Conflict of Laws Bibliography 2013

I am pleased to pass on that Professor Symeon Symeonides has once again compiled a bibliography that covers private international law, or conflict of laws, in a broad sense. In particular, it covers judicial or adjudicatory jurisdiction, prescriptive jurisdiction, choice of forum, choice of law, federal-state conflicts, recognition and enforcement of sister-state and foreign-country judgments, extraterritoriality, arbitration and related topics. You can find it here.

Thanks to Professor Symeonides for continuing to publish this incredibly helpful resource.

Pribetic on Foreign Judgments in Canada

Antonin Pribetic (Himelfarb Proszanski) has posted Recognition and Enforcement of Foreign Judgments in Canada on SSRN.

> *This paper provides an overview of the governing conflict of laws principles for the recognition or enforcement of foreign judgments, including an analysis of the recent Court of Appeal for Ontario decision in Yaiguaje et al. v. Chevron Corporation et al. and its implications for the recognition and enforcement of foreign judgments, generally. The issue of state immunity as an obstacle to foreign judgment enforcement is also considered.*

University of Missouri Call for Proposals: "Judicial Education and the Art of Judging: From Myth to Methodology"

The University of Missouri is issuing a call for proposals for an upcoming works-in-progress conference as well as a call for papers for a student writing competition. Both of these calls are affiliated with a symposium that is being convened at the University of Missouri's Center for the Study of Dispute Resolution on Friday, October 10, 2014.

The symposium is entitled "Judicial Education and the Art of Judging: From Myth to Methodology" and addresses a number of issues relating to the role of judges and the goals and methods of judicial education. The symposium features the Honorable Duane Benton of the United States Court of Appeals for the Eighth Circuit as keynote speaker as well as an accomplished group of judges, academics, and judicial education experts from the United States and Canada as panelists.

The day before the symposium (Thursday, October 9, 2014), the University of Missouri will be hosting an international works-in-progress conference relating to the subject matter of the symposium, broadly interpreted. Presentation proposals should be no more than one page in length and can include analyses that are practical, theoretical or interdisciplinary in nature. Participants can discuss judges at the state, federal or international level, and applications from outside the United States are particularly welcomed. Proposals for the works-in-progress conference should be directed to Professor S.I. Strong (strongsi@missouri.edu) and will be accepted until May 26, 2014. Decisions regarding accepted papers will be made in June 2014. Prospective attendees should note that there is no funding available to assist participants with their travel expenses.

The University of Missouri is also organizing an international student writing competition in association with the symposium. Papers will likely be due in August 2014, although precise details (such as the due date and the amount of

any prize money associated with the competition) are still being finalized.

More information about the symposium, works-in-progress conference and student writing competition is available at the symposium website, located here. People may also contact Professor S.I. Strong (strongsi@missouri.edu) with any questions.

Please feel free to distribute this information to anyone you believe might be interested in the symposium, works-in-progress conference or writing competition. You are also welcome to cross-post this information on any blogs.

French Conference on the Future of Choice of Law Methodology

The University Paris Descartes will hold a conference on March 14 on the future of choice of law theory. Speeches will be in French.

Quel avenir pour la théorie des conflits de lois?

9h15 – Rapport introductif: Olivera Boskovic**,** *Universite Paris Descartes*

I – **Declenchement du raisonnement conflictuel**
Chair: Helene Gaudemet-Tallon (*Emeritus Université Paris II*)

9h45 – L'office du juge: Marie-Laure Niboyet**,** *Universite Paris Ouest-Nanterre-La Defense*

10h05 – La qualification: Sophie Lemaire**,** *Universite Paris-Dauphine*

10h25 – Unilateralisme versus bilateralisme: Stephanie Francq**,** *Universite catholique de Louvain*

10h45 – Discussion

II – Facteurs de perturbation

Chair: Anne Sinay-Cytermann (*Universite Paris Descartes*)

11h15 – Les lois de police: Louis d'Avout, *Universite Paris II*

11h35 – Les questions prealables: Sandrine Sana-Chaille de Nere, *Universite Montesquieu, Bordeaux IV*

