Kiobel and the Question of Extraterritoriality (Paper)

With this work written in English (click here to access the document), Professor Zamora Cabot continues his already wide and prolific research on the *Alien Tort Claims Act* (hereinafter, ATCA) of the United States, and on its application. In this paper the author focuses on a decisive issue: the question of extraterritoriality that is being discussed in the *Kiobel* case. The author declares that the way this question is being presented -i.e., whether the United States is exceeding its competences vis-á-vis public international law from the point of view of extraterritoriality, related to imposition or legal imperialism- is completely wrong. The United States is not acting against the Law of Nations and the debate on this issue is actually unfounded. To support his opinion, after some previous considerations in the introductory Part of this work, Professor Zamora Cabot brings up several cases sustaining the aforementioned negative. Most specifically, in Section II, and just as an *aide-mémoire*, the author highlights three milestones in the field of international economic sanctions: Section 301 *et seq*. of the *United States Trade Act of 1974* and its application, the *Siberian Gas Pipeline* case and the renowned *Cuban Embargo* case which comprises some important elements, such as the *Helms-Burton Act*. In his opinion, based on a long personal research, the opponents to the ATCA are trying to place it into a controversial and troubled field, taking advantage of the negative memory sparked off by the real conflicts of extraterritoriality, as exemplified by the U.S. international sanctions regime.

In Section III, the author, in line with the original interpretation made by the United States Court of Appeals for the Second Circuit in its seminal case *Filártiga*, argues that the cases on the application of the ATCA are based on special torts, for which the mechanics and approaches of Private international law do play a significant role. Evaluating the set of jurisdictional and legislative competences (jurisdiction to adjudicate and jurisdiction to prescribe) of the United States confronted with the Law of Nations, and regarding its practice, the author declares that those competences can be exercised without problems, just as the United States courts are repeatedly reflecting in their jurisprudence while deciding other kinds of international tort cases. This does not imply denying the special features of the ATCA cases, mainly defined by two facts: first, the need of

contrasting the consistency with the *Jus Cogens* of the conducts underlying these cases,to confirm if the reservation of jurisdiction to adjudicate in favor of the federal courts as dictated by the ATCA is justified; second, the possibility for the federal courts to base their decisions *on federal common law*, to the extent that it has integrated the mandates of Public international law.But it is worth noting, in any case, that these special torts do not lead to exclusion, but to the opportunity to make Private international law and Public international law to cooperate, which always ennobles both of them.

Finally, in Section IV, Professor Zamora Cabot concludes his research with this idea: if the United States Supreme Court decides in the *Kiobel* case against the brilliant jurisprudence generated by the ATCA in that country, which is in favor of the Human Rights and which constitutes a magnificent example for the international community, the fight to protect them will continue. And it will do so before the State Courts inside the United States, as well as before many other courts across the length and breadth of the globe. Actually, the international community is becoming more sensitive and mindful, and numerous initiatives are being taken, especially regarding cases based on human rights violations committed by multinational corporations.

European Parliament Conference on Civil Law and Justice

A workshop on civil law and justice will take place next Wednesday, 23 January, at the European Parliament, entitled "**Do EU citizens enjoy free movement**". The opening panel will present the latest developments in the case-law of the Court of Justice on civil law, with a special focus on EU citizenship; the Irish Presidency planning for the area of civil law will follow. Session I will address Private International Law from a general point of view, comprising among others the intervention of our editor Xandra Kramer on the study (downloadable here) "Current gaps and future prospects in European private international law: towards a code of private international law?". Session II will focus on family and

succession law, therefore on topics such as the questions left unresolved in Regulation 650/2012 (Prof. Burkhard Hess of the Max Planck Institut Luxembourg), the rules governing surrogacy in the EU Member States (Laurence Brunet, London School of Economics), the cross-border implications of the legal protection of adults (Phillipe Lortie and Maja Groff, from the Hague Conference on Private International Law, and Richard Frimston, Solicitor, Russell-Cook Solicitors, Member of the Society of Trust and Estate Practitioners), or the legal basis for the way forward in the field of family law (Aude Fiorini, Dundee Law School). In Session III, consecrated to civil status, the speakers will address fraud with respect to civil status (Duncan Macniven, President of The International Commission on Civil Status, former Registrar General for Scotland), together with day-to-day matters in cross-border relationships, such as the challenges for civil registrars in circumventing problems stemming from the legal vacuum in as far as civil status documents are concerned (Dr Bojana Zadravec, Vice-President of European Association of Registrars).

