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).

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*.

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.

Keitner on Human Rights Enforcement through Transnational Litigation

Chimene Keitner (UC Hastings College of Law) has posted Transnational Litigation: Jurisdiction and Immunities on SSRN.

Through transnational litigation, national courts enforce human rights norms "horizontally." Jurisdictional doctrines and immunity principles both shape the permissible contours of horizontal enforcement. Conflicts may arise between the principles of state sovereignty and non-interference, on the one hand, and the goals of promoting accountability and providing remedies for victims, on

the other. This chapter in the forthcoming Oxford Handbook of Human Rights explores the bases for asserting jurisdiction in human rights cases and focuses on the development, and limits, of foreign official immunity and foreign state immunity. It also discusses claims against non-state actors including private corporations for committing or assisting human rights violations. While the horizontal enforcement of human rights norms by national courts carries the potential for both salutary and disruptive effects, national courts remain important developers and enforcers of international human rights law.

The pre-publication text of this chapter will be available on SSRN while the Oxford Handbook of Human Rights is still in production.

Deinert on International Labor Law

Olaf Deinert, Professor at the Georg-August-University Göttingen, has written a book on (German and European) international labor law (*Internationales Arbeitsrecht. Deutsches und europäisches Arbeitskollisionsrecht*, Tübingen, Mohr Siebeck 2013). The official summary reads as follows:

Olaf Deinert studies all the issues pertaining to applicable law in labor law cases with a foreign element. He gives a detailed description of the conflict of law rules and, in a discussion which includes all fields of labor law, looks at the extent to which applicable law (lex causae) is superseded by overriding mandatory rules of private law and public law. He examines this from the perspective of comparative law, since this is significant for the uniform interpretation of European regulations on international labor law, illustrating as it does the problems involved and serving as an example of how to solve individual issues in the conflict of laws.

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

Kroll-Ludwigs on Party Autonomy in European Private International Law

Kathrin Kroll-Ludwigs, University of Bonn, has authored a book on the role of party autonomy in European Private International Law (*Die Rolle der Parteiautonomie im europäischen Kollisionsrecht*, Tübingen, Mohr Siebeck 2013). It provides a broad overview of the design of party autonomy in the law of contractual and non-contractual obligations, family and succession law. The official summary reads as follows:

> *Why did the European legislator decide on a broad freedom of choice of law in the law of contractual and non-contractual obligations on the one hand and on a limited choice in family law and the law of succession on the other hand? Kathrin Kroll-Ludwigs' analysis of the reasons for this divergency leads to the very basis of party autonomy as a fundamental right of individual freedom. She suggests a change of paradigm.*

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

Van Calster on European Private International Law

Geert Van Calster, Professor at the University of Leuven, authored a new text book on European Private International Law that has just been published:
Geert Van Calster, European Private International Law, Hart Publishing 2013

(382 pages). This book is a valuable addition to the existing text books on European Private International Law. It focuses on those instruments and developments that are most important in the commercial area.

The blurb reads:

Usable both as a student textbook and as a general introduction for legal professionals, European Private International Law is designed to reflect the reality of legal practice throughout the EU. The private international law of the Member States is increasingly regulated by the EU, making private international law ever less 'national' and ever more EU based. Consequently, EU law in this area has penetrated national law to a very high degree, making it an essential area of study and an area of increasing importance to practising lawyers throughout the EU. This book provides a thorough overview of core European PIL, including the Brussels I, Rome I and Rome II Regulations (jurisdiction, applicable law for contracts and tort), while additional chapters deal with PIL and insolvency, freedom of establishment and corporate social responsibility.

More information is available here.

5th Journal of Private International Law Conference, Madrid, 12-13 Sep 2013

Building on the very successful Journal of Private International Law conferences in Aberdeen (2005), Birmingham (2007), New York (2009), and Milan (2011) the **5th Conference of the Journal will take place in Madrid on 12-13 September 2013**. The organization of the Conference is shared by the Law Faculties of Universidad Autónoma de Madrid and Universidad Complutense. The Programme is reproduced in full below. All of the details on venue, accommodation and registration can be found on the **conference website**.

