Save the date: Conference on Coherence in European Private International Law in October 2014

On 10 and 11 October 2014, *Jan von Hein* from the University of Freiburg and *Giesela Rühl* from the University of Jena will host a conference on coherence in European private international law. Speakers from Germany, Austria and Switzerland will critically assess the current state of European private international law including the law of international civil procedure. They will uncover inconsistencies, contradictions as well as frictions and discuss how they can be overcome. Should the European legislator continue to enact separate legal acts for individual legal fields (contracts, torts, divorce, maintenance, succession, etc.)? Should the European legislator regulate choice of law and international civil procedure in separate legal acts? By asking these and other questions the conference seeks to contribute to the ongoing debate about the future of European private international law.

The conference is funded by the Fritz Thyssen Stiftung and will take place in Freiburg im Breisgau (Germany). The conference language will be German. Registration will be open soon.

Essays in Honour of Professor Emeritus Spyridon Vrellis

Essays in Honour of Professor Emeritus Spyridon Vrellis, a long-term affiliate of the University of Athens, are issued under the title In Search for Justice. The volume contains an extensive curriculum vitae and bibliography of Professor Vrellis. It also includes 71 paper in four languages (Greek, French, English and

German). According to the official information from the publisher, the contributors are:

Adamopoúlou P., Basedow J., Bogdan M., Borrás A., Voúlgaris I., Burian L., Yeoryiádis Ap., Gkórtsos Khr., Cordero J. Sanchez, Davrádos N., Deliyiánni-Dimitrákou Khr., Delikostópoulos I., Doúnga Al., Koumplí V., Drillerákis I., Dintjer Tebbens H., Dorís Ph., Frank R., Gaudemet-Tallon H., Grammaticaki-Alexiou A., Hartley T., Jessurun D?Olivira H. U., Kaïsis A., Karayiannis S., Karampatzós A., Katiphóris N., Kiraly M., Klamarís N., Kondíli I., Kotsíris L., Kourákis N., Kríspis I., Lagarde P., Lando O., Lipp V., Mantákou Á., Meeusen J., Meïdánis Kh., Moura Ramos R. M., Moustaïra E., Nafziger, J., Özsunay E., Pampoúkis Kh., Panópoulos G., Papadélli A., Papadopoúlou-Klamarí D., Papanikoláou P., Papasiópi-Pasiá Z., Pataut E., Pauknerová M., Pvifver M., Pelleni A., Pintens W., Poúlou E., Rethimiotáki E., Siehr K., Stathópoulos M., Stamatiádis D., Stribis I., Sturm F., Sturm G., Symeonides S., Sotiropoúlou M., Tagarás Kh., Tadaki M., Tarman Zeynep D., Tzákas D. -P., Tsavdarídis A., Tsevás A., Tsikrikás D., Tsoúka Khr., Vassilakakis E., Khristodoúlou K. and Zervoyiánni E.

Many contemporary topics on private international law are examined in the published papers. These are the contents (for which I thank Professor Vassilakakis) and other information about the Essays are available here.

"Judgments on Awards" in "Secondary Jurisdictions": The D.C. Circuit Decision in Commisimpex v. Congo

Over fifteen years ago, on the 40th anniversary of the of the New York Convention, Jan Paulsson wrote that it was high time for the Convention "to discover its full potential." *See* Paulsson, *Enforcing Arbitral Award Notwithstanding Local Standard Annulments*, 6 Asia Pac. L. Rev. 1 (1998). He

"propose[d]" that "the annulment of an award by the courts in the country where it was rendered should not be a bar to enforcement elsewhere unless the grounds of that annulment were ones that are internationally recognized." In his view, an "enforcement judge . . mak[es] a decision which will have practical consequences on resources located in his or her jurisdiction," and need not take another enforcement court's assessment of local or even international standards as "controlling."

This week, before the United States Court of Appeals for the D.C. Circuit, we see somewhat of an opposite scenario. A party wins an international arbitration in Paris in 2000. It successfully enforces the award in London in 2009—thus making that award an English judgment. But the creditor is unable to collect on the judgment in England, and pivots west to the United States. But the three-year statute of limitations has run under the Federal Arbitration Act ("FAA"), meaning that the award can't be enforced there. The applicable statute of limitation for foreign judgments, however, is 10 years, so it seeks to enforce that instrument instead. Though Professor Paulsson says that each enforcement court must make its own decision on the enforceability of foreign arbitral awards, does the conversion of that award into a national court judgment take it out of the arbitration context altogether? Stated more bluntly, can a litigant "launder" the award in this manner?