Click here for the whole programme.

Venue: Room JAN4Q2, European Parliament, Brussels.

Madrid PIL Seminar, April 2013

The final program of the International Seminar on Private International Law, organised by Prof. Fernández Rozas and Prof. De Miguel Asensio, taking place next April in Madrid, has already been released. The meeting will gather together speakers from different countries and legal cultures, including South and North America and Asia, for an in-depth discussion of a variety of the most recent developments in Private International Law. Click here to access the document.

Vacancies at the University of Freiburg

At the Department of Law of the **Albert-Ludwigs-University Freiburg im Breisgau** (Germany), **four vacancies** have to be filled at the future chair for **civil law, particularly conflict of laws and comparative law (designated chairholder: Prof. Dr. Jan von Hein)**, from April 1st, 2013 with

legal research assistants (salary scale E 13 TV-L, personnel quota 50%)

limited for 2 years.

The assistants are supposed to support the organizational and educational work of the future chairholder, to participate in research projects of the chair as well as to teach their own courses (students' exercise). Applicants are offered the opportunity to obtain a doctorate.

The applicants are expected to be interested in the chair's main areas of research. They should possess an above-average German First State Examination (at least "vollbefriedigend") or a foreign equivalent degree. In addition, a thorough knowledge of German civil law as well as conflict of laws, comparative law and/or international procedural law is a necessity. Severely handicapped persons will be preferred provided that their qualification is equal.

Please send your application (Curriculum Vitae, certificates and, if available, further proofs of talent) to Prof. Dr. Jan von Hein, Institut für ausländisches und internationales Privatrecht, Abt. III, Peterhof, Niemensstr. 10, D-79098 Freiburg (Germany) no later than February 15th, 2013.

As the application documents will not be returned, we kindly request you to submit only unauthenticated copies. Alternatively, the documents may be sent as a pdf-file via e-mail to ipr3@jura.uni-freiburg.de.

Further information is available at the institutes website.

Academic Association for International Procedural Law (Meeting)

A meeting of the Academic Association for International Procedural Law (**Wissenschaftliche Vereinigung für Internationales Verfahrensrecht)** will take place from Wednesday 20 to Saturday 23 March 2013 in Passau (Germany) and Linz (Austria). Apart from the working sessions, dedicated to current issues of recognition of foreign judgments and to the European rules on cross-border debt recovery, the participants will also have the opportunity to visit some cultural sites. The General Assembly of the Association will be held on Friday afternoon.

Registration is open for members and guests of the Association. For more information and online-registration please refer to: www.jura.uni-passau.de/2442.html.

Click here for the program.

Note: Unless otherwise indicated presentations will be in German.

Issue 2012.4 Netherlands Private International Law on Family Law

The fourth issue of 2012 of the Dutch journal on Private International Law, *Nederlands Internationaal Privaatrecht,* includes seven articles dedicated to the topic 'Party autonomy in international family law.'

Maarja Torga, Party autonomy of the spouses under the Rome III Regulation in Estonia – can private international law change substantive law?, p. 547-554. The abstract reads:

At the moment Estonia is preparing to join Council Regulation (EU)No. 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (hereafter: Rome III Regulation). Article 5 of the Rome III Regulation gives limited party autonomy to the spouses in divorce matters. However, regardless of the applicable law chosen by the parties, under Article 13 of the Rome III Regulation the Estonian courts would not have to grant a divorce if Estonian substantive law does not deem the marriage in question to be valid for the purpose of divorce proceedings. The present article evaluates the discretion of the Estonian judges to rely on Article 13 of the Rome III Regulation and the alternative courses of action for the spouses in order to avoid the application of the said provision. By using the Rome III Regulation as an example, the author takes the position that the extension of party autonomy in one field of Estonian private international law should lead to a gradual expansion of party autonomy in other fields of Estonian law, which at the moment is rather conservative in its treatment of non-traditional forms of marriage.

