Klerman on Jurisdiction, Choice of Law and Property

Daniel Klerman (University of Southern California Law School) has posted Jurisdiction, Choice of Law and Property on SSRN.

> *Jurisdiction and choice of law in property disputes has been remarkably stable. The situs rule, which requires adjudication where the property is located and application of that state's law, remains the norm in most of the world. This article is the first to apply modern economic analysis to choice of law and jurisdiction in property disputes. It largely confirms the wisdom of the situs rule, but suggests some situations where other rules may be superior. For example, in disputes about stolen art, the state where the work was last undisputedly owned may be both the most efficient forum and the best source of applicable law.*

The paper is forthcoming in Yun-chien Chang (ed.), *Law and Economics of Possession* (Cambridge University Press).

Conflict of Laws in Israel and Palestinian Territories

Michael Karayanni (Hebrew University of Jerusalem) will shortly publish Conflicts in a Conflict – A Conflict of Laws Case Study on Israel and the Palestinian Territories.

> ***Conflicts in a Conflict*** *outlines and analyzes the legal doctrines instructing the Israeli courts in private and civil disputes involving the Occupied Palestinian Territories of the West Bank and the Gaza Strip, since 1967 until the present day. In doing so, author, Michael Karayanni sheds light on a whole sphere of legal designs and norms that have not received any thorough*

scholarly attention, as most of the writings thus far have been on issues pertaining to international law, human rights, history, and politics. For the most part, Israeli courts turned to conflict of laws, or private international law to address private disputes implicating the Palestinian Territories. After making a thorough investigation into the jurisdictional designs of the West Bank and the Gaza Strip, both before and after the Oslo Peace Accords, ***Conflicts in a Conflict*** *comes to focus on traditional topics such as adjudicative jurisdiction, choice of law, and recognitions and enforcement of judgments. Related issues such as the foreign sovereign immunity claim of the Palestinian Authority before Israeli courts as well as the extent to which Palestinian plaintiffs were granted access to justice rights, are also outlined and analyzed.*

This book's compelling thesis is the existence of a close relationship between conflict of laws doctrines as they developed over the years and Israeli policies generally in respect of the Palestinian Territories. This study of the conflict of laws in a war setting and conflict of laws in a jurisdictionally ambiguous location, will greatly serve scholars and practitioners in similarly troubled and complex legal situations elsewhere.

Summer School in International Commercial Contracts in Italy

The School of Law of the University of Verona, Italy, in cooperation with the Center for International Legal Education (CILE) of the University of Pittsburgh, USA, will host a Summer School program in International Commercial Contracts, which will take place on June 3-6, 2014 at the School of law of the University of Verona.

The Summer School aims at providing participants with an in-depth understanding of drafting, managing and litigating international contracts. The course will deal with the different sources of law applicable to international contracts, relevant model contract clauses and selected types of contracts of

particular relevance in international practice.

Target group and prerequisites for admission: The School is addressed to legal professionals and other business operators involved in international contract practice, but also open to 2nd-level degree and PhD students. A very good level of English is a fundamental prerequisite for admission.

Programme

The Law & Economics of International Contracts / International Sales Law
C. Gillette, NYU Law School

The Law Applicable to International Contracts / Case-Law on International Sales
F. Ferrari, University of Verona, NYU Law School

Transaction Planning Using Rules of Jurisdiction
R. Brand, University of Pittsburg School of Law

Negotiating and Drafting International Contracts
M. Torsello, University of Verona

International Commercial Arbitration
C. Giovannucci Orlandi, University of Bologna

For further information, please contact segreteria.master@ateneo.univr.it, cile@law.pitt.edu, or the Director of the course, Prof. Marco Torsello, at: marco.torsello@univr.it.

Deadline for registration: May 15, 2014. Registration fees: € 730,00.

Devaux on French Choice of Law

Rules on Marriage

Angelique Devaux has posted The New French Marriage in an International and Comparative Law Perspectives on SSRN.