The Programme

Thursday 12th September 2013

9.00 – 9.30 Registration

9.30 – 10.00 Welcome session (J. Harris + local judicial or academic authorities)

10.00 – 11.30 Panels

Group 1 – MINORS & NAME

CARPANETO, Laura	Few proposals on the "adaptation" of Brussels II-bis with specific reference to the rules on parental responsibility
FIORINI, Aude	The Hague Child Abduction Convention and the Habitual Residence of Newborns – a Comparative Study
GONZÁLEZ MARTÍN, Nuria	International Child Abduction and Mediation: Feasibility and Suitability of a Guide of Good Practice
TRIMMINGS, Katarina	Embryo transfer in international context
GUZMÁN ZAPATER, Mónica	The right to a name: observatory on the progress made by the EU on the continuity of civil status
Mikša, Katažyna	New rule – old problem? The law applicable to surnames in new Polish Act on Private International Law

Group 2 – CODIFICATION

FRANZINA, Pietro	Codifying Private International Law – Some Thoughts on the Reasons of a Resurgent Trend
ERDÖS, Itsvan	Unity or Diversity? Should there be a European Code of Private International Law?

PAUKNEROVA, Monika & PFEIFFER, Magdalena	New Act on Private International Law in the Czech Republic: Starting Points and Perspectives within the European Union
ALMEIDA, Bruno& ARAUJO, Nadia	Two steps forwards, one step back? Recent developments and pending challenges of PIL practice in Brazil
Deskoski, Toni &Dokovski, Vangel	Choice of court agreements in Macedonian Private International Law and in the Brussels I Regulation (and the influence of the Brussels I Regulation on the legal systems of the third countries)

Group 3 – TORTS – JURISDICTION

DYRDA, Lukas	Autonomous interpretation in European private international law – several remarks on the notion of "the place where the harmful event occurred or may occur" under the Brussels I Regulation and the new Regulation No 1215/2012 in intellectual property infringement cases
CORDERO, Clara Isabel	The need for an EU coordinated legislative approach on cross-border violations of privacy
VALLAR, Julia	Is art. 5.3 of EC Reg. NO. 44/2001 applicable in respect of an action for a negative declaration in tort matters?
KNÖFEL , Oliver	Taming the Leviathan – Liability of States for Sovereign Acts (Acta Iure Imperii) as a Challenge for EU Private International Law

Group 4 – ARBITRATION

ASON, Agnieszka	The Revised Brussels Regulation: A New Approach To Arbitration in the European Rulemaking
HAUBERG WILHEMSEN, Louise	European Perspectives on International Arbitration

ZACARIASIEWICZ, Maciej	Vindicating public interest through application of mandatory rules in international commercial arbitration
GROSSU, Manuela	Waving the Right to Challenge Arbitral Awards as the Outcome of Hybrid Procedures
Hacibekiroglu, Ekin	Taking evidence in international commercial arbitration

11.30 – 12.00 Coffee Break

12.00 – 13.30 Panels

Group 5 – MARRIAGE & MATRIMONIAL PROPERTY

RAITIERI, Marco	Citizenship as a connecting factor in private international law for family matters
SHAKARGY, Sharon	Marriage by the State or Married to the State? On Choice of Law in Marriage and Divorce
QUINZA, Pablo	The establishment of an optional common European matrimonial property regime: an alternative way for international couples.
TORGA, Maarja	Establishing the 'cross-border' nature of a matrimonial property dispute under the proposed EU regulation on the matrimonial property regimes
SAPOTA, Anna	Compromise or enhanced cooperation – the possible ways to deal with EU proposal on matrimonial property regimes and property consequences of registered partnership

Group 6 – GENERAL PIL

CANOR, Iris	The Principle of Non-Discrimination in Private International Law
FULLI-LEMAIRE, Samuel	Characterisation – a problem reborn?

MAUNSBACH, Ulf	Justifying the exclusion of choice
HOLLOWAY, David &SCHULTZ, Tomas	Comity in European PIL
SHRIVASTAVA, Vishal	A Case Study on the Need for Strengthening the International Court of Justice

Group 7 – RECOGNITION AND ENFORCEMENT IN THE EU

TORRALBA, Elisa & RODRÍGUEZ PINEAU, Elena	What's in a Judgment? Reflections on res judicata, jurisdiction and ECJ's activism
AZCÁRRAGA MONZONÍS, Carmen	New Developments in the Scope of Free Movements of Public Documents in the European Union
SERRANO, Giuseppe	Private enforcement of administrative acts adopted by a foreign competition authority: a PIL perspective
DOWERS, Neil	Underpinning the internal market: the doctrine of mutual trust, the fundamental freedoms, and European private international law
GILLIES, Lorna	Assessing the Role of Public Policy and the Utility of Jurisdiction and Choice of Law Rules for the Effective Return of Cultural Property Objects Unlawfully Removed from a Member State