Ilaria Viarengo, The role of party autonomy in cross-border divorces, p. 555-561. The abstract reads:

The Rome III Regulation allows spouses to choose the law applicable to their divorce. This choice represents a relevant change for a field which is traditionally regulated by provisions from which the parties cannot derogate. First of all, the article analyses the reasons that justify optio juris *in the case of international divorce. The article furthermore examines the* optio juris *functioning and, in particular, it focuses on ways of assuring the full awareness of the parties and limitations to the choice. Although the Netherlands does not take part in the adoption of the Rome III Regulation, there are scenarios in which Dutch citizens might be affected by it, given that the Regulation has a 'universal' character. Finally, the article examines the role of the parties' will in determining the law which is applicable to the financial consequences of the divorce and in particular in the conclusion of prenuptial agreements.*

Janeen M. Carruthers, Party autonomy and children: a view from the UK, p. 562-568. The abstract reads:

This article examines the extent to which children, in proceedings affecting their transnational legal affairs, are entitled to express their views, and in what manner, at what time, and to what effect. Attention is paid to international standards set out in the United Nations Convention on the Rights of the Child, and to particular rules contained in international instruments such as Brussels II bis and the 1980 Hague Abduction Convention, and in unharmonised areas such as international family relocation. The influence which children increasingly may exert through the expression of their will is distinguished from the device of party autonomy as that concept generally is understood in private international law. The article shows that implementation of the policy of respecting children's views varies among legal systems, rendering important the matter of forum.

Anna Wysocka, How can a valid *profession iuris* be made under the EU succession Regulation? p. 569-575. The abstract reads:

In the near future, the Succession Regulation will unify international succession law in the EU. Containing rules which have a universal nature, starting from August 17, 2015 it will almost entirely replace international succession rules which are currently in force in the Member States. The Succession Regulation allows for a professio iuris*, which may be made even now as long as it complies with certain requirements. Which laws may be designated as applicable? In what form should a* professio iuris *be made? Which law applies to the material validity of the* professio iuris*? Must the choice of law be clearly expressed or may it be tacit? May it be modified or revoked? What if the* professio iuris *turns out to be invalid? The above questions are answered by comparing the provisions of the Succession Regulation with the Hague Convention, as well as domestic laws of countries currently allowing for* professio iuris*.*

Csongor István Nagy, What functions may party autonomy have in international family and succession law? An EU perspective, p. 576-586. The abstract reads:

The article examines, from an EU perspective, what functions and considerations may justify party autonomy in the fields of international family and succession law. The article argues that in family and succession law the main function of party autonomy should be to tackle the uncertainties related to the applicable law (predictability), to protect vested rights and to ensure the operation of the country-of-origin principle. It is also submitted that this function is less relevant regarding matters connected to legal systems that contain uniform choice-of-law

rules, like the Member States of the EU. Furthermore, the article also argues that in the EU the mutual recognition of the choice-of-law rules of the Member States may also justify party autonomy, especially in family and succession law.

Maria Hook, Party autonomy – yes or no? The 'commodification' of the law applicable to matrimonial property relations, p. 587-596. The abstract reads:

The party autonomy principle has met with some success in matrimonial property law, having been embraced, albeit with restrictions, by most civil law countries, but eschewed by the relevant statutory regimes of common law countries such as England and Australia. This article argues that the rationale for extending party choice to matrimonial property disputes is in need of re-examination. In particular, it submits that insufficient attention has been paid to the mechanism behind the party autonomy rule – the choice of law contract – and proposes a contractual framework of evaluation, founded on the choice of law agreement as a self-sufficient contract. This framework is used to determine whether, in the area of matrimonial property law, objective choice of law rules are mandatory in nature – that is, whether they seek to give effect to public policies that ought not be the subject of party choice. By importing contractual theory into the choice of law process, this article hopes to offer a principled alternative to the traditional, often narrowly-focused approach that has been taken to party autonomy in this area.

