Rühl on European Sales Law and PIL

Giesela Rühl (Jena University) has posted The Common European Sales Law: 28th Regime, 2nd Regime or 1st Regime? on SSRN. The abstract reads:

> *The article analyses three basic models that can be applied to determine the relationship between the proposed Common European Sales Law (CESL) and the rules of private international law: the '28th regime-model', the '2nd regimemodel', and the '1st regime-model'. It argues that both the '28th regime-model' and the model favoured by the European Commission, the '2nd regime-model', endanger the overall objective of the CESL because Article 6 Rome IRegulation will continue to apply. The '1st regime-model', in contrast, avoids application of Article 6 Rome I-Regulation because it classifies the CESL as a uniform law that takes precedence over the rules of private international law. The article, therefore, concludes that the European Commission should rethink its position and apply the '1st regime-model' instead of the '2nd regime-model'.*

New UAM "Julio d. González Campos" Seminar (13 April)

The Private International Law Department of the UAM (Universidad Autónoma, Madrid) is happy to announce a new edition of the so called "Julio D. González Campos" series of seminars on April 13, with Matthias Lehmann (Professor of Private International Law at the Martin Luther University, Halle-Wittenberg, and Director of the Institute of Economic Law, and Eva Lein, Herbert Smith Senior Research Fellow of the British Institute of International and Comparative Law) as speakers.

The first session will begin at 11:00 with Ms. Eva Lein's intervention, entitled

"Which Law Should Apply to an Assignment of Claims? – The Reform of Article 14 Rome I Regulation". The second lecture, by Prof. Lehmann, is programmed for 12:15, under the title "Do We Need A Reform of the Rome I Regulation Regarding the Law Applicable to Financial Torts?". Both sessions will be in English.

All those interested are welcome. Venue: Seminar V (Julio D. González Campos, 4th Floor), Faculty of Law, Universidad Autónoma de Madrid.

Saumier on Forum Non Conveniens in Quebec

Geneviève Saumier (McGill University) has posted Forum Non Conveniens in Quebec: Assessment of a Transplant on SSRN. The English abstract reads:

> *The doctrine of forum non conveniens was adopted in Quebec private international law with the new Civil Code of 1991 that came into force on 1 January 1994. After almost 20 years, how has this common law transplant adapted to its new environment? This article examines how the jurisdictional discretion was embraced and absorbed into Quebec legal and judicial practice and compares its particularities to those found in other jurisdictions.*

The paper, which is written in French, was published in the *Mélanges Prujiner* (2011).

Bayreuth Conference on a "Rome

0-Regulation”

On 29 and 30 June 2012 Stefan Leible and Hannes Unberath from the University of Bayreuth will host a conference on the question whether we need a “Rome 0-Regulation” dealing with general issues of European Private International Law. Registration is online.

The programme reads as follows:

FREITAG, 29. Juni 2012 (FRIDAY, 29 June 2012)

- 9:00 **Begrüßung und Einführung,** *Prof. Dr. Stefan Leible*, Vicepresident of the University of Bayreuth and *Prof. Dr. Hannes Unberath*, M. Jur., University of Bayreuth
- 9:15 **Kodifikation und Allgemeiner Teil im IPR,** *Prof. Dr. Dr. h.c. mult. Erik Jayme*, University of Heidelberg
- 9:45 **Das rechtspolitische Umfeld für eine Rom 0-Verordnung ,** *MR Dr. Rolf Wagner*, Federal Ministery of Justice, Berlin
- 10:15 **Allgemeiner Teil und Effizienz ,** *Prof. Dr. Giesela Rühl*, LL.M. (Berkeley), University of Jena
- 10:45 **Diskussion**
- 11:15 **Kaffeepause**
- 11:45 **Qualifikation,** *Prof. Dr. Helmut Heiss*, LL.M. (Chicago), University of Zurich
- 12:15 **Vorfrage,** *Prof. Dr. Gerald Mäsch*, University of Münster
- 12:45 **Diskussion**
- 13:15 **Mittagspause**
- 14:30 **Engste Verbindung,** *Prof. Dr. Oliver Remien,* University of Würzburg
- 15:00 **Parteiautonomie ,** Prof. Dr. Heinz-Peter Mansel, University of Cologne
- 15:30 **Diskussion**
- 16:00 **Kaffeepause**
- 16:30 **Gewöhnlicher Aufenthalt,** *Prof. Dr. Peter Mankowski*, University of Hamburg
- 17:00 **Stellvertretung,** *Prof. Dr. Martin Gebauer*, University of Tübingen
- 17:30 **Diskussion**

