NEON did not have its principal place of business and was not incorporated in

Oregon, it was not subject to general jurisdiction. **Note**: there has been some question following recent Supreme Court decisions whether merely "doing business" in the forum can establish general jurisdiction. The Ninth Circuit has come down on the side of "no," which could be very influential as other courts continue to deal with this issue.

Next, the Court considered whether Nike's contacts could be attributed to NEON to establish general jurisdiction. **Note the twist**: most imputation cases involve using a domestic subsidiary's contacts with the forum state to get jurisdiction over a foreign parent corporation. This question had been briefed but was not decided by the Supreme Court in its *Daimler* decision. Here, the Ninth Circuit held that contacts could only be attributed when the subsidiary acts as the alter ego of the parent. Because the plaintiff could not show that the corporate formalities were not observed, Nike's contacts could not be imputed to NEON. In so holding, the Ninth Circuit interred its agency test for attribution, whereby contacts could be imputed when the subsidiary performed "important" work that the parent would have to do for itself if the subsidiary did not exist. In light of the alter ego test, it will now be incredibly hard to base jurisdiction on attribution of contacts in the Ninth Circuit.

Finally, since Nike was subject to general jurisdiction in Oregon, the Court considered whether the case should be dismissed on forum non conveniens grounds. According to the Court, "[o]n balance, the inconvenience of litigating this case in Oregon, the inefficiency and inadvisability of relitigating claims the Dutch ETC has already decided, and the adequacy of the ETC as an alternative forum establish that the District of Oregon is not an appropriate forum for Ranza's claims."

Taken as a whole, this case confirms that U.S. may be moving away from permissive jurisdictional rules, and that the U.S. may no longer be quite such a magnet forum.