11h55 – Le renvoi: Louis Perreau-Saussine, *Universite Paris-Dauphine*

12h25 – Discussion

III – Eviction de la loi designee

Chair: Paul Lagarde *(Emeritus Université Pantheon-Sorbonne)*

14h30 – La fraude: Sandrine Clavel, *Universite de Versailles Saint-Quentin-en-Yvelines*

14h55 – L'ordre public: Pascal de Vareilles-Sommieres, *Universite Paris I*

15h15 – La clause d'exception: Pierre Berlioz, *Universite de Reims Champagne-Ardenne*

15h35- Discussion

16h05 – La clause marche interieur: Malik Laazouzi, *Universite Jean Moulin, Lyon III*

16h30 – Rapport de synthese: Horatia Muir Watt, *Sciences Po*

17h00 – Cocktail

Venue: Faculte de droit, Universite Paris Descartes (CEDAG), 10 avenue Pierre Larousse – 92 240 Malakoff

Admission is free, registration is possible with Ms Madame Albane Piejos: albane.piejos@parisdescartes.fr

First Issue of 2014's Journal du Droit International

The first issue of the *Journal du droit international (Clunet)* for 2014 is out. It contains a number of commentaries of recent French and European decisions deciding issues of private international law.

The table of content can be accessed here.

Franzina on Sovereign Bonds and the Conflict of Laws

Pietro Franzina (University of Ferrara) has posted Sovereign Bonds and the Conflict of Laws: A European Perspective on SSRN.

> *This paper provides an account of the rules whereby courts sitting in a Member State of the European Union should decide conflict-of-laws issues relating to loans contracted by States or State-related entities involving the issue of bonds, thereby identifying the country whose legislation must govern the rights and obligations of the bondholders and of the issuing entity. After discussing the peculiar features of sovereign bonds when viewed from a conflict-of-laws perspective, the paper focuses on the choice-of-law clauses almost invariably included in the loans and on the rules governing such clauses pursuant to regulation no. 593/2008 of 17 June 2008 on the law applicable to contractual obligations (the "Rome I" regulation). The article goes on to determine the issues that must be deemed to be governed by the lex contractus and on the possible exceptions to the operation of conflict-of-laws rules, including the rules on choice of law, in accordance with the said "Rome I" regulation. In particular,*

the paper explores the way in which, and the extent to which, overriding mandatory provisions and the public policy exception may have a role to play in the global governance of sovereign debt crises, balancing the concerns and expectations of creditors, on the one hand, and the interests of distressed sovereign debtors and their populations, on the other.

First Seminar on the Boundaries of European Private International Law

Boundaries of European Private International Law

Seminar n° 1 – Barcelona:

European PIL – National and International Law

27 / 28 March 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 first seminar in Barcelona (a second seminar will take place in Louvain-La-Neuve, 5/6 June 2014), two main themes will be tackled:

1. Reconciling European private international law with (substantial and procedural) national and international frameworks;

2. Reconciling European private international law with private international law applicable in relationships with countries outside the EU.

Thursday, 27th March

15:00 to 15:30: inauguration of the seminar by the Dean of the Faculty.

Chair: Professor Blanca Vilà Costa

Opening session: 15:30-17:00

Pietro Franzina, Associate Professor of international law, University of Ferrara, *The competence of the European Union regarding the Administration, including the Denunciation, of International Conventions concluded by Member States.*

Albert Font i Segura, *Profesor Titular* of private international law at the Pompeu Fabra University (Barcelona), *Some Basic Issues in the Future Application of the Regulation on Succession: Characterization, Territorial Conflict of Laws and Ordre Public.*

Guillermo Palao Moreno, *Catedrático* of private international law, University of Valencia, *Enforcement of Foreign Mediation Agreements within the EU.*

First workshop: Reconciling European Private International Law with (Substantial and Procedural) National and International Frameworks

17:30 to 19:00: first session of the first workshop

Maria Asunción Cebrián Salvat, Doctoral candidate, University of Murcia, *Agency and Distribution Contracts: National Rules v. European Private International Law.*