- 18:00 **Ende des ersten Veranstaltungstages**
- 20:00 **Abendessen**

SAMSTAG, 30. Juni 2012 (SATURDAY, 30th June 2012)

- 9:00 **Renvoi,** *Prof. Dr. Jan von Hein*, University of Trier
- 9:30 **Interlokale und interpersonale Anknüpfungen,** *Prof. Dr. Wolfgang Hau,* University of Passau
- 10:00 **Diskussion**
- 10:30 **Kaffeepause**
- 11:00 **Eingriffsnormen,** *Prof. Dr. Dres. h.c. Hans Jürgen Sonnenberger*, University of Munich
- 11:30 **Ordre Public,** *Prof. Dr. Wolfgang Wurmnest*, University of Hannover
- 12:00 **Diskussion**
- 12:30 **Mittagspause**
- 13:30 **Ermittlung und Anwendung ausländischen Rechts,** *Prof. Dr. Eva-Maria Kieninger*, University of Würzburg
- 14:00 **Alles obsolet? – Anerkennungsprinzip vs. klassisches IPR,** *Priv.-Doz. Dr. Michael Grünberger*, LL.M. (NYU), University of Cologne/University of Bayreuth
- 14:30 **Diskussion**
- 15:00 **Ende der Veranstaltung**

More information (in German) is available here and here.

ERA Conference on Rome I and II

On 31 May and 1 June 2012, the European Academy of European Law (ERA) will host a conference on Rome I and Rome II in Trier (Germany). The conference will concentrate on day-to-day situations in cross-border context, notably consumer contracts and traffic accidents, and is supposed to provide a forum for debate between legal practitioners on the practical implementation of the two Regulations. Participants are invited to share and evaluate their own experiences

in their member states.

The conference programme reads as follows:

THURSDAY, 31 May 2012

- 9:00 **Arrival and Registration**
- 9:30 **Welcome**

I. SYNOPSIS OF ROME I & II

- 9.35 **Scope of Application in the light of English and ECJ law,** *Alexander Layton*
- 10.00 **Mandatory rules and ordre public,** *Michael Hellner*
- 10.25 **Discussion**
- 10.45 **Coffee break**

II. ROME I: WHICH LAW APPLIES TO INTERNATIONAL CONTRACTS?

1. General and Specific Rules

- 11.15 **Choice of Law and applicable law in the absence of choice,** *Jan von Hein*
- 11.45 **Discussion**
- 12.10 **Case law on employment contracts,** *Etienne Pataut*
- 12.40 **Discussion**
- 13.00 **Lunch**

2. Focus on Consumer Contracts

- 14.00 **Consumer contracts: recent developments,** *Giesela Rühl*
- 14.30 **Discussion**

Workshop (with coffee & tea)

- 14.45 **Cross-border consumer contracts in judicial practice,** *John Ahern*
- 15.45 **Results of the workshop and discussion**

3. What's Next

- 16.30 **Towards a revision? – Consumer contracts, insurance**

contracts and assignment, *Stefania Bariatti*

- 17.00 **Discussion**
- 17.15 **End of the first conference day**
- 19.00 **Evening programme and dinner**

FRIDAY, 1 June 2012

III. ROME II: WHICH LAW APPLIES TO CROSS-BORDER TORTS?

1. General and Specific Rules

- 9.00 **Tort/delict under Rome II,** *Andrew Dickinson*
- 9.25 **Product Liability,** *Marta Requejo Isidro*
- 9.50 **Discussion**
- 10.15 **Coffee break**

2. Focus on Traffic Accidents

- 10.45 **Traffic accidents in the light of Brussels I, Rome II and the Hague Convention (including a case-study)**, *Thomas Kadner Graziano*
- 12.00 **Current issues on the traffic law and compensation**, *Marie Louise Kinsier*
- 12.30 **Discussion**

3. What's Next

- 12.45 **Amendment of the Rome II Regulation: a new rule on defamation?,** *Cecilia Wikström*
- 13.15 **Lunch and end of the conference**

More information is available here.

