New Dutch treatise on PIL (Asser/Kramer & Verhagen)

The last volume of three books dedicated to private international law within the leading Asser-series in the Netherlands has just been published.

Asser/Kramer & Verhagen, 10-III International vermogensrecht, Deventer: Kluwer 2015 (827 pages). It is authored by Xandra Kramer (Erasmus University Rotterdam) and Rick Verhagen (Radboud University Nijmegen/Clifford Chance), in collaboration with Sanne van Dongen and Paul Vonken (Radboud University Nijmegen). The book discusses Private International Law aspects of company law, agency, property law, trusts, contractual and non-contractual obligations from a Dutch, European and international perspective. More information is available here. A seminar dedicated to the publication of this book will take place at Clifford Chance in Amsterdam on 29 January 2015 (14-18 hrs), registration information is available here.

It follows the publication of the first volume dedicated to general aspects of PIL: **Asser/Vonken, 10-I Algemeen deel**, Deventer: Kluwer 2013, authored by Paul Vonken, in collaboration with Rick Verhagen, Xandra Kramer and Sanne van Dongen and part two on international family and succession law: **Asser/Vonken, 10-II Internationaal personen-, familie- en erfrecht**, Deventer: Kluwer 2012, authored by Paul Vonken, in collaboration with Freek Schols (Radboud University Nijmegen).

La Ley: Unión Europea (Number 21)

Number 21 (December 2014) of the Spanish legal journal *La Ley: Unión Europea* has been released, with the following contents:

Section *Doctrina*

Patricia OREJUDO PRIETO DE LOS MOZOS, "Diez años de aplicación e interpretación del Reglamento Bruselas II bis sobre crisis matrimoniales y responsabilidad parental (Análisis de los aspectos de competencia judicial internacional)

Abstract: *Ten years have already passed since Brussels II bis Regulation entered into force. Along these years, the EU institutions, and especially the ECJ, have developed an important task in the interpretation and application of this instrument. By means of an analysis of this development, this paper is directed to contribute to the reflection on some of the issues that are currently under consideration ahead of a possible reform of the Regulation, and also to draw attention to other issues that are not being considered. For reasons of limited space, whole consideration is given to the rules on international jurisdiction.*

Ana FERNÁNDEZ PÉREZ, "La cooperación de la Unión Europea con terceros países en materia de defensa de prácticas anticompetitivas: hacia un modelo de *nueva generación*"

Abstract: *The need to implement a Defense of Competition system in all states of the WTO offers several avenues to strengthen international cooperation in the fight against anticompetitive conducts. In this sense, bilateral conventions seem to respond to this need by promoting the convergence of tools and practices of competition policy among jurisdictions and facilitate cooperation with competition authorities.*

Section *Tribuna*

Alegría BORRÁS, "La aceptación de las adhesiones al Convenio de La Haya de 1980 sobre sustracción de menores: el Dictamen del TJUE de 14 de octubre de 2014"

Abstract: *On 14 October 2014 the European Court of Justice delivered its opinion on the exclusive external competence of the European Union to accept the accession of third States to the 1980 Hague Convention on the civil aspects of international child abduction. Following strictly its opinion 1/03 the Court understands that it is necessary to maintain the uniform and consistent application of EU rules. This comment refers to this opinion in contrast with the*

view of the great majority of member States and of the Council.

The current issue contains as well a section on case law with comments on selected decisions.

German Society of International Law: 34th Biannual Conference, March 11 to 14, 2015

From 11 through 13 March 2015 the German Society of International Law will hold its 34th biannual conference at the Justus Liebig University in Gießen (Germany). The conference will address two different topics: “Freedom and Regulation in Cyberspace” and “Identifying the Law between Source and Judicial Application”.
Further details are available (in German) at the conference website.

Call for Papers, Utrecht Journal of International and European Law

The Utrecht Journal of International and European Law is issuing a Call for Papers to be published in its 81st edition on ‘General Issues’ within International and European law. The Board of Editors invites submissions addressing any aspect of International and European law. Topics may include, but are not limited to, International and European Human Rights Law, International and European Criminal Law, Transnational Justice, Family Law, Health and Medical Law, Children’s Rights, Commercial Law, Media Law, Law of Democracy, Intellectual

Property Law, Taxation, Comparative Law, Competition Law, Employment Law, Law of the Sea, Environmental Law, Indigenous Peoples, Land and Resources Law, Alternative Dispute Resolution or any other relevant topic.

