# US Supreme Court Delivers its judgment in Kiobel

> *The presumption against extraterritoriality applies to claims under the Alien Tort Statute, and nothing in the statute rebuts that presumption.*

The opinion is available here.

For initial comments, see the insta-symposium over at opiniojuris.

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# Common European Sales Law Meets Reality – A European Debate on the Commission's Proposal

On 14 and 15 June 2013, the annual conference of the European Private Law Review (GPR) will take place in Halle (Saale), Germany. Renowned officials, politicians, judges, and academics from various EU Member States are going to discuss the Commission's Proposal for a Common European Sales Law. Speakers include Diana Wallis, the former Vice President of the European Parliament; Verica Trstenjak, formerly Advocate General of the European Court of Justice and now professor at the University of Vienna; Denis Mazeaud, UniversitéPanthéon-Assas; Paul Varul, University of Tartu; Pascal Ancel, Université de Luxembourg; Loukas Mistelis, Queen Mary, University of London, and Martin Schmidt-Kessel, University of Bayreuth. A unique feature of the conference is that it is not restricted to the legal aspects of the proposal, but also includes other perspectives, such as anthropology, the role of the media in judging the instrument and the place of the new sales law in academic education. The registration form is available here.

The programme reads as follows:

**Friday, 14 June 2013**

- 1:00 to 1:30 pm Registration
- 1:30 to 2:00 pm Introduction
    - 1. Welcome Address,
      *Prof. Dr. Matthias Lehmann*, Martin Luther Universität Halle-Wittenberg
    - 2. Greetings,
      *Thomas Wünsch*, State Secretary, Ministry of Justice and Equal Treatment, Saxony-Anhalt
- 2:00 to 3:45 pm CESL in Politics
    - 1. Making European Sales Law I: Insights from Brussels
      *Mikolaj Zaleski,* European Commission, DG Justice, Unit A2 – Contract Law
    - 2. Making European Sales Law II: Particularities in a Federal System
      *Dr. Frank Warnecke*, Ministry of Justice and Equal Treatment, Saxony-Anhalt
    - 3. Droit commun européen de la vente et la France: Je t'aime, moi non plus
      *Prof. Dr. Denis Mazeaud*, Université Panthéon-Assas
      4. Benefits and Drawbacks of CESL for Smaller Member States
      *Prof. Dr. Paul Varul*, University of Tartu, Estonia
    - 5. Is the UK Afraid of European Private Law and Should It Be?
      *His Hon Judge David Mackie CBE*, QC, High Court of Justice, England and Wales
- 3:45 to 4:15 pm Coffee break
- 4:15 to 6:00 pm CESL in Society
    - 1. CESL and the Media: Reduction of Complexity or Scaremongering?
      *Diana Wallis*, Former Vice President of the European Parliament
    - 2. Civil Law Codifications as Symbols of National Sovereignty
      *Prof. Dr. Marie-Claire Foblets,* Max-Planck-Institute for Anthropological Research, Halle
    - 3. Hitting That Blue Button Down There: Does the Consumer Have a Real Choice?
      *Alice Wagner*, Vienna Chamber of Labour

- 6:00 PM Cocktail Reception

**Saturday, 15 June 2013**

- 9:00 to 10:45 am CESL in Court
    - 1. The Challenge Faced by the ECJ and Possible Responses
      *Prof. Dr. Verica Trstenjak,* Universität Wien, Former Advocate General, European Court of Justice
    - 2. National Courts: How Can They Keep Track?
      *Prof. Dr. Luz María Martínez Velencoso*, Universidad de Valencia
    - 3. Taking CESL to ADR: The Solution?
      *Prof. Dr. Loukas Mistelis*, Queen Mary University of London
- 10:45 to 11:15 am Coffee break
- 11:15 AM to 1:00 pm CESL in University
    - 1. Good and Bad Timing: The Place in the Curriculum
      *Prof. Dr. Pascal Ancel,* Université de Luxembourg
    - 2. The Language in Which CESL Shall be Taught
      *Prof. Dr. Christoph Busch,* EBS Law School, Wiesbaden
    - 3. Civil Sales Law, Commercial Sales Law, Consumer Sales Directive, CISG, CESL – Enough is Enough?
      *Prof. Dr. Martin Schmidt-Kessel,* Universität Bayreuth
- 1:00 pm Conclusion

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# French Conference on Punitive Damages

The University of Nancy will host an international workshop on the *Circulation of Punitive Damages* on 24 May 2013.