> *"Drinking, eating, sleeping together is marriage it seems to me" already wrote Antoine Loysel, Jurisconsult, into Institutes Coutumières at the beginning of the 16th century.*
>
> *After several failed attempts and the creation of a civil partnership designed as a semi-loophole to a heated debate and timely subject, it took France more than twelve years after the Netherlands to finally join the family of countries authorizing marriage of homosexual couples.*
>
> *Equality is the key word of the French reform: Equality in duties and rights that allows an identical access for legal protection to marriage like for opposite-sex couples, inspired from The Declaration of Human and Civic Rights of 26 August 1789 .*
>
> *To perfect the equality to an international level, the Act of 17 May 2013 included language which states that marriages performed in a foreign jurisdiction satisfy the legal requirements of marriages in France. The new bill also confirms France's traditional choice of law rule according to which the law of the nationality of each spouse applies to the substantive validity of marriage. In order to be effective, the statute adopts a new conflict of law rule providing that same-sex marriage would still be allowed when the national law, or the law of the residence, or the law of the domicile of one of the spouses allows it. Intended to translate an extensive and cosmopolitan access to same-sex marriage, the new rules of conflict of laws suffer in reality from imperfection and do not provide an equal access to marriage for all, in particular due to historical international conventions that superseded the law.*
>
> *The difficulties for both gay and lesbian spouses occupy an even more prominent place in today's globalized world where more and more couples live outside their country of origin. As soon as cross-border elements come, the new definition of French marriage faces a multitude of challenges related to immigration, benefits, adoption, international wealth management, matrimonial property regime, divorce, and succession.*

What are the surrounding practical consequences when same-sex married couples decide to move abroad, and how to solve or to anticipate all the dormant problems?

In this paper, I am examining some of the potential issues related to same-sex marriage and conflict of laws in a comparative law perspective, and I suggest a new approach to deal with these coming questions in accordance with the international and European tools that may serve individuals from countries that already have opened marriage to same-sex couples, and those who want to join the international family.

Issue 2013.4 Nederlands Internationaal Privaatrecht

The fourth issue of 2013 of the Dutch journal on Private International Law *Nederlands Internationaal Privaatrecht* includes two contributions on the Commission Recommendation on Collective Redress and an article on the obligations of parties with regard to pleading and contesting jurisdiction under the Brussels I Regulation in the Netherlands.

Astrid Stadler, 'The Commission's Recommendation on common principles of collective redress and private international law issues', p. 483-488. The abstract reads:

For its new policy on collective redress the European Commission has chosen the form of a mere 'Recommendation' instead of a binding directive or regulation with respect to the violation of (consumer) rights granted under EU law. The Recommendation provides some basic principles on collective redress instruments which should be taken into account by the Member States when implementing injunctive or compensatory collective redress mechanisms. There is, however, no obligation for the Member States to implement such procedural

tools. Despite the attempt at establishing common principles, the European legislature thus seems to accept a heterogeneous landscape of collective redress in Europe and has missed the opportunity to provide rules on international jurisdiction, recognition and the applicable law particularly designed for cross-border mass litigation. As a consequence forum shopping becomes even more important for plaintiffs in mass damage cases.

Mick Baart, 'Implications of Commission Recommendation 2013/39 on common principles for collective redress. Can safeguards limit the potential for abuse without compromising the realization of policy goals?', p. 489-498. The abstract reads:

The recent publication of Recommendation 2013/39 seeks to establish a common European approach to collective redress. In response to concerns that collective procedures may introduce opportunities for abuse, the European Commission included a number of procedural safeguards. However, can these safeguards limit the potential for abuse without hindering the achievement of policy goals? This article evaluates this question from the perspective of group formation since opt-out procedures have traditionally been perceived as an important factor in abusive practices. The Recommendation accordingly considers the use of opt-in procedures to be an essential safeguard against abuse. Nonetheless, the rejection of opt-out procedures appears to entail an inherent paradox as it reduces the potential for abuse but simultaneously presents significant obstacles to the effectiveness of collective procedures. Moreover, it could have unintended consequences for questions of private international law as Member States that actively use opt-out mechanisms are not obliged to comply with a non-binding Recommendation.

Jacques de Heer, 'De stelplicht van eiser en gedaagde in geschillen voor de Nederlandse rechter over internationale bevoegdheid op grond van de EEX-Verordening', p. 499-507. The English abstract reads:

In cross-border contentious proceedings, the plaintiff only has a conditional obligation to show that the court in which proceedings are brought has jurisdiction. This condition follows from Article 24 of the Brussels I Regulation, which deals with jurisdiction through submission to the forum. When the defendant wishes to contest the jurisdiction of the court, he is under no immediate obligation to argue why this is so. However, if the factual arguments

put forward by the plaintiff to found the jurisdiction of (for example) the Dutch court remain uncontested, this court has to consider these facts when deciding on its jurisdiction. In so deciding, the court is not bound by the jurisdictional rules of the Brussels I Regulation as mentioned by the defendant. When the defendant only raises a defence of concurrent proceedings in another Member State, he is obliged to immediately state the relevant facts.