Authors are invited to address questions and issues arising from the specific area of law relating to their topic. All types of manuscripts, from socio-legal to legal technical to comparative, will be considered for publication.

The Board of Editors will select articles based on quality of research and writing, diversity and relevance of topic. The novelty of the academic contribution is also an essential requirement.

Prospective articles should be submitted online via the journal website, and should conform to the journal style guide (See here for full details). Utrecht Journal has a word limit of 15,000 words including footnotes. For further information please consult the website or email us at utrechtjournal@urios.org.

Deadline for Submissions: 30 April 2015

Choice of Law in the American Courts in 2014: Twenty-Eighth Annual Survey

Prof. Symeonides latest survey on choice of law in the American Courts is available on SSRN (to be published later in the American Journal of Comparative Law, vol. 63, 2015-2). The abstract reads as follows:

“This is the Twenty-Eighth Annual Survey of American choice-of-law cases. It was written at the request of the Association of American Law Schools Section on Conflict of Laws and it is intended as a service to fellow teachers of conflicts law, both in and outside the United States.This Survey covers cases decided by American state and federal appellate courts from January 1 to December 31, 2014, and posted on Westlaw by midnight, December 31, 2014. Of the 1,204 cases

that meet these parameters, the Survey focuses on those cases that may contribute something new to the development or understanding of conflicts law — and, particularly, choice of law. The following are some of the highlights of the year:

One U.S. Supreme Court decision dealing with general jurisdiction, the second in three years, after a thirty-year silence; Seven cases deciding whether the Alien Tort Statute applies to actions filed by foreign plaintiffs against American defendants alleged to have aided and abetted the commission of international law violations outside the United States; a case involving a cross-border shooting of a Mexican boy by a U.S. Border Patrol agent; and a case arising from the imprisonment of U.S. contractor Alan Gross in Cuba;

Fifty-six court rulings striking down as unconstitutional the prohibition of same-sex marriages in 26 states, one ruling upholding the prohibition in four states, and a Texas case recognizing a California judgment that declared both male partners in a same-sex marriage to be the parents of a child conceived through artificial insemination and carried to term by a surrogate mother;

One more xenophobic statute, the eighth in four years, banning the use of certain foreign laws;

Several tort cases involving conduct-regulation conflicts and applying the law of the state of the tort, rather than the parties' common domicile;

One state supreme court case joining the minority of courts that have rejected the doctrine of severability of choice-of-forum clauses, and several cases involving the interplay of those clauses and choice-of-law clauses;

A California Supreme Court case holding that the Federal Arbitration Act (FAA) did not preempt a California statute that prohibited waivers of "representative actions" filed by employees against employers for violating the state's labor laws, and two cases disagreeing on whether contracting parties may avoid FAA preemption by choosing the "non-federal" part of a state's law;

A New York case recognizing a foreign judgment, even though New York had no jurisdiction over the debtor or his assets; a Pennsylvania case giving full faith and credit to the New York judgment; and a D.C. case refusing to do so — and not only because New York did not have jurisdiction; and

Many other interesting conflicts cases involving products liability, other torts, contracts with and without choice-of-law clauses, insurance contracts, statutes of limitation, marriages by proxy, divorce, marital property, and successions."

Save the date: Workshop on Sovereign Debt in Cambridge

On 25 May 2015 Anne Henow, Hayk Kupelyants, Jens van 't Klooster, Kim Hecker and Marco Meyer from the University of Cambridge will host a one day workshop on "The Ideal of Democracy and the Reality of Sovereign Debt" at Gonville and Caius College in Cambridge.