French Supreme Court Rules on European Enforcement Order

On January 6th, 2012, the French Supreme Court for Private and Commercial Matters (*Cour de cassation*) ruled for the first time on the European Enforcement Order established by Regulation 804/2005.

The issue before the court was whether a European Enforcement Order (EEO) certificate could stand and justify enforcement measures after the certified decision had been set aside in its legal order of origin. The *Cour de cassation* held that it could not despite the fact the the certificate had not been withdrawn in its legal order of origin.

Facts

The parties were a German couple who had married in 1970 in Germany. They had separated 20 years later. The husband was paying maintenance to his wife. In 2005, she sued before a German court arguing that he was not paying her what he ought to and claiming almost 1 million euros. The husband had moved to France, and thus probably did not hear about the case.

In October 2005, a Stuttgart Court issued a judgment ordering payment of 1 million euros. In January 2006, the same court certified the 2005 judgment as a European Enforcement Order. In December 2006, the wife attached a bank account and a house in France.

It seems that the husband realized at that point what had been going on in Germany. He challenged the German 2005 judgment in Stuggart, which transfered the case to a Court in Mainz. He also sought a stay of the enforcement proceedings in France, that he obtained. In 2007, the Mainz Court found that he owed nothing at all to his wife. She appealed. In 2008, the Court of appeal of Karlsruhe confirmed that she had no claim against her husband.

The husband then petitioned the French enforcement court to lift all enforcement measures carried out in France. The wife argued that this could not be done as long as she would have a valid EEO certificate. The French court disagreed and lifted all enforcement measures. The wife appealed to the Caen court of appeal,

and then to the *Cour de cassation*.

Is the EEO Certificate Autonomous?

The reason why an EEO certificate must be issued is that it will then be the title used by enforcement authorities abroad to enforce the certified judgment. One could argue, therefore, that enforcement authorities in Europe should only be concerned with the EEO certificate.

In many of its provisions, the EEO Regulation provides that certificates wrongly issued must be withdrawn by the court of origin (see, eg, Article 10). Article 6 of the EEO Regulation even provides so for cases when the certified decision has ceased to be enforceable.

> *6.2 Where a judgment certified as a European Enforcement Order has ceased to be enforceable or its enforceability has been suspended or limited, a certificate indicating the lack or limitation of enforceability shall, upon application at any time to the court of origin, be issued, using the standard form in Annex IV.*

One possible interpretation of these provisions could be that certificates only stop producing their effects when they are withdrawn, and that they stand autonomously until this happens.

Another interpretation, however, is that EEO certificates only facilitate the circulation of judgments, and they are therefore not autonomous. If such judgments disappear, they cannot stand anymore.

This interpretation is seemingly endorsed by the *Cour de cassation*, which relies on the following provision:

> *Article 11 Effect of the European Enforcement Order certificate*
>
> *The European Enforcement Order certificate shall take effect only within the limits of the enforceability of the judgment.*

The Court rules that the EEO certificate could thus not found enforcement measures in France after the German court of appeal had ruled that the German certified judgment was not enforceable anymore. Existing enforcement measure had to be lifted.

Liability

The French lower courts had also held the wife liable for abuse of process. The *Cour de cassation* confirms the liability of the holder of the certificate, who is found to have committed a wrong for continuing to enforce the certificate after the German court of appeal had finally ruled that the wife had no claim against her husband.

In France, creditors seeking to enforce EEO certificates after the underlying judgment has been finally set aside are thus committing a wrong.

Fourth Issue of 2011's Revue Critique de Droit International Privé

The last issue of the *Revue critique de droit international privé* was just released. It contains two articles addressing private international law issues and several casenotes. The table of contents can be found here.

