The Hague Convention 1996 in Force in the UK

The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, ratified by the UK this year, came yesterday (1 November 2012) into force in this country, subject to the following declarations and reservations:

.- A judgment given in a Court of a Member State of the European Union, in respect of a matter relating to the Convention, shall be recognised and enforced in the United Kingdom of Great Britain and Northern Ireland by application of the relevant internal rules of Community law.
.-In accordance with Article 29, paragraph 2, of the Convention, the Government of the United Kingdom declares that it will interpret this paragraph as referring only to cases where the requesting Central Authority does not know to which applicable territorial unit their application should be addressed. In such cases the United Kingdom designates the Central Authority for England to transmit to the relevant Central Authority.
.- In accordance with Article 34, paragraph 2, of the Convention, the Government of the United Kingdom declares that requests made under paragraph 1 of Article 34 shall be communicated to its authorities only through the relevant Central Authority.
.- In accordance with Article 54, paragraph 2, of the Convention, the Government of the United Kingdom of Great Britain and Northern Ireland declares that it objects to the use of French.

German Federal Court of Justice

Rules on International Jurisdiction under Articles 15, 16 and 22 of the Brussels I-Regulation

In a judgment of 23 October 2012, the German Federal Court of Justice *(Bundesgerichtshof)* had to deal with the question of whether German courts have jurisdiction over claims of a consumer against a tour operator arising out of a tenancy of a holiday house abroad. Referring to Articles 15 (1) (c) and 16 (1) of the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter: Brussels I-Regulation) the court answered the question in the affirmative.

The facts of the case were as follows: The plaintiffs, a German couple domiciled in Schwerin (Germany), rented from the defendant, a Danish tour operator, a holiday house located in Belgium and belonging to a third party. Upon arrival, the plaintiffs realized that the house suffered from substantial defects. When the defendant failed to fix the, the plaintiffs cut their vacation short and returned to Germany.

Back home, the plaintiffs sued the defendant for reimbursement of the travel price and compensation for wasted holiday time in Local Court *(Amtsgericht)* of Schwerin. They argued that under Article 16 (1) of the Brussels I-Regulation German courts were competent to hear the case since the contract in question was a consumer contract in the sense of Article 15 (1) lit. c) of the Brussels I-Regulation. The defendant, in contrast, argued that German courts did not have jurisdiction. Pointing to Article 22 of the Brussels I-Regulation, he argued that in proceedings which have as their object tenancies of immovable property the courts of the Member State in which the property was situated had exclusive jurisdiction.

The Local Court of Schwerin – and later the Appellate Court *(Landgericht)* of Schwerin – followed the plaintiffs' view and ordered the defendant to pay the requested sums. The defendant, therefore, appealed to Federal Court of Justice *(Bundesgerichtshof)* which, however, confirmed the lower courts' decisions. A

consumer, who rented a holiday house belonging to a third party from a commercial tour operator, could rely on Article 16 of the Brussels I-Regulation and bring proceedings in the courts of his home country. Article 22 No. 1 of the Brussels I-Regulation, in contrast, did not apply. According to the case law of the Court of Justice of the European Union, a provision, which compelled a party to bring an action in a member state in which neither party was domiciled, had to be interpreted narrowly. Application of Article 22 No. 1 of the Brussels I-Regulation, therefore, was confined to disputes between the owner and the tenant of immovable property. In contrast, the provision did not apply to disputes between a tour operator and a consumer.

The full decision will soon be available on the website of the Federal Court of Justice (in German).

2012 Clarendon Law Lecture

In November 2012 Oxford University Press and the Faculty of Law of the University of Oxford will host the 2012 Clarendon Law Lectures to be delivered by *Lord Collins of Mapesbury.* Focusing on "Justiciability in National and International Law" the lectures will take place in the Gulbenkian Lecture Theatre, St. Cross Building, St. Cross Road, Oxford OX1 3UL. Further information are available on the Oxford Faculty of Law Homepage.