Here is the call for papers:

> *In the aftermath of the 2008 bank bailouts, sovereign debt has increased to unprecedented levels. As a result, governments saw their policy room curtailed by the demand for credibility and access to international capital markets. In Greece and Italy, democratically elected officials stepped down from power with the aim of promoting creditworthiness. The Argentine litigation in the United States again brought attention to substantial sway of bondholders over sovereign states.*
>
> *As a response, economic and legal debates on sovereign debts have been wide and varied, but they have only rarely addressed the core normative issues involved in issuing, trading, and restructuring sovereign debt. Political philosophers have been slow to respond to issues raised by recent debt crises. One likely reason for the current lack of normative reflection on the increased political importance of financial dynamics is the complexity of international financial markets.*
>
> *The aim of the workshop is therefore to bring together scholars from*

philosophy, law, and the social sciences to discuss the consequences of rising sovereign debts for the normative ideals that inform existing parliamentary democracy. The workshop will feature invited contributions by keynote speakers Philip Wood (Law, Allen & Overy) and Gabriel Wollner (Philosophy, Humboldt). Drawing on these diverse perspectives, the workshop will contribute to a new framework for evaluating sovereign indebtedness.

Topics include but are certainly not limited to:

- *Financial markets and democratic sovereignty*
- *Design of sovereign debt contracts and the role of international institutions*
- *The values and dangers of sovereign debt for social welfare*
- *Sustainable public finance and investment*
- *Fair sovereign debt restructuring*
- *Dealing with sovereign debt within the Eurozone*
- *Odious debt*
- *Rights and responsibilities of bondholders*

Keynote speakers:

PHILIP WOOD is an expert in comparative and cross-border financial law and works full-time for the law firm Allen & Overy in the firm's London office. He has written around 18 books, including nine volumes in the series Law and Practice of International Finance published in He held visiting academic positions at the Universities of Cambridge, Oxford and Queen Mary.

GABRIEL WOLLNER is assistant professor in philosophy at Humboldt University Berlin. His academic interests are in political philosophy and ethics, and the application of these inquiries to various issues in public policy. His work has appeared in a number of journals, including 'The Journal of Social Philosophy', 'The Journal of Political Philosophy' and 'The Canadian Journal of Philosophy'.

Submission details and deadlines:

The workshop is a one day event for which participants are expected to read the presented papers in advance. Papers can be up 10,000 words in length and presentations will be limited to 10 minutes, followed by a 40 minute discussion.

To apply, please send a 500 – 700 word abstract to Jens van 't Klooster (jmv32@cam.ac.uk) before the 15th of February. Accepted presenters will be asked to circulate their paper by the first of May.

Organizers: Anne Henow, Hayk Kupelyants, Jens van 't Klooster, Kim Hecker and Marco Meyer.

We gratefully acknowledge support by the University of Cambridge School of Arts and Humanities, Gonville and Caius College Cambridge and the Cambridge-Groningen 'Trusting Banks' project.

Briggs, Private International Law in English Courts (OUP, 2014)

£195 from OUP

Top of my Christmas conflict of laws wish-list is this new work from Adrian Briggs, ***Private International Law in English Courts*** (OUP, 2014). The blurb:

This book offers a restatement of European and English Private International Law as it applies in the English courts. The author has set out to create a contemporary approach to private international law which is distinguished from the traditional approach of describing private international law through its common law foundations. The author places European Regulations, and related statutory material, at the front and centre of the book, reorganising private international law according to the principles that the law is increasingly European and decreasingly insular. As such the work constitutes an approach to the area which is essential for litigators dealing with questions of private international law influenced by forty years of European legislation. The in-depth discussion will also be valuable to academics specialising in private

international law. Written by an academic who is also a practising barrister, this book seeks to highlight the techniques and principles which provide the hidden infrastructure and support mechanisms for the private international law rules of European law, as well as the remaining standing of the common law rules of private international law.

The book will be useful to practising lawyers tackling issues of private international law as it now is, after forty years of European legislation, but the in-depth discussion will also be valuable to academic lawyers specialising in private international law. Written by an academic who is also a practising barrister, this book seeks to highlight the techniques and principles which provide the hidden infrastructure and support mechanism for the private international law rules of European law, as well as (albeit second) for the common law rules of private international law.