Earlier this year, the District Court said no. In its view, enforcement of a judgment pregnant with an arbitral award "would create an obstacle to the accomplishment and execution of the full purposes and objectives" of the FAA and the New York Convention which it sought to codify. In its view, the "maneuver" attempted by the award-judgment-creditor here would "outsource[e]" the question of timeliness to litigants and foreign states and "upset the balance between promoting arbitration, on the one hand, and protecting potential defendants' interest in finality," on the other.

Just last week, the D.C. Circuit disagreed. Siding with the United States as amicus curiae, and prior decisions of the Second Circuit—the only other court to address the issue—it observed that "the overriding purpose of [the] FAA . . . is to facilitate international commercial arbitration by ensuring that valid arbitration agreements are honored and valid arbitral awards are enforced. . . . [The purpose] is not undermined — and frequently will be advanced — through recourse to parallel enforcement mechanisms that exist independently of the

FAA." "Although an arbitral award and a court judgment enforcing an award are closely related, they are nonetheless distinct from one another, and that distinction has long been recognized." In a nod to Professor Paulsson's view, the Circuit acknowledged that England is a "secondary jurisdiction" with respect to the French arbitral award, so its decisions "have 'no preclusive effect' in recognition proceedings in the United States." But in this context, the U.S. court is not being asked to "automatically to accord preclusive effect to the English Court's determinations on the Award under the Convention, but rather to assess the English Judgment under the separate (and clearly distinct) factors for judgment recognition under [state] law."

Parallel coverage by Ted Folkman is on Letters Blogatory today, too.

Research on Child Abduction

Professor Paul Beaumont of the University of Aberdeen, in collaboration with ***Dr Lara Walker*** of the University of Sussex, has received funding from the Nuffield Foundation to carry out empirical research on **Child Abduction** in the European Union. The project started on 1st April 2014 and lasts for 20 months.

The project concerns the place of adjudication of cases of international child abduction.

The Hague Convention on Child Abduction makes the presumption that it is generally in the interests of abducted children to be returned to the country of origin for adjudication, so that the courts there can carry out a full assessment of their interests. But under Article 13, the state of refuge can issue a 'non-return order' where there are concerns about a return to the stage of origin. The study will focus on the operation of the Brussels IIa regulation, which allows the courts of origin to overturn this non-return order.

The study will involve collation of data from Central Authorities in all the relevant states, to estimate the number and basic characteristics of cases where the courts of origin have overruled a non-return order. More detailed analysis of case reports will enable the researchers to examine the processes which led the courts of origin to reach this decision. The study will also consider the relationship between decisions about the place of adjudication and the outcome of the case – in other words, does the decision to return a child to the state of origin also result in

custody provision being made? The findings from this study will inform a forthcoming consultation to review the Brussels IIa regulation and associated practice guidance.

How can you help?
The Centre for Private International Law is interested in receiving information from anyone who has details of judgments in child abduction cases involving both Article 13 of the Hague Child Abduction Convention and Article 11 (8) of the Brussels IIa Regulation to further our research.
Confidentiality will be respected.
Information should be sent to Jayne Holliday at jayne.holliday@abdn.ac.uk
More information on the project can be found here.

Belgium ratified the Child Protection Convention of 1996

Belgium has ratified the Hague Child Protection Convention of 1996. Readers might remember that the ratification by the EU Member States of this instrument was delayed due to a diplomatic issue. Once this was resolved, the Commission's objective was that all Member States should ratify the Convention by 2010 (see the Council Decision of 5 June 2008). Some were late. Belgium, as the second last Member State to ratify, has now done so. Of the EU Member States only Italy's ratification remains outstanding.

The Convention will enter into force in Belgium on 1 September 2014.

New publication on Matrimonial

Property Proposal

Jaqueline Gray and Pablo Quinzá Redondo published “Stress-Testing the EU Proposal on Matrimonial Property Regimes: Co-operation between EU private international law instruments on family matters and succession” in Family&Law, an open-source Belgian-Dutch Journal. The publication is available here.

Prize Question: Who Gets Carried Away by Europe?

- Europe attracts and divides. It makes us dream, but it also has a reality with boundaries that shape our lives.

What are the dynamics of integration? Whom does Europe sweep off their feet? Does European integration create community or does it lead to exclusion?

By asking this prize question, the Young Academies of several European countries are seeking insights into the motions of Europe, its destinies and processes, and the people affected by them. Answers can take all imaginable forms, from academic or literary to artistic, audiovisual, and musical submissions, provided they are accompanied by an explanatory text.

The prize question is open to everyone. Contributions are welcome in Danish, Dutch, English, French, German, Italian, Polish, Spanish, or Swedish.

The deadline for submission is December 1, 2014.