Michaël Da Lozzo, Doctoral candidate, University of Toulouse 1 Capitole, *European Private International Law to the Test of National Overriding Mandatory Rules.*

Josep Suquet Capdevila, Doctor by the UAB, *On-line Mediation in the Consumer Field: a Comparative Analysis of Catalan, Spanish and European Legal Instruments.*

Friday, 28th March (venue: Sala de Vistas, Faculty of Law)

9:30 to 11:30: second session of the first workshop

Nicolas Kyriakides, Doctoral candidate, Oxford University, *European Account Preservation Order: what does the Common Law Tradition have to say?*

Teresa Solis Santos: Doctoral Candidate, University of Extremadura, *Cross Border Creditor's Protection. The Future European Account Preservation Order.*

Verona Tio, Doctoral candidate, University of Barcelona, *Judicial Powers over Penalty Clauses and Proceedings followed before an English Court.*

Celine Moille, Doctor, University of Lyon 3, *Issues of Articulation between European Private International Law and National and International Systems relating to Sale of Goods.*

Second workshop: Reconciling European Private International Law with Private International Law Applicable in Relationships with Countries outside the EU

12:00 to 13:30: first session of the second workshop.

Celine Camara, Doctoral candidate, Researcher at the Max-Planck Institute, *Discrimination against Third State Nationals in Regulation 2201/2003 "Brussels II bis".*

Huang Zhang, Doctoral candidate at the UAB, *The New Lis Pendens Regime in the Regulation Brussels I and the Challenge Met by Chinese Jurisdiction.*

Eduardo Alvarez Armas, Doctor, Catholic University of Louvain, *International Jurisdicion over Third-country Polluters: a Trojan horse to the EU's Environmental Policy?*

16:00 to 17:30: second session of the second workshop.

Jayne Holliday, Doctoral candidate, University of Aberdeen, *Reconciling the EU Succession Regulation with the Private International Law of the UK.*

Nicolo Nisi, Doctoral candidate, University of Bocconi, *The European Insolvency Regulation and the External World.*

Clara Isabel Cordero Alvarez, Doctor, Assistant Professor at the Complutense University of Madrid, *Contracts between EU Consumers and Third Country Businesses: the Evolution of EU Private International Law.*

17:45 to 18:15: closing conference by Pedro Alberto De Miguel Asensio, *Catedrático* of private international law at the Complutense University of Madrid, *The Amendment of the Brussels I Regulation (Recast) and the Unified Patent Court Agreement.*

More details are available here.

New Book on European Class Actions

Arnaud Nuyts and Nikitas E. Hatzimihail are the editors of a new book on Cross Border Class Actions – The European Way (Sellier Publishing).

> *Whether with regard to mass torts, civil-rights claims or as a means of private enforcement of antitrust and other regulatory policies: Collective redress of*

civil claims has been gaining in importance in Europe and worldwide. Long associated with the American model of class actions, an increasing number of EU Member States have made their own attempts at collective redress institutions. At the same time, the amendment of the Brussels I Regulation has shied away from dealing with the cross-border aspects of collective redress.
In this book, a worldwide group of distinguished experts in private international law, civil procedure and regulatory law evaluate the problems of cross-border collective redress and provide proposals for a "European way" appropriate for the twenty-first century.
This very topical work is, thus, indispensable for practitioners, academics, lobbyists and institutional agents.

The Table of Contents can be downloaded here.

Cuniberti on the International Attractiveness of Contract Laws

I (University of Luxembourg) have posted The International Market for Contracts – the Most Attractive Contract Laws on SSRN.

The aim of this Article is to contribute to a better understanding of the international contracting process by unveiling the factors which influence international commercial actors when choosing the law governing their transactions.

Based on the empirical study of more than 4,400 international contracts concluded by close to 12,000 parties participating in arbitrations under the aegis of the International Chamber of Commerce, the Article offers a method of measuring the international attractiveness of contract laws. It shows that parties' preferences are quite homogenous and that the laws of five jurisdictions dominate the international market for contracts. Among them, two are chosen three times more often than their closest competitors: English and

Swiss laws.