ICC Conference on Jurisdiction Clauses

The Institute of World Business Law at the International Chamber of Commerce will host a conference on May 23rd on Jurisdictional Choices in Times of Trouble.

The following topics will be addressed:

Morning 09.30-13.00
Session I – Asymmetrical choices

The validity of unilateral optional clauses

- Overview of the jurisdictions which uphold unilateral option clauses and
- those that consider them void The resulting legal uncertainty
- Study of the causes, implications and solutions
- Is the situation the same if the option reserves the right to resolve disputes via recourse to an arbitral tribunal rather than courts?

Pr. Marie-Elodie Ancel, University Paris-Est Créteil Val de Marne
Dr. Anton Asoskov, Lomonosov Moscow State University
Pr. Alain Rau, University of Texas
Dr. Maxi Scherer, Queen Mary, University of London

Moderated by: Dr. Georges Affaki, Chairman of the Legal Committee of the ICC

Banking Commission

Questions – Discussion

The limits to the parties' free choice of jurisdiction

- The requirement of an objective link between the choice of jurisdiction and the connection of the contract to a specific country
- Other formal requirements for the validity of jurisdictional choices (incorporation by reference, etc)
- News on the doctrine of forum non conveniens
- Debate on The Hague Convention on exclusive choice of court agreements: less favourable than the Brussels 1 bis Regulation but tendancy to favourize relations with third parties

Marie Berard, Clifford Chance LLP, United Kingdom
Pr. Diego Fernández Arroyo, Sciences Po Law School
Khawar Qureshi QC, McNair Chambers

Moderated by: Dr. Horacio Grigera Naón, Independent Arbitrator, United States

Questions – Discussion

Disparities in the choice of arbitrators

Pr. Eric Loquin, University of Burgundy
Paolo-Michele Patocchi, Patocchi & Marzolini, Switzerland

Moderated by: Pr. Pierre Mayer, Dechert LLP Paris

Questions – Discussion

Afternoon 14.30-17.45

Session II – The influence of national laws on jurisdictional choices

Applicable law

- Sulamerica and Arsanovia–is there a contrast between these two English cases and national laws opting for a substantive approach (rather than a conflict of law approach) to determine the validity of the arbitration clause?

- Debate on Article 25 of the Brussels 1 bis Regulation on the validity of the jurisdiction clause in substance (cf recital 20): as in Sulamerica, the DIP of the chosen court is applied, not the law governing the contract.

Dr. Georges Affaki
Pr. Julian D.M. Lew QC, Queen Mary, University of London; 20 Essex Street Chambers
Pr. François-Xavier Train, University Paris 10
Pr. Laurence Usunier,University Paris 13

Moderated by: Dr. Horacio Grigera Naón

Questions – Discussion

The law applicable to the arbitrability of the dispute

Pr. Carlos Alberto Carmona, Marques Rosado Toledo Cesar & Carmona – Advogados, Brazil
Pr. Hans van Houtte, President, Iran-United States Claims Tribunal

Moderated by*:* Yves Derains, Derains & Gharavi, France

Questions – Discussion

Choice of a tribunal and lis pendens

- The conflict between the EU Brussels Regulation 1 bis and other legislations – which solutions?
- What are the consequences of the ratification of The Hague Convention on the choice of court?

Pr. Arnaud Nuyts, University of Brussels (ULB)
Pr. Gilles Cuniberti, University of Luxembourg
Pr. Horatia Muir-Watt, Sciences Po Law School

Moderated by: Dr. Horacio Grigera Naón

Questions – Discussion

Conclusions: Georges Affaki and Horacio Grigera Naón

Closing remarks: Yves Derains

Symposium in Memory of Giuseppe Tarzia at the MPI Luxembourg

Many thanks to Felix Koechel (MPI Luxembourg) for the hint.

The Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law will host a symposium in memory of Giuseppe Tarzia (28.12.1930 – 23.2.2005), Professor emeritus at the Università degli Studi di Milano, on 9 May 2014. On this occasion the personal library of Giuseppe Tarzia as an extension of the Institute's library will be inaugurated.

To view the final program of the event in French and Italian, please visit the Institute's website.

The registration is open until 2 May 2014.

Brand on Overlap between PIL and Substantive Law in the EU

Ronald A. Brand (University of Pittsburgh School of Law) has posted The Evolving Private International Law/Substantive Law Overlap in the European Union on SSRN.

This chapter, written for the FESTSCHRIFT FÜR ULRICH MAGNUS (Sellier

European Law Publishers 2014), considers three areas in which, either through legislation or through the decisions of the European Court of Justice, private international law rules found in the Brussels I Regulation have overlapped with substantive law rules to create uncomfortable – and sometimes undesirable – results. These examples arise at the overlap of (1) the CISG Article 31 rules on delivery of goods and the Brussels I Recast Regulation Article 7(1) (original Article 5(1)) contract jurisdiction rules; (2) national rules on contract formation and the Brussels I Recast Regulation Article 25 (original Article 23) rules on choice of court; and (3) consumer protection and the rules of the Brussels I Recast Regulation on jurisdiction in consumer cases. After discussing each of these overlapping areas of law, the chapter provides comments on how, together, these concerns demonstrate the need to avoid using private international law rules for the purpose of either implementing substantive law goals or for creating new rules that conflict with their substantive law counterparts.

The author welcomes all comments, particularly from those that disagree with him.

Festschrift Ulrich Magnus

A Liber Amicorum for Ulrich Magnus was published in February 2014. It contains a number of contributions on private international law.

III. Internationales Privat- und Zivilverfahrensrecht

- Jürgen Basedow, *Zuständigkeitsderogation, Eingriffsnormen und ordre public*
- Peter Behrens, *Connecting factors for the determination of the proper law of companies*
- Ronald A. Brand, *The Evolving Private International Law / Substantive Law Overlap in the European Union*
- Franco Ferrari, *Forum Shopping: A Plea for a Broad and Value-Neutral*

Definition

- Axel Flessner, *Rechtsvergleichung und Kollisionsrecht – Neue Akzente in einer alten Beziehung*
- Robert Freitag, *Halbseitig ausschließliche Gerichtsstandsvereinbarungen unter der Brüssel I-VO*
- Axel Halfmeier, *Transnationale Delikte vor nationalen Gerichten oder: Wie weiter nach dem Ende der amerikanischen Rechtshegemonie?*
- Eva-Maria Kieninger, *Grenzenloser Verbraucherschutz?*
- Oliver L. Knöfel, *Staats- und Amtshaftung im Europäischen Internationalen Privatrecht*
- Harald Koch, *Kollisionsrecht und Auslandsbezug: Wie international ist das IPR?*
- Dieter Martiny, *Zur Einordnung und Anknüpfung der Ansprüche und der Haftung Dritter im Internationalen Schuldrecht*
- Thomas Pfeiffer, *Die Haager Prinzipien des internationalen Vertragsrechts –Ausgewählte Aspekte aus der Sicht der Rom I-VO*
- Kurt Siehr, *Global Jurisdiction of Local Courts and Recognition of Their Judgments Abroad*
- Martin Taschner, *Vertragliche Schuldverhältnisse der Europäischen Union – Zuständigkeit und anwendbares Recht*
- Peter Winkler von Mohrenfels, *Kündigungsschutz und Kleinbetriebsklausel im internationalen Arbeitsrecht – unter besonderer Berücksichtigung des österreichischen Kündigungsschutzrechts*
- Wolfgang Wurmnest, *Die Einbeziehung kartellrechtlicher Ansprüche in Gerichtsstandsvereinbarungen*

The full table of contents is available here.

Second Seminar on the

Boundaries of European PIL

Boundaries of European Private International Law

Seminar n° 2 – Louvain la Neuve:

What are the Boundaries between Internal Market and European PIL and among PIL Instruments?

5/6 June 2014

Coordination : Jean-Sylvestre Bergé (Université Jean Moulin Lyon 3), Stéphanie Francq (Université catholique de Louvain) et Miguel Gardenes Santiago (Universitat Autònoma de Barcelona)

A demonstration of the existence of European private international law is no longer necessary. However, the question of the place of European private international law in a more globalised legal order, i.e. the difficult but crucial theme of reconciling European private international law to the legal frameworks that preceded it at national, international and European level, has been largely neglected to date.