Group 8 – COMPANY LAW & FINANCE

MUCCIARELI, Federico Maria	Company's private international law in the 21st Century: dealing with complexity
WINSHIP, Verity	Jurisdiction Over Corporate Groups
Yüksel, Burcu	The Choice of Law Aspects of International Funds Transfers

WAHAB, Mohamed S. Abdel	The Law Governing Public Private Partnership Agreements: BetweenParty Autonomy and Overriding Regulatory Policies
AKSELI, Orkun	Assignment of Receivables and the Conflict of Laws

13.30 – 15.00 Lunch (a short guided visit to "La Corrala" will be available at 14.30)

15.00 – 16.30 Panels

Group 9 – SUCCESSION

Yatsunami, Ren	Characterization of Trust in Consideration of Neighboring Legal Relationships
HOLLIDAY, Jayne	Habitual residence: room for improvement?
PERONI, Giulio	From the principle of unity to the principle of divisibility of the patrimony: new tendencies in international private law
NAGY, Csongor Itsván	The functions of party autonomy in international family and succession law – an EU perspective
WYSOCKA-BAR, Anna	Modification and revocation of professio iuris under the EU Succession Regulation

Group 10 – CONTRACTS

RESZCZYK	Law applicable to voluntary representation
Van Hoek, Aukje	Private international law for cross-border posting of workers: one union, many models of protection
ÁLVAREZ ARMAS, Eduardo	Private International Law and the rights of air and sea passengers in the EU: A puzzle and a lock in the access to justice.

POLIDO, Fabricio	Critical interactions between Private International Law and the Vienna Convention on Contracts for the International Sale of Goods of 1980 – CISG: A view from the Brazilian legal environment
ÖZGENC, Zeynep	Choice of Law in contract of affreightment: the approach of Turkish private international law.

Group 11 – BRUSSELS I RECAST – JURISDICTION

CAMPUZANO DÍAZ, Beatriz	The scope of application of the rules on jurisdiction after the recast of Brussels I Regulation
MIGLIO, Alberto	The Recast of Brussels I and Jurisdiction Over Third State Defendants
HERRANZ BALLESTEROS, Mónica	Law applicable to choice of court agreements in Brussels I Recast
SÁNCHEZ DÍAZ, Sara	Choice of court agreements: Brussels I Regulation Recast
AÑOVEROS TERRADAS, Beatriz	Collective Redress and Consumer Protection in Europe

Group 12 – JURISDICTION & ENFORCEMENT

ARZANDEH, Ardavan	Spiliada: An unpredictable doctrine?
TARMAN, Zeynep Derya	Jurisdiction Turkish courts
KEYES, Mary & MARCHALL, Brooke	*Potestativité* and party autonomy

DARIESCU, Cosmin	When Forum non Conveniens objection can be invoked before Romanian Courts?
Ozcelik, Gulum	Public Policy Intervention in the Recognition and Enforcement of Foreign Judgments: Turkish Perspective

16.30 – 17.00 Coffee Break

17.00 – 18.30 Panels

Group 13 – TORTS- APPLICABLE LAW

Grusic, Ugljesa	Regulating the Environment and Private International Law
ERKAN, Mustafá	Product Liability in Turkish Private International Law: Is Turkey Looking Towards the Rome II Regulation?
BRIGHT, Clair	Civil Liability for Corporate Human Rights Abuse; The issue of extraterritorial jurisdiction
Sousa Gonçalves, Anabela Susana de	The General Rules of the EU Regulation No 864/2007 (Rome II)
PITEL, Stephen & HARPER, Jesse	The Law Governing Tort Claims: Twenty Years of the *Lex Loci Delicti*

Group 14 – INSOLVENCY

HEREDIA CERVANTES, Iván	Arbitral agreements and arbitral procedures in the Insolvency Regulation.
PENADÉS FONS, Manuel	Conflict of laws to solve laws in conflict: Balancing cross-border insolvency and international arbitration.
McCORMACK, Gerard	Reforming the European Insolvency Regulation – changing what is on the menu
GUANJIAN Tu, andXiaolin Li	Cross-Border Bankruptcy: A Call and A Suggestion for Cooperation within China

Group 15 – SALES/CESL

HEIDEMANN, Maren	Choice of law under the proposed Common European Sales Law
PORCHERON, Delphine	Unification of substantive rules and private international law: a study of their relationship through the example of the Common European Sales Law
RUIZ ABOU NOGM, Verónica	Designing Ways Forward: Lateral Thinking, Private International Law and the Common European Sales Law'
Strecker, Sophie & BERRY, Elspeth	Rome I, Party Autonomy and the Choice of Non-State Law: Difficulty or Opportunity?
SÜRAL, Ceyda	Conflict of laws rules: a barrier before the application of Unidroit principles or not?