Sagi Peari, Choice-of-law in family law: Kant, Savigny and the parties' autonomy principle, p. 597-604. The abstract reads:

This article offers an explanation for the emerging popularity of the parties' autonomy principle in the area of family law. It will be argued that Friedrich Carl von Savigny's divergence from Kant in the area of family law is what underlies the reluctance of different jurisdictions to implement the parties' autonomy principle in this area. Accordingly, the adoption of this principle in the area of family law reflects a complete reversion of Savigny's choice-of-law theory to its Kantian roots.

Kono and Jurcys on International Jurisdiction over the Cloud

Toshiyuki Kono and Paulius Jurcys (Kyushu University) have posted International Jurisdiction over Copyright Infringements in the Cloud on SSRN.

> *The emergence of the Internet, and more recently cloud computing, has tremendous technological, economic, social as well as cultural effects. Such technological development certainly affects legal framework and calls for careful assessment whether, and, if so how, the existing legal principles and doctrines should be adjusted. Despite the fact that cloud-based technologies have swiftly coated almost every aspect of communication, the discussion regarding its legal implications has been very fragmentary.*
>
> *This paper focuses on a rather specific aspect concerning the intersection of private international law and intellectual property rights in the cloud environment. Although the Internet is one of the most economically rewarding markets for the exploitation of the intellectual property, the ubiquity of the world wide web is also associated with a number of risks. One of the risks which should be considered by right holders and intermediaries operating in the digital environment concerns potential litigation over the exploitation of intellectual property rights before a court of a foreign state. In private international law terms, this risk is known as international jurisdiction: in disputes between the parties from different states or disputes involving foreign subject matter, which court should adjudicate the case? Under what conditions should a national court of one state exercise its jurisdiction and decide a multi-state dispute? National laws usually contain certain rules or principles which guide the courts in deciding whether the jurisdiction should be asserted or not (e.g., defendant's residence or commitment tortious acts in the forum state).*
>
> *The exercise of jurisdiction in multi-state intellectual property disputes has been subject to great controversies. Even the most distinguished courts in various countries stumbled when dealing with intricate quandaries involving cross-border exploitation of intellectual property rights. The exercise of jurisdiction over multi-state disputes involving territorially limited intellectual property rights has become even more complex with the advancement of digital*

communication technologies. Some of the underlying difficulties are discussed in this chapter which starts with a short illustration how cloud computing affects the exploitation of intellectual property assets. This discussion is followed by a closer analysis of the main principles which are employed by the courts across the Atlantic in deciding when to assert jurisdiction over multi-state intellectual property disputes. The fourth section poses a more general question of whether the existing legal framework is apt for the disputes involving cloud-related controversies. Finally, the activities which have been conducted by a special Committee under the auspices of the International Law Association are discussed.

Symeonides on Choice of Law in American Courts in 2012

Dean Symeon C. Symeonides (Willamette University – College of Law) has posted Choice of Law in the American Courts in 2012: Twenty-Sixth Annual Survey on SSRN. It is, as usual, to be published in the *American Journal of Comparative Law* (Vol. 61, 2013). Here is the abstract:

This is the Twenty-Sixth Annual Survey of American Choice-of-Law Cases. It is intended as a service to fellow teachers and students of conflicts law, in the United States and abroad.

Of the 4,300 cases decided in 2012 by state and federal courts, this Survey reviews 1,225 appellate cases, focusing on those cases that may contribute something new to the development or understanding of conflicts law, particularly choice of law. Highlights include:

- *Numerous cases exemplifying the valiant efforts of state courts, and some lower federal courts, to protect consumers, employees, and other presumptively weak parties from the Supreme Court's ever-expanding interpretation of the Federal Arbitration Act;*