More information is available at www.aquestionforeurope.eu and here:

Vogel on Choice of Law relating to Personality Rights

As a result of the global spread of media content, cross-border infringements of personality rights have increased significantly over recent years. However, the question of which law applies in these instances remains largely answered (see, for example, our online symposium as well as various posts). A recently published monograph, "Das Medienpersönlichkeitsrecht im Internationalen Privatrecht", takes up the long-running debate about a Europe-wide harmonisation of national conflict of law rules relating to personality rights. The author Benedikt Vogel, engages in a comparative analysis of media-related infringements in substantive and conflict of laws in Germany, France and the UK. The author develops a new proposal for a conflict of law rule for personality rights infringements. In doing so he takes into account the (failed) negotiations preceding the adoption of the Rome II Regulation which brought again to light the need for flexibility and compromise in all member states. The proposal aims to satisfy all conflicting interests: those of the plaintiff and the media, those of the courts in view of practicability and efficiency and, last not least, the public's interest in protecting the freedom of expression and information in Europe.

The book has been published by Nomos and is written in German. Further information (in German) is available here.

Conference on "Minimum Standards in European Civil

Procedure Law

On November 14 and 15, 2014 Matthias Weller, EBS Law School, and Christoph Althammer, University of Freiburg, will host a conference on "Minimum Standards in European Civil Procedure Law" at the Research Center for Transnational Commercial Dispute Resolution at the EBS Law School in Wiesbaden, Germany. The conference will be held in German. More information is available of the Center's homepage. Registration is online.

The programme reads as follows:

Friday, November 14, 2014

- **Anmeldung**
- **Begrüßung**
  Prof. Dr. Matthias Weller, EBS Law School, Wiesbaden

Teil 1 – Perspektive der Mitgliedstaaten

- **Mindeststandards und zentrale Verfahrensgrundsätze im deutschen Recht: EMRK/Verfassungsrecht/einfaches Recht**,
  Prof. Dr. Christoph Althammer, Albert Ludwigs University Freiburg
- **Mindeststandards und zentrale Verfahrensgrundsätze im französischen Recht: EMRK/Verfassungsrecht/einfaches Recht**
  Prof. Dr. Frédérique Ferrand, Université Jean Moulin Lyon
- **Mindeststandards und zentrale Verfahrensgrundsätze im englischen Recht: EMRK/einfaches Recht**
  Prof. Dr. Matthias Weller, EBS Law School, Wiesbaden
- **Transnationale Synthese: ALI/UNIDROIT Principles of Civil Procedure**
  Prof. Dr. Thomas Pfeiffer, Ruprecht Karls University Heidelberg
- **Diskussion**

Saturday, November 15, 2014

Teil 2 – Unionsrechtliche Perspektive

- **Mindeststandards und Verfahrensgrundsätze im Strafverfahren unter europäischem Einfluss**
  Prof. Dr. Michael Kubiciel, University of Cologne
- **Mindeststandards und Verfahrensgrundsätze im Verwaltungsverfahren unter europäischem Einfluss**
  Prof. Dr. Andreas Glaser, University of Zurich
- **Mindeststandards und Verfahrensgrundsätze im behördlichen und privaten Kartellverfahren unter europäischem Einfluss**
  Prof. Dr. Friedemann Kainer, University of Mannheim
- **Mindeststandards und Verfahrensgrundsätze im Recht des Geistigen Eigentums unter europäischem Einfluss,**
  Prof. Dr. Mary-Rose McGuire, University of Mannheim
- **Unionsrechtliche Synthese: Mindeststandards und Verfahrensgrundsätze im acquis communautaire/Schlussfolgerungen für European Principles of Civil Procedure,** *Prof. Dr. Burkhard Hess,* Director of the Max Planck Institute for International, European and Regulatory Procedural Law, Luxembourg
- **Diskussion**

Article on special jurisdiction in IP matters, including a comment on Coty

The previously reported CJEU decision in *Coty Germany GmbH v. First Note Perfumes NV*, concerning the infringement of the rights in the 3D Community trade mark, unlawful comparative advertising and unfair imitation, is the subject of a comment by Prof. Annette Kur, in her article **Durchsetzung gemeinschaftsweiter Schutz-rechte: Internationale Zuständigkeit und anwendbares Recht**, fortcomming in GRUR Int., Issue 7/8, 2014.

Her criticism is primarily addressing the answer to the first question in which the CJEU reiterated that jurisdiction under Article 93(5) of CTM Regulation may be established solely in favour of CTM courts in the MS in which the defendant committed the alleged unlawful act. This is because she finds an interpretation of the provision contrary to the principle of territoriality of intellectual property rights, both national and unitary. She explains that the effect of this principle is absence of any possibility that there might be a single infringement of an intellectual property right with the event causing damage in one country, and the damage occurring in another. In such a situation there would be two distinct acts of infringement, one in each of the countries. Kur qualifies the CJEU reasoning as a fundamental misunderstanding of the structural features of the intellectual property law that distinguish it from other areas of tort law.