In the first article, Dr. Markus Buschbaum et Dr. Ulrich Simon discuss the European Commission's Proposals regarding jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and the property consequences of registered partnerships.

In the second article, Patrick Kinsch (Luxembourg Bar and University of Luxembourg) explores the impact of the *Negrepontis* case of the European Court of Human Rights on the public policy exception in the law of foreign judgments.

Book: Feraci, “L’ordine pubblico nel diritto dell’Unione europea”

Ornella Feraci (Univ. of Siena) has recently published “L’ordine pubblico nel diritto dell’Unione europea” (*The public policy in EU Law*) (Giuffrè, 2012). An abstract has been kindly provided by the author (the complete table of contents is available on the publisher’s website):

The work aims to examine one of the classic topic of private international law in the perspective of the European Union law under the two aspects of applicable law and recognition and enforcement of foreign decisions. Through the analysis of the case-law of the Court of Justice of the European Union and of the most recent instruments of private international law of the Union, it comes to identify a new concept of “public policy of the European Union”, which intends to protect the fundamental principles of European Union law; the book investigates the characteristics of the exception, trying to identify the functions, the relations with national public policy of the Member States and, as far as possible, the content.

Title: “L’ordine pubblico nel diritto dell’Unione europea“, by *Ornella Feraci*, Giuffrè (series: Collana di Studi del Dipartimento di Diritto pubblico dell’Università di Siena), 2012, XVI – 463 pages.

ISBN: 9788814173394. Price: EUR 50. Available at Giuffrè.

Call for Proposals

Please see below for a call for proposals for a conference to be held 20-22 June 2012

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Call for Proposals – Collective Redress in the Cross-Border Context

Large-scale international legal injuries are becoming increasingly prevalent in today's globalized economy, whether they arise in the context of consumer, commercial, contract, tort or securities law, and countries are struggling to find appropriate means of providing collective redress, particularly in the cross-border context. The Hague Institute for the Internationalisation of Law (HiiL), along with the Netherlands Institute for Advanced Study in the Humanities and Social Sciences (NIAS), will be responding to this new and developing challenge by convening a two-day event on the theme "Collective Redress in the Cross-Border Context: Arbitration, Litigation, Settlement and Beyond." The event includes two different elements – a workshop on 21-22 June 2012 comprised of invited speakers from all over the world as well as a works-in-progress conference on 20-21 June 2012 designed to allow practitioners and scholars who are interested in the area of collective redress to discuss their work and ideas in the company of other experts in the field. Both events are organized by the Henry G. Schermers Fellow for 2012, Professor S.I. Strong of the University of Missouri School of Law.

Persons interested in being considered as presenters for the works-in-progress conference should submit an abstract of no more than 500 words to Professor S.I. Strong at strongsi@missouri.edu on or before 1 May 2012. Decisions regarding accepted proposals will be made in early May, and those whose proposals are accepted for the works-in-progress conference will need to submit a draft paper by 4 June 2012 for discussion at the conference. All works-in-progress submissions should explore one or more of the various means of resolving collective injuries, including class and collective arbitration, mass arbitration and mass claims processes, class and collective litigation, and large-scale settlement and mediation, preferably in a cross-border context. Junior scholars in particular are encouraged to submit proposals for consideration.

Persons presenting at the works-in-progress conference will have to bear their own costs, since there is no funding available to assist with travel and other expenses. The works-in-progress conference will be held on 20 and 21 June 2012 at NIAS, Meijboomlaan 1, 2242 PR Wassenaar, The Netherlands. Wassenaar is approximately 20 minutes from The Hague by car. The workshop of invited speakers will be held on 21 and 22 June, also at NIAS.

Both the Schermers workshop and the works-in-progress conference are open to

the public, although advance registration is required. More information on both events is available at the HiiL website (www.hiil.org) or from Professor Strong at strongsi@missouri.edu.

Contact: Prof. S.I. Strong at strongsi@missouri.edu

Deadline for proposals: 1 May 2012

For more on the Henry G. Schermers Fellowship at HiiL/NIAS, see: http://www.hiil.org/organ-bios/prof-s-i-strong

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New Book: "Substance and Procedure in