20.30 Conference Dinner in Pabellón de los Jardines de Cecilio Rodríguez (El Retiro)

Friday 13th September 2013

9.30 -11.00 Plenary session I RECOGNITION & ENFORCEMENT

Chair: Francisco J. Garcimartín Alférez

GASCÓN INCHAUSTI, Fernando	The abolition of exequatur proceedings in the "new" Brussels Regulation
TUO, Chiara E.	The re-evaluation of foreign judgments under EU Regulation 1215/12: between prohibitions and mutual trust
LEHMANN, Matthias	A System sui generis?Res judicata effect of Member State Judgments in the European Union
BEAUMONT, Paul & WALKER, Lara	Recognition and Enforcement of Judgments in Civil and Commercial Matters: Lessons from Brussels for the Hague
OPPONG, Richard Frimpong & NIRO, Lisa	Recognition and Enforcement of Judgments of *International* Courts in National Courts: Emerging Jurisprudence and Challenges Ahead

11.15 -11.45 Coffee break

11.45 – 13.15 Plenary session II CONTRACTS & TORTS

Chair: Pedro A. De Miguel Asensio

LEIN, Eva	Extending Jurisdiction under Art 5(3) Brussels I Regulation to Accomplices?
DANOV, Mihail	Private Antitrust Litigation and Private International Law in a Global Context
TERAMOTO, Shinto & Jur?ys Paulius	IP Intermediaries In Conflict Of Laws: A Social Network Perspective
ALBORNOZ, Mª Mercedes	The internet and private international law of contracts
OREJUDO PRIETO DE LOS MOZOS, Patricia	PIL matters relating to crowdfunding
MÄSCH	Agency and conflict of laws

13.30 – 15.00 Lunch

15.00 -16.30 Plenary session III GLOBAL LITIGATION

Chair: Paul Beaumont

PERTEGÁS, Marta & Teitz, L.E.	The benefits of regional and global litigation instruments for foreign trade and investment
CHILDRESS, Donald Earl	Transnational litigation and PIL
GROSSE RUSE-KHAN, Henning	A conflict of laws approach to competing rationalities in international law. The Case of Plain Packaging between IP, Trade, Investment and Health

UBERTAZZI, Benedetta	Private International Law before the International Court of Justice
MAHER, Gerard & RODGER, Barry	Countries, States, and Legal Systems: An International Private Law Perspective
TANG, Zheng Sophia	Corruption in International Commercial Arbitration—Special Conflict of Laws Challenges

16.30 -17.00 Coffee Break

17.00 -18.00 Conference by A.G. Pedro Cruz Villalón

18.00 – 18.30 Concluding remarks and closing words by P. Beaumont

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Michaels on Globalisation and Law

Ralf Michaels (Duke Law School) has posted Globalization and Law: Law Beyond the State on SSRN.

> *The chapter provides an introduction into law and globalization for sociolegal studies. Instead of treating globalization as an external factor that impacts the law, globalization and law are here viewed as intertwined. I suggest that three types of globalization should be distinguished — globalization as empirical phenomenon, globalization as theory, and globalization as ideology. I go on to discuss one central theme of globalization, namely in what way society, and therefore law, move beyond the state. This is done along the three classical elements of the state — territory, population/citizenship, and government. The role of all of these elements is shifting, suggesting we need to move away from the traditional paradigm of both social and legal studies: methodological nationalism. I do not answer here how this paradigm should be replaced, but I discuss one prominent candidate of a meta-theory: transnational law. Transnational law, I suggest, helps transcend dichotomies of methodological nationalism that have become unhelpful: between domestic and international,*

between public and private, and between law and society

The paper is forthcoming in *Law and Social Theory* (Bannaker & Travers eds., Oxford, Hart Publishing, 2013).