- *A few cases enforcing choice-of-law clauses unfavorable to their drafters, and many more cases involving deadly combinations of choice-of-law and choice-of-forum clauses;*
- *Several interesting products liability cases, and other tort conflicts, including maritime torts and workers' compensation claims by professional football players;*
- *The first appellate case interpreting the recent amendments of the anti-terrorism exception to the Foreign Sovereign Immunity Act (FSIA);*
- *The first cases holding unconstitutional the Defense of Marriage Act (DOMA);*
- *A Massachusetts case holding that an undissolved Vermont same-sex union was an impediment to a subsequent same-sex marriage in Massachusetts;*
- *An Arizona case holding that a Canadian same-sex marriage was against Arizona's public policy, but — unlike other cases — also holding that the trial court had jurisdiction to annul the marriage and divide the parties' property;*
- *The first case in decades upholding a foreign marriage by proxy;*
- *A case upholding, on First Amendment grounds, an injunction against Oklahoma's "Anti-Shari'a" Amendment; and*
- *A case refusing to recognize a Japanese divorce, custody, and child support judgment rendered in a bilateral proceeding because the husband did not receive notice of a subsequent guardianship proceeding.*

Cross-Border Road Accidents Claims (Monograph)

Angel Espiniella Menéndez, lecturer of Private International Law at the University of Oviedo, has just published the book "Las reclamaciones derivadas de accidentes de circulación por carretera transfronterizos" (Claims arising from

Cross Border Road Accidents), which is number 185 in the Collection “Cuadernos de la Fundación Mapfre”. Based on the legal theory of obligations and addressed to the practitioners involved in this kind of litigation, the book aims to provide a comprehensive overview of a hypothetical complaint. To this end the monograph is divided into three sections: cross-border claims of injured parties against those allegedly liable; cross-border claims of injured parties against insurers; and cross-border claims for reimbursement among compensation duty bearers. Thus, the book analyzes the cross-border litigation against drivers, owners of vehicles , manufacturers of vehicles, persons claimed to be liable for the acts of others (employers, masters or principals), transferors of the vehicles, carriers, etc., and it also deals with the cross-border intervention of insurance companies, cross-border claim representatives, national funds of guarantees and compensation bodies, National Insurers’ Bureaux, and their correspondents.

After a thorough investigation the author concludes that the rules of the Rome II Regulation are more appropriate than those of the Convention of 4 May 1971 on the Law Applicable to Traffic Accidents, even though the Regulation does not contain specific rules on the subject matter; therefore, he recommends the denonciation of the Convention. He also suggests that the insurer coverage be governed by the law of the State where the accident occurs, regardless of the law of the State where the vehicle is normally based; and accordingly he prompts the amendment of the Directive 2009/103, Article 14. To conclude the author proposes separate, specific rules for claims among the entities providing coverage, including Bureaux, compensation bodies, guarantee funds, insurers, representatives and their correspondents.

Download a free copy here.

Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts" (1/2013)

Recently, the January/February issue of the German law journal "Praxis des Internationalen Privat- und Verfahrensrechts" (**IPRax)** was published.

- ***Heinz-Peter Mansel/Karsten Thorn/Rolf Wagner***: "European conflict of laws: Progressing process of codification– patchwork of uniform law"

The article gives an overview on the developments in Brussels in the judicial cooperation in civil and commercial matters from November 2011 until November 2012. It summarizes current projects and new instruments that are presently making their way through the EU legislative process. It also refers to the laws enacted on a national level in Germany which are a consequence of the new European instruments. Furthermore, the article shows areas of law where the EU has made use of its external competence. The article discusses both important decisions and pending cases before the ECJ touching the subject matter of the article. In addition, the present article turns to the current projects of the Hague Conference as well.

- ***Stefan Leible/Doris Leitner***: "Conflict of laws in the European Directive 2008/122/EG"

The following essay is about the conflict of laws in the European Directive 2008/122/EG on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts, being effective since 2/23/2008 and being transformed into German law since 1/17/2011, and its relevance for German law. After giving information about the regulation's history, scope and content, the authors make a detailed analysis on the directive's conflict of laws rule art. 12 par. 2 as well as its national transformation rule art. 46b EGBGB and demonstrate the differences to the former legal norms.