**Introduction**

9:30 – 10:00 : *Les dommages-intérêts punitifs en quête de fondement*, Philippe Jestaz (Emeritus Université Paris XII)

10:00 – 10:40 : *Dissuader et punir : les dommages et intérêts punitifs remplissent-ils vraiment la fonction qui leur est assignée ? Le regard de l'économiste du droit*, Samuel Ferey (Faculté de droit Nancy)

## 1 – La compatibilité des dommages-intérêts punitifs avec un système civiliste

10:50 – 11:10 : *La réception des punitive damages en Louisiane : un modèle pour l'Europe continentale ?*, François-Xavier Licari (Faculté de droit Metz)

11:20 – 11:40 : *La réception des dommages-intérêts punitifs au Québec : un modèle pour l'Europe continentale ?*, Sylvette Guillemard (Université Laval, Québec)

11:50 – 12:10 : *La présence cachée des dommages-intérêts punitifs en Allemagne*, Paul Klötgen (Faculté de droit Nancy)

12:10 – 12:50 : Discussion générale

## 2 – Le rayonnement des dommages-intérêts punitifs

14:00 – 14:20 : *Les punitive damages et le droit américain de l'arbitrage*, George A. Bermann (Columbia School of Law)

14:30 – 14:50 : *Les dommages-intérêts punitifs dans la jurisprudence arbitrale de la CCI*, Emmanuel Jolivet (ICC)

15:00 – 15:20 : *Les dommages-intérêts punitifs à l'épreuve du contrôle national de l'exequatur*, Olivier Cachard (Faculté de droit de Nancy)

15:30 – 15:50 : *La quantification du préjudice dans les actions en dommages-intérêts fondées sur les infractions aux articles 101 ou 102 TFUE*, Mattia Melloni (Autorité luxembourgeoise de la concurrence)

16:00 : Discussion générale et cocktail

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# Second Issue of 2013's ICLQ

The second issue of *International and Comparative Law Quarterly* for 2013 includes three articles exploring private international law issues and a case commentary of the *VALE Építési Kft* decision of the European Court of Justice.

Pablo Cortés and Fernando Esteban de la Rosa, *Building a Global Redress System for Low-Value Cross Border Disputes*

> *This article examines UNCITRAL's draft Rules for Online Dispute Resolution (ODR) and argues that in low-value e-commerce cross-border transactions, the most effective consumer protection policy cannot be based on national laws and domestic courts, but on effective and monitored ODR processes with swift out-of-court enforceable decisions. The draft Rules propose a tiered procedure that culminates in arbitration. Yet, this procedure neither ensures out-of-court enforcement, nor does it guarantee compliance with EU consumer mandatory law. Accordingly, this article argues that the draft Rules may be inconsistent with the European approach to consumer protection.*

Sirko Harder, *The Effects of Recognized Foreign Judgment in Civil and Commercial Matters*

> *This article investigates what effects a recognized foreign judgment in civil and commercial matters has in English proceedings. Does the judgment have the effects that it has in the foreign country (extension of effects) or the effects that a comparable English judgment would have (equalization of effects), or a combination of these? After a review of the current law, it will be discussed what approach is preferable on principle. The suggested approach will then be illustrated by considering whether a foreign decision on one legal basis of a certain claim ought to preclude English proceedings involving another legal basis of the same claim. Finally, it will be discussed whether and how the effects of a recognized foreign judgment in England are affected by interests of a third country.*

Christopher Bisping, *The Common European Sales Law, Consumer Protection and Mandatory Overriding Provisions in Private International Law*

*This article analyses the relationship of the proposed Common European Sales Law (CESL) and the rules on mandatory and overriding provisions in private international law. The author argues that the CESL will not achieve its stated aim of taking precedence over these provisions of national law and therefore not lead to an increase in cross-border trade. It is pointed out how slight changes in drafting can overcome the collision with mandatory provisions. The clash with overriding mandatory provisions, the author argues, should be taken as an opportunity to rethink the definition of these provisions.*

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# Belgian Court Rules on Jurisdiction for Restitution Claims

On 13 December 2012, the Court of Appeal of Liege held that restitution claims fall within the scope of Article 2 of the Brussels I Regulation.

A Belgian company was suing a Luxembourg company in Belgium. The companies had concluded a contract for carriage of goods. The Belgian company claimed restitution of certain payments from the Luxembourg party.

The Belgian Court wondered whether restitution claims belong to Article 5.1 or 5.3 of the Brussels I Regulation. It concluded that they do not, because under the Belgian law of obligations a claim in restitution is quasi-contractual and thus neither contractual nor delictual. As a consequence, the court held, only Article 2 applied.

It is unclear whether any party argued that there might be autonomous interpretation of the Brussels I Regulation, and that the European Court of Justice judgment in *Kalfelis* might well stand for the proposition that quasi-contractual claims are delictual for the purpose of Article 5.3 of the Regulation.

# First Issue of 2013's Flemish PIL E-Journal

The first issue of the Belgian e-journal on private international law *Tijdschrift@ipr.be / Revue@dipr.be* for 2013 was just released.

The journal is meant to be bilingual (French/Dutch), but this issue is almost exclusively in Dutch, except for one judgment from the Court of Appeal of Liege.

No article in this issue.