The aim of this research program is to remedy this situation by holding discussions in different locations in Europe (Lyon – Barcelona – Louvain), bringing together European specialists in private international law or European law and doctoral or post-doctoral students.

For this second seminar, taking place in Louvain-la-Neuve (following the very successful Barcelona seminar, held in March), two main themes will be tackled:

1. Reconciling European private international law with other fields of European law, namely the internal market (free circulation and harmonisation of private national legislations) and other aspects of the area of freedom security and justice (immigration and cooperation in criminal matters);

2. Reconciling the various European instruments of private international law.

Thursday, 5 June

Inaugural Session

14:30 to 15.00: inauguration of the seminar and welcome addresses

15.00 to 16:15: opening session, chaired by Dean **Marc Fallon**, Louvain University.

Veerle Van Den Eeckhoudt, Professor, Antwerp & Leiden University, *"The Instrumentalisation of Private International Law by the European Institutions : quo vadis? Rethinking the 'Neutrality' of Private International law in an Era of Europeanisation of Private International law and Globalisation"*

Marion Ho-Dac, Lecturer, University of Valenciennes, *"Adapting European Private International Law to the Demands of the Internal Market."*

15.50- 16.15 Discussion

First workshop: Reconciling European private international law with other European law aspects of EU substantive law: internal market and other aspects of the areas of freedom security and justice

16:45 to 18:15: first session of the first workshop

Ulgjesa Grusic, Lecturer in Law, University of Nottingham, *The principle of effectiveness in EU law and Private International law: the case of transnational Employment in the English courts*

Fieke Van Overbeeke, Doctoral candidate, University of Antwerp, *The lost social dimension of the EU: A private international law perspective of labor in international road transport*

Alexandre Defossez, teaching and research assistant at the University of Liège, *The Posting of Workers Directive: Erase or Rewind?*

Friday, 6 June

9:00 to 10:30: second session of the first workshop

Blandine de Clavière Bonnamour (Lecturer, University Lyon 3) et **Bianca**

Pascale (Doctoral Candidate, University Lyon 3), *The Scope of European Consumer Law (Substantive and Private International Law Aspects)*

Lydia Beil, Doctoral Candidate, University of Freiburg , *Reconciling Private International Law with European Consumer Law: Where to start consumer protection in the context of E-Commerce?*

Laura Liubertaite, Lecturer Vilnius University, *The Impact of Primary Law of the European Union on the Bilateral Conflict of Laws Rules of the Member States*

Second workshop: Reconciling the various European instruments of private international law.

11:00 to 12:30: first session of the second workshop.

Farouk Bellil, Doctoral candidate, University of Rouen, *Articulating the various PIL instruments applying in the field of insolvency*

Eleonore De Duve (Doctoral candidate) and **Anna Katharina Raffelsieper** (Research Fellow), Max Planck Institute for International, European and Regulatory Procedure (Luxembourg), *The Debtor's Protection in European Civil Procedures: Reviewing the Review*

Libor Havelka, Doctoral Candidate, Masaryk University, *Moving Back and Forth, On the Relationship between the Brussels I Regulation and International and National law*

14:30 to 16:00: second session of the second workshop.

Cécile Pellegrini, Post-Doctoral Researcher, University of Luxembourg, *Current State of the European and American Exorbitant Grounds of Jurisdiction.*

Maria Aranzazu Gandia Sellens, Doctoral Candidate, University of Valencia, *The Relationship between the Brussels I Regulation Recast and the Agreement on a Unified Patent Court, Specially Focusing on Patent Infringement: when reality exceeds fiction*

Jacqueline Gray (Doctoral candidate, Utrecht University), **Pablo Quinzá Redondo** (Doctoral candidate, University of Valencia), *The Coordination of*

Jurisdiction and Applicable Law in Related Proceedings: the Interaction between the Proposal on Matrimonial Property Regimes and the Regulations on Divorce and Succession

16:30 to 17:30: third session of the second workshop

Ioannis Somarakis, Doctoral Candidate, University of Athens, *The scope of application of the method of recognition for foreign situations in European private international law*

Amélie Panet, Research and Teaching Assistant University Lyon 3, *The recognition of situations of personal status created in third countries*