- ***Christoph Benicke***: "Haager Kinderschutzübereinkommen" – the

English abstract reads as follows:

The 1996 Hague Protection of Children Convention provides a modern legal instrument in the field of international child protection and overcomes the shortcomings of the 1961 Hague Protection of Minors Convention. International jurisdiction is primarily assigned to the authorities of the State of habitual residence of the child. In addition, a flexible consideration of the particularities of the case is made possible by the fact that the jurisdiction may be transferred to the authorities of a State with which the child has a close relationship e.g. based on nationality. The principle that the court applies its own law promotes rapid and effective procedures. Since the general jurisdiction lies with the authorities in the State of the habitual residence of the child, the law of the habitual residence of the child will be applied in most proceedings. This is consistent with the choice of law rule in Article 16, which establishes the applicable law outside the realm of protective measures. The Convention also includes a modern system for the recognition and enforcement of decisions from other Contracting States. The international jurisdiction of the authority which issued the decision can still be checked, but the recognizing State is bound in respect to the factual findings in the decision to be recognized. Once recognition and enforceability are certified, the foreign decision will be enforced under the same conditions as a national one. Difficult questions arise about the relationship between the Hague Child Protection Convention and the Brussels II regulation. Among Member States the Brussels II regulation displaces the Protection of Children Convention for the jurisdictional issues in most cases. The same is true for the recognition and enforcement of decisions from other Member States of the Brussels II regulation. On the other hand, the choice of law rules of the Protection of Children Convention apply in all procedures, even when the jurisdiction is based on the Brussels II regulation.

- ***Jan von Hein***: "Jurisdiction at the place of performance according to Art. 5 no. 1 Brussels I Regulation in the case of a gratuitous consultancy agreement"

The annotated judgment of the OLG Saarbrücken deals with the question whether a gratuitous consultancy agreement falls within the scope of Art. 5 no. 1 Brussels I Regulation. After establishing that the present decision concerns a contract and not a mere act of courtesy, it is discussed whether Art. 5 no. 1(b)

or Art. 5 no. 1(a) Brussels I Regulation is applicable to a gratuitous consultancy agreement. Subsequently, the reasons why the non-remuneration is the decisive factor for ruling out the application of Art. 5 no. 1(b) Brussels I Regulation are elaborated followed by some remarks concerning the determination of the place of performance of the obligation in question under Art. 5 no. 1(a) Brussels I Regulation. The possibility of establishing a concurring competence – a forum attractivitatis – of the court having special jurisdiction in contract for related tort claims e.g. resulting from product liability is analysed. The annotation concludes with final remarks on the revision of the Brussels I Regulation and the proposed changes concerning the jurisdiction at the place of performance.

- ***Markus Würdinger***: "Language and translation barriers in European service law – the tension between the granting of justice and the protection of defendants in the European area of justice"

The problem of languages implicates considerable obstacles in international legal relations. Regulation No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (European Regulation on the service of documents) provides in Article 8, in which cases the addressee may refuse to accept the document to be served. This right exists if the document is not written in, or accompanied by a translation into a language which the addressee understands (1. lit. a) or the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected (1. lit. b). The article analyses this statute on the basis of a judgment of the LG Bonn (District Court Bonn), formulates principles of interpretation and arrives at the conclusion that the language of correspondence has by right a great importance in commercial legal relations. Whoever engages here in a certain language and is able to communicate adequately in it, has in case of doubt not the right provided by Article 8 of the Regulation to refuse the acceptance of the document to be served.

- ***Christian Tietje***: "Investitionsschiedsgerichtsbarkeit im EU-Binnenmarkt" – the English abstract reads as follows:

More than 170 Bilateral Investment Treaties (BITs) exist between the EU Member States. In the last years several investment arbitrations were initiated by investors from EU Member States against other Member States. This has led to an intense legal and political discussion on intra-EU BITs with regard to their validity and enforceability as well as the effects of public international law on European Union Law in general. In this context, the EU Commission calls on the EU Member States to denounce the existing intra-EU BITs because of an alleged incompatibility with Union law. This contribution discusses and illustrates relevant legal issues of this debate based on a recent Decision of the Regional High Court of Frankfurt, Germany. The Court in its decision of 10 May 2012 intensively discussed the question of whether intra-EU-BITs are in violation of EU law and thus not applicable as a base for jurisdiction of an international tribunal. The Court convincingly rejects all arguments in this regard and declares intra-EU-BITs in full conformity with EU law.