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# New French Book on International Commercial Law

Catherine Kessedjian, who is professor of law at Paris II University and a former Deputy Secretary General to the Hague Conference, has published a new treatise on French International Commercial Law.




As is traditional in France, the book includes developments on international commercial contracts, but also on the law governing corporations (including international insolvency) and international dispute resolution.

A table of contents and more details are available here.

# Born on the European Private International Law of Book-Entry Securities

Michael Born has published a book on the European Private International Law of Book-Entry Securities (*Europäisches Kollisionsrecht des Effektengiros*, Tübingen, Mohr Siebeck 2013). The official summary reads as follows:

> *The law applicable to securities held in book-entry form in securities accounts is subject to a variety of European private international law rules. However, these provisions have not yet established a complete and consistent conflict of laws regime. Michael Born analyses the inconsistencies and gaps and also examines the options for eliminating the identified shortcomings.*

Further information is available on the publisher's website (in German).

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# Cuniberti on Lex Mercatoria

I (University of Luxembourg) have posted Three Theories of *Lex Mercatoria* on SSRN.

> *One of the most remarkable developments in international commercial law over the last fifty years has been the gradual acceptance of the existence of a new merchant 'law', or lex mercatoria, spontaneously generated by the international community in the shadow of national legal orders. While the notion that there might be law beyond the state aroused the interest of legal scholars and theorists around the world, few wondered whether international commercial actors had a genuine interest in the development of an autonomous*

*transnational law. This Article offers empirical evidence suggesting that commercial parties almost never opt into lex mercatoria pursuant to their freedom to contract, but instead use that freedom to select a particular national law to govern their contracts. This conclusion begs the question of whether anybody else might benefit from lex mercatoria.*

*In a groundbreaking article published in 2005, Christopher Drahozal argued that the idea had lost practical significance and offered a signaling theory of lex mercatoria: the interest in the idea can be explained by the willingness of would be arbitrators to market themselves. While essentially agreeing with Drahozal, this Article offers two other theories explaining the development of lex mercatoria. First, I argue that deciding disputes on the basis of lex mercatoria can bring important benefits to international arbitrators. If that is the case, though, their interests may conflict with that of the parties who hired them. That raises an agency problem which needs to be both acknowledged and addressed. Secondly, I demonstrate how lex mercatoria can also benefit organizations which are involved in the business of producing model contracts and maintain that the active promotion of the use of non-state law – thereby side-stepping mandatory rules of national law – is intended to reduce the costs of producing international model contracts by such organizations.*

The article is forthcoming in the *Columbia Journal of Transnational Law*.

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# Nehne on Methodology and Principles of European Private International Law

Timo Nehne, University of Cologne, has written a new book on methodology and general principles of European Private International Law (*Methodik und allgemeine Lehren des europäischen Internationalen Privatrechts.* Tübingen, Mohr Siebeck 2012). The author has kindly provided us with the following

summary:

*The Private International Law regulations adopted by the European Union so far stipulate issues of methodology and "general principles" in fragments only. The dissertation "Methodik und allgemeine Lehren des europäischen Internationalen Privatrechts" (Methodology and General Principles of European Private International Law) focuses on their examination. The book encompasses six chapters. In chapter 1, the conceptual and methodological basis for the work is established. After the definition of the term "European Private International Law" and a short description of its history (§ 1), the introduction of a uniform terminology for this field of law is discussed (§ 2). Afterwards, dogmatic fundamental questions for the construction of European Union Private International Law (EU PIL) and for filling its gaps are scrutinised (§ 3). On that basis, methodic proposals of how to interpret EU PIL (§ 4) and how to close existing gaps (§ 5) are developed. Beside the creation of homogeneous Latin technical terms, both of these techniques are applied in chapters 2 to 5 to work out further methods for the handling of European conflict of laws and to fathom its principles. In doing so, the dissertation follows the path of application of EU PIL regulations. Thus, chapter 2 deals with the scope of European Private International Law (§ 1) and its relationship with national law, EU law as well as international conventions (§ 2). Subsequently, subjects concerning the legal category of a European choice of law rule are investigated (chapter 3) namely characterization (§ 1) and the solving of preliminary questions (§ 2). After having identified the applicable legal category, a European legal practitioner will be faced with a specific connecting factor. What kind of connecting factors EU PIL provides, is depicted in chapter 4. After an introducing summary (§ 1) it broaches the issues of party autonomy (§ 2) and "objective" connecting factors (§ 3). In any case, the connecting factor of a EU choice of law rule leads to the legal system governing the case at hand. In this respect, European conflict of laws follows the principle of exclusion of renvoi (chapter 5 § 1) which gives rise to the question whether it allows exceptions (§ 2). A further problem consists in the handling of the applicable law of states with more than one legal system (§ 3). Finally, chapter 6 compiles the results of the preceding chapters (§ 1) and closes with a suggestion which rules a Rome 0 Regulation or a EU PIL code should comprehend at least (§ 2).*

Further information is availbale on the publisher's website.