International Attractiveness, 2007-2012

- ***English Law: 11.20***
- ***Swiss Law: 9.91***
- ***U.S. State Laws: 3.56***
- ***French Law: 3.14***
- ***German Law: 2.03***

The Article then inquires which features made these laws more attractive than others and seeks to verify whether the postulate that international commercial parties are rational actors is true. It concludes that while some parties might have the resources to study the content of available laws before deciding which one to choose, others have no intention of investing such resources and are happy to rely on cheaper means to assess the content of foreign laws, including proxies. Furthermore, some parties suffer from cognitive limitations, the most important of which being the fear of the unknown and the correlative need for selecting a law resembling their own. Finally, unsophisticated parties might not fully appreciate the extent of their freedom to choose the law governing their transaction and might wrongly believe that it is constrained by largely irrelevant factors such as the venue of the arbitration.

The article is forthcoming in the *Northwestern Journal of International Law and Business.*

The EU prepares to become a party

to the Hague Convention on Choice of Court Agreements

By Pietro Franzina

Pietro Franzina is associate professor of international law at the University of Ferrara.

On 30 January 2014 the European Commission adopted a proposal for a Council decision on the approval, on behalf of the European Union, of the Hague Convention of 30 June 2005 on Choice of Court Agreements. In short, the Convention lays down uniform rules conferring jurisdiction on the court designated by the parties to a cross-border dispute in civil and commercial matters, and determines the conditions upon which a judgment rendered by the designated court of a contracting State shall be recognised and enforced in all other contracting States.

In light of the Lugano Opinion rendered by the Court of Justice in 2006, the conclusion of the Convention comes under the exclusive external competence of the Union.

Once the Council decision will be enacted, and the approval effected, the European Union – which signed the Convention in 2009 (following Council decision No 2009/397/EC of 26 February 2009) – shall join Mexico as a contracting party to the Convention, thereby triggering its entry into force on the international plane. Pursuant to Article 31, the Convention shall in fact enter into force "on the first day of the month following the expiration of three months after the deposit of the second instrument of ratification, acceptance, approval or accession".

In the Commission's view, the European Union should avail itself of the possibility to make a declaration under Article 21 of the Convention, stating that the latter shall not apply to matters in respect of insurance contracts. The text of the proposed declaration is annexed to the proposal (as Annex II) and may be found here.

When the Hague Convention will become binding upon the Union, the issue will

arise of its relationship with the rules on choice of court agreements and the recognition and enforcement of judgments laid down in the Brussels I and the Brussels I *bis* regulation, as well as in the Lugano Convention of 30 October 2007.

The coordination between the Convention and the two regulations is addressed in the explanatory memorandum accompanying the proposal. The relevant passage begins by noting that the said regulations do not "govern the enforcement in the Union of choice of court agreements in favor of third State courts". This would rather be achieved by the Convention. The amendments to the Brussels I regulation introduced with the recast of 2012 "have strengthened party autonomy" and now "ensure that the approach to choice of court agreements for intra-EU situations is consistent with the one that would apply to extra-EU situations under the Convention, once approved by the Union".

The Commission recalls that the relationship between the Convention and the existing and future EU rules is the object of a disconnection clause set out in Article 26(6). Pursuant to this provision, the Convention shall not affect the application of the regulation "where none of the parties is resident in a Contracting State that is not a Member State" of the Union and "as concerns the recognition or enforcement of judgments as between Member States".

In practice, "the Convention affects the application of the Brussels I regulation if at least one of the parties is resident in a Contracting State to the Convention", and shall "prevail over the jurisdiction rules of the regulation except if both parties are EU residents or come from third states, not Contracting Parties to the Convention". As regards the recognition and enforcement of judgments, the regulation "will prevail where the court that made the judgment and the court in which recognition and enforcement is sought are both located in the Union". Thus, to put it with the Commission, the Convention will "reduce the scope of application of the Brussels I regulation", but "this reduction of scope is acceptable in the light of the increase in the respect for party autonomy at international level and increased legal certainty for EU companies engaged in trade with third State parties".