- ***Johannes Weber***: "Actions against Company Directors from the Perspective of European Rules on Jurisdiction"

The interaction of European and International Company Law has until now been primarily viewed in the context of conflict of laws. The practice of national and European courts, however, indicates that issues of international jurisdiction are getting more and more important. Focusing on the Brussels I Regulation, this paper deals with jurisdiction on actions against company directors for breach of their duties. It argues that these actions fall within the scope of Art. 5 (1)(b) BR and that the courts both in the state of the company's statutory and administrative seat may claim competence.

- ***Bernd Reinmüller/Alexander Bücken:*** "The scope of an arbitration clause in the event of a "brutal termination of an existing business relationship" under French Law"

The contribution deals with a decision by the Cour de Cassation (1ère civ. of 8 July 2010 – Case no. 09-67.013) on the scope of an arbitration clause in respect of damage claims on grounds of a "brutal breach" of a trade relation- ship.

Art. L 442-6 I 5 of the French Commercial Code stipulates that persons engaged in a trade or business who "brutally" breach an established trade relationship

are obliged to compensate the ensuing damages. This provision serves for the upholding of law and order (ordre public) and as part of the French law of torts it is not subject to the disposition of the parties.

The Cour de cassation held that an action based on this legal norm can be covered by a contractual arbitration clause regardless of its tortious nature and its coercive character, because it has a sufficient contractual reference. This presupposes a sufficiently broad formulation of the arbitration clause.

- ***Wilfried Meyer-Laucke***: "Zur Frage der Anerkennung russischer Urteile auf dem Gebiet des Wirtschaftsrechts" – the English abstract reads as follows:

Up to now no Russian judgments have been admitted in the Republic of Germany and declared enforceable due to the rule that this can only be done in case reciprocity is ensured. The same rule is applied in the Russian Federation. It let into a dead end.

However, things have changed. Since 2006 Russian arbitrage-courts handling commercial matters have admitted foreign judgments to be enforced in Russia despite the lack of international agreements. Following this line the arbitrage-court of St. Petersburg has applied this practice to an order of the local court of Frankfurt a.M. by which a bankruptcy procedure has been opened, and has based its grounds on general rules in particular on Art. 244 of the Arbitrage Procedure Rules. These grounds are given in accordance with the jurisdiction of the High Arbitrage Court of Russia. Thus, it can be taken as granted for the German jurisdiction that reciprocity is ensured from now on as far as judgments of arbitrage-courts are concerned.

- ***Francis Limbach***: "About the End of the "Witholding Right" in French International Law of Succession"

The "withholding right" ("droit de prélèvement") has been a singular instrument in French international private law for nearly 200 years. In succession cases where foreign (i.e. non-French) law of succession applied and a French citizen was to inherit as a legal heir, the withholding right aimed to protect the latter from disadvantages related to applicable foreign provisions.

Thus, if it occurred that his share determined by foreign law was less than what he would have received under French law, his withholding right entitled him to seek adequate compensation by "withholding" assets of the estate located on French territory. Criticized for decades in scholarly literature as a "nationalist rule", the provision pertaining to the withholding right has eventually been declared unconstitutional by the French Constitutional Council on August 5th, 2011 on the grounds of un- equal treatment of French and foreign nationals. The present article aims to determine the impact of this decision on French international law of succession, especially on French-German cross-border cases.

- ***Erik Jayme/Carl Zimmer*** on the question whether there is a need for a Rome Regulation on the general part of the European PIL:"Brauchen wir eine Rom 0-Verordnung? – Überlegungen zu einem Allgemeinen Teil des Europäischen IPR"
- ***Erik Jayme*** on methodical questions of European PIL: "Systemfragen des Europäischen Kollisionsrechts"
- ***Jan Jakob Bornheim*** on the conference on the European law on the sale of goods held in Tübingen on 15./16.6.2012: "GPR-Tagung zum Gemeinsamen Europäischen Kaufrecht und Kollisionsrecht in Tübingen, 15./16.6.2012"