If I may offer my own blurb: this is a book that everyone working in private international law (and especially in the UK) will need access to, given both the recognition that the conflict of laws is now primarily a conflict made better or worse by European law, and the importance of Prof Briggs' work to all who study, write or practise in this field. It is available on the OUP website for £195.

Volume on the Role of Consumer ADR and the Administration of Justice

Michael Stürner (University of Konstanz), *Fernando Gascón Inchausti* (Complutense University of Madrid) and *Remo Caponi* (University of Florence) have edited a volume on "The Role of Consumer ADR in the Administration of Justice" (Sellier European Law Publishers, Munich). It sheds light on the Directive on Alternative Dispute Resolution and the Regulation on Online Dispute Resolution – and their likely impact on the administration of

justice in consumer matters:

The book jacket reads as follows:

> *The landscape of alternative dispute resolution in consumer cases (CADR) is about to change profoundly. With the advent of Directive 2013/11/EU on Alternative Dispute Resolution (ADR) and Regulation (EU) No 524/2013 on Online Dispute Resolution (ODR) a new way to settle disputes is advocated as a tool to enhance the internal market. The ADR system implemented by these instruments is designed to provide for speedy and low-cost out-ofcourt dispute settlement procedures between consumers and traders arising from the sales of goods and services. However, many questions remain open, namely the impact of the CADR system on the adjudication by state courts. The role CADR can play in the administration of justice is yet to be defined. In the present volume renowned experts of civil procedure and ADR shed light on a newly emerging branch of law.*

More information is available on the publisher's website.

Australian Private International Law for the 21st Century (Hart, 2014)

Australian Private International Law in the 21st Century

A new edited collection, ***Australian Private International Law for the 21st Century: Facing Outwards***, has just been published by Hart/Bloomsbury. Edited by Andrew Dickinson, Mary Keyes and Thomas John, here's the blurb:

A nation's prosperity depends not only on the willingness of its businesses to export goods and services, and of its citizens and residents to travel to take advantage of opportunities overseas, but also on the willingness of the businesses and citizens of other nations to cross the nation's borders to do business. Economic expansion, and parallel increases in tourism and immigration, have brought Australians more frequently into contact with the laws and legal systems of other nations. In particular, in recent years, trade with partners in the Asia-Pacific Region has become increasingly important to the nation's future. At the same time, Australian courts are faced with a growing number of disputes involving foreign facts and parties. In recognition of these developments, and the need to ensure that the applicable rules meet the needs both of transacting parties and society, the Attorney-General's Department launched in 2012 a full review of Australian rules of private international law. This collection examines the state and future of Australian private international law against the background of the Attorney-General's review. The contributors approach the topic from a variety of perspectives (judge, policy maker, practitioner, academic) and with practical and theoretical insights as to operation of private international law rules in Australia and other legal systems.

You can purchase it for the (very competitive) price of £50GBP from the Hart website, both in paper and digital versions.

Latest Issue of RabelsZ: Vol. 78 No 4 (2014)

The latest issue of "Rabels Zeitschrift für ausländisches und internationales Privatrecht – The Rabel Journal of Comparative and International Private Law" (RabelsZ) has recently been released. It contains the following articles:

McGrath, Colm Peter, and Helmut Koziol: *Is Style of Reasoning a Fundamental Difference Between the Common Law and the Civil Law?*

Renner, Moritz: *Transnationale Wirtschaftsverfassung* (Transnational Economic Constitutionalism)

Since the 1920ies, the concept of the Economic Constitution ("Wirtschaftsverfassung") has been highly influential in German and European legal thinking. The Economic Constitution refers to the mandatory legal rules which shape the relationship of economy and politics within a democratic society. In Europe, these norms have come to be defined on a supranational level. Here, the Four Freedoms and the competition rules of the EU Treaty are the cornerstones of a European Economic Constitution. On the international level, there is no equivalent to such norms. World trade and investment law enshrine free trade, whereas there is an apparent lack of even basic rules of market regulation. The practice of cross-border economic exchange can be described as "private ordering in the shadow of law". Rules from different legal sources are recombined – or even replaced – by private mechanisms of dispute-resolution and standard-setting. The article analyzes this development with a view to the rise of international commercial arbitration and the growing importance of international accounting standards. Both examples show the limited reach of domestic and supranational Economic Constitutions, as they can be employed for "opting out" of mandatory regulation in cross-border contexts. At the same time, however, the institutions of private ordering described here increasingly develop their own standards of mandatory law, both by referring to existing national, supranational and international norms and by generating new rules of a genuinely transnational character. The article argues that these rules may form the nucleus of an emerging Transnational Economic Constitution ordering the relationship between economy, politics and law on a global level.