The programme reads as follows:

- LECTURE ONE, Thursday, 8 November 2012, 17:00-18:00 (followed by a drinks reception)
- LECTURE TWO, Thursday, 15 November 2012, 17:00-18:30
- LECTURE THREE, Thursday, 22 November 2012, 17:30-18:30

Anuario Español de Derecho Internacional Privado, 2011

A new volume of the *Anuario Español de Derecho Internacional Privado* (vol. 2011) has just been released. It includes a number of unique studies, most of which are in-depth developments of the ideas briefly presented both by Spanish and foreign scholars at the International Seminar on Private International Law, held last March at the Universidad Complutense de Madrid. Just a taste of the contributions (clik here for the whole summary):

Sixto A. Sánchez Lorenzo, **La Propuesta de Reglamento relativo a una normativa común de compraventa europea y el Derecho internacional privado**, pp. 35–61.

Sabine Corneloup, **Roma II y el Derecho de los mercados financieros: el ejemplo de los daños causados por la violación de las obligaciones de información**, pp. 63–87.

Juan José Álvarez Rubio, **Jurisdicción, competente y ley aplicable en materia de difamación y protección de los derechos de la personalidad**, pp. 89–118.

Pilar Jiménez Blanco, **Acciones de cesación de actividades ilícitas transfronterizas**, pp. 119–146.

Ángel Espiniella Menéndez, **Problemas de ley aplicable a la responsabilidad por actos ajenos**, pp. 147–166.

Santiago Álvarez González, **Las legítimas en el Reglamento sobre sucesiones y testamentos**, pp. 369–406.

Eva Inés Obergfell, **La libre elección de la ley aplicable en el Derecho internacional privado de sucesiones: una perspectiva desde Alemania,** pp. 407–414.

Iván Heredia Cervantes, ***Lex successionis* y *lex rei sitae* en el Reglamento de sucesiones**, pp. 415–445.

Davì, Le renvoi en droit international privé contemporain (Recueil des cours, vol. 352)

Prof. *Angelo Davì* (University of Rome "La Sapienza") has recently published in the *Recueil des cours* (vol. 352) the course on *renvoi* held at the Hague Academy of International Law: "Le renvoi en droit international privé contemporain".

An English presentation has been kindly provided by the author (a French version is available on the publisher's website):

> *The Course deals with the modern development of scientific thinking on renvoi, examines its various functions in contemporary legal systems and assesses the importance of its current role. The different models of renvoi present in domestic legislations as well as in uniform rules on conflict of laws, of either a conventional or supra-national origin, are analysed on the basis of the fundamental distinction between models which merely take into account foreign choice of law rules and models based on a complete reconstruction of the content of foreign private international law. Ample space is accorded to developments in the EU system of private international law, as well as to an analysis of the relationship between renvoi and other methods and techniques currently employed in this area of the law, mainly for the purpose of assessing the effects their diffusion is likely to produce on the role played by renvoi as an instrument of coordination in contemporary private international law.*

Title: Le renvoi en droit international privé contemporain, by *Angelo Davì*, Brill Academic Publishers – Martinus Nijhoff (series: Collected Courses of the Hague Academy of International Law, vol. 352), Leiden, 2012, pp. 528.

ISBN: 9789004227262. Price: EUR 145. Available at Brill.

ASIL Conference on What is Private International Law?

On November 2-3, 2012, the Private International Law Interest Group of the American Society of International Law (ASIL) is hosting its conference at Duke Law School, together with the Center for International and Comparative Law, and the Duke Journal of Comparative and International Law.

WHAT IS PRIVATE INTERNATIONAL LAW?

FRIDAY, NOVEMBER 2, 2012

1:15 Welcome / Introduction: Ralf Michaels

1:30 *Panel 1: Philosophical Foundations of Private International Law*
– John Linarelli, Theories of Justice and Private International Law
– Sagi Peari, The Choice-Based Perspective of Choice-of-Law
– Robert S. Wai, Already Transnational Private Law
Chair and Commentator: Trey Childress

3:45 Panel 2: *The Goals of Private International Law*
– Louise Ellen Teitz, The Future of the Hague Conference
– Alex Mills, The Identities of Private International Law – Lessons from the US and EU Revolutions
– Stéphanie Francq, Hierarchy of Norms—the Missing Tool of Private International Law?
Chair and Commentator: Chris Whytock

SATURDAY, NOVEMBER 3, 2012

9:00 Panel 3: *Constitutional and Democratic Aspects of Private International Law*
– Jacco Bomhoff, The Constitution of the Conflict of Laws
– Charles T. Kotuby, General Principles and International Due Process as Sources of Private International Law
– Mark Fathi Massoud, Private International Law in Authoritarian Regimes:

International Arbitration and the Outsourcing of the Rule of Law
– Annelise Riles, After New Governance: International Financial Governance and the Surprising Attraction of a Conflict of Laws Approach
Chair and Commentator: Julie Maupin

11:15 Panel 4: *Private International Law and Legal Pluralism*
– Cristián Gimenez Corte, Pushing the Limits: The Function of Private International Law in the Era of Globalization and the Need to Review its Theoretical Foundations
– Yao-Ming Hsu, Pluralistic Justice and Private International Law
– Dwight Newman, Global Legal Pluralism, Collective Rights, and Private International Law
Chair and Commentator: Ralf Michaels

1:00 Lunch: 3rd floor Mezzanine
ASIL prize presentation

2:00 *Wrap-up panel*
All participants

On Negative Declarations and the Brussels I Regulation

The latest issue of the *Anuario Español de Derecho Internacional Privado* (vol. XI, 2011), which has been recently published, includes an article by Crístian Oró Martínez (Universitat Autònoma de Barcelona – Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law) dealing precisely with the question examined by the CJEU in its judgment of 25 October 2012. The author analyses the long-standing case law on Article 5(3) of the Brussels I Regulation, especially insofar as it required that the action seek to establish the liability of the defendant. This would exclude the possibility of using this jurisdiction rule as regards actions for a negative declaration. However, in the author's view, there are a number of reasons to hold that Article 5(3) should cover

this kind of actions, if interpreted both from a literal and from a systematic perspective. Since the issue at stake has resulted in divided opinions not only in legal literature, but also in the case law of national courts, the article analyses the arguments generally advanced in support of these different positions. As a conclusion, the author submits that the CJEU should review its case law in order to allow actions for a negative declaration to be brought under Article 5(3) of the Brussels I Regulation. In short, a position which coincides with the outcome of the judgment of 25 October 2012, even though the Court did not consider it necessary to review its own interpretation of the scope of Article 5(3) in order to reach such conclusion.

Negative declarations, tort and the Brussels I Regulation

An important, if slightly unexpected, ruling from the CJEU in Case C-133/11, Folien Fischer AG and another v Ritrama SpA (25 October 2012). Disagreeing with the Advocate General, the Court has held that an action for a negative declaration seeking to establish the absence of liability in tort may fall within Art. 5(3) of the Brussels I Regulation.

The Court concludes that:

> *If, therefore, the relevant elements in the action for a negative declaration can either show a connection with the State in which the damage occurred or may occur or show a connection with the State in which the causal event giving rise to that damage took place, …, then the court in one of those two places, as the case may be, can claim jurisdiction to hear such an action, pursuant to point (3) of Article 5 of Regulation No 44/2001, irrespective of whether the action in question has been brought by a party whom a tort or delict may have adversely affected or by a party against whom a claim based on that tort or delict might be made.*

The judgment is available here, and the Advocate General's opposing opinion here .

A short summary of the facts and decision appears on the Incorporated Council for Law Reporting website here.

Le Règlement Européen sur les Successions et la Planification Patrimoniale en Suisse

Although the European Regulation No 650/2012 is not applicable in Switzerland, it can hardly be ignored by Swiss professionals working in the field. The *Centre de droit comparé, européen et international* of the University of Lausanne has organised a workshop to discuss the implications of this text in the relations between Switzerland and some neighboring countries (Germany, France, Italy). It will take place on January 25, 2013. Prof. Andrea Bonomi, Patrick Wautelet, Angelo Davì, Domenico Damascelli, and Robert Danon, will share the stage with experts of the notarial world, such as Dr. Mariel Revillard, Rembert Süß, Paolo Pasqualis or Pascal Julien Saint-Amand.

The number of places is limited; registration before January 9, 2013, is recommended. For the complete programme and further information click here.

Consumer ADR in Europe

Christopher Hodges, *Iris Benöhr* and *Naomi Creutzfeld-Banda*, all from the University of Oxford, have recently published a comprehensive comparative study

on consumer ADR in Europe (Consumer ADR in Europe, Hart Publishing, 2012). The volume provides a detailed overview of existing ADR schemes in various European countries, including Belgium, France, Germany, Spain, Sweden and the United Kingdom as well as emerging pan-EU dispute resolution schemes. In light of the European Commission's 2011 Proposals on (cross-border) alternative and online dispute resolution (available here and here) the volume provides a timely and most valuable insight into the current system of consumer ADR in Europe. More information is available on the publisher's website.