Donini, Valentina M.: *Protection of Weaker Parties and Economic Challenges – An Overview of Arab Countries' Consumer Protection Laws*

Lieder, Jan: *Die Aufrechnung im Internationalen Privat- und Verfahrensrecht* (Set-off in International Private and Procedural Law)

This paper analyses the functions of set-off, illustrates the differences between individual national regimes, introduces and explains Art. 17 of the Rome I Regulation (Rome I) and discusses disputes regarding further topics relating to the private international and procedural law of set-off.

The primary function of set-off is the simplification of payment transactions. It facilitates the settlement of mutual claims of two parties against one another in a fast and simple way and reduces transaction costs by rendering unnecessary the execution of two separate payment transactions and by disburdening lawsuits from multiple claims. Given these – and other – functional advantages, no developed legal system can afford to abstain from providing the legal institute of set-off. Nevertheless, there are profound differences between individual legal systems, e. g. in the classification of set-off as a matter of substantive or procedural law, in whether there is a pre-condition of an offsetting statement, and whether the set-off has a retroactive effect back to the moment in which the two claims faced each other for the first time (ex tunc) or whether it just takes effect ex nunc after the issuance of an offsetting statement. European and international academic model rules (DCFR, UNIDROIT) basically follow the German-coined continental approach, with the exception of instead giving a set-off an ex nunc effect to a large extent. The regulation of the conflicts of law by the newly established Art. 17 Rome I is of fundamental importance given the differences between the legal systems. It declares as applicable the law governing the claim against which the right to set-off is asserted and abolishes former disputes about the applicable law. It aims at protecting the set-off opponent, which is justified since he is confronted with the extinction of his claim and the party who has pleaded the set-off, judicially or extra-judicially, had the choice to file a suit instead. The author argues that all known kinds of unilateral set-offs should be governed by Art. 17 Rome I, and that – irrespective of the scope of Rome I – all kinds of claims, contractual and non-contractual, should be subjected to its Art. 17 (analogously). Since Art. 17 Rome I does not regulate the law applicable to set-off by contract, the general rules of the law of conflicts apply, especially Arts. 3 and 4 Rome I. Furthermore, Art. 17 Rome I does not apply to genuinely procedural aspects of a set-off, so that the lex fori is to be applied. Heavily disputed is the question of the international jurisdiction of a court in respect to procedural set-offs against disputed, non-connected claims. Here, the author argues against international jurisdiction as a prerequisite since the set-off opponent is not deserving of any protection.

Corneloup, Sabine: *Rechtsermittlung im internationalen Privatrecht der EU: Überlegungen aus Frankreich* (The Application of Foreign Law in European Private International Law: Reflections from a French Perspective)

On 16 January 2014, a symposium of the German Council of Private International
Law took place in honour of the 80th birthday of Hans Jürgen Sonnenberger. This article is based on a presentation given at that symposium. Its purpose is to formulate, as far as the scope of application of the Private International Law of the EU is concerned, proposals for harmonizing the application of foreign law by the national courts of the Member States. First, it provides an overview of the position in France and comes to the conclusion that the French case law is not completely satisfactory. Secondly, regarding the mandatory or facultative nature of conflict-of-law rules, it proposes that a clear distinction should be made between the judge and the parties. Conflict-of-law rules should always be applied ex officio by the judge, whereas the parties should have the possibility in the course of the proceedings to choose the lex fori. The limits of party autonomy are defined according to two different models which both might be appropriate. Regarding the ascertainment of foreign law, the article advocates for better judicial cooperation especially within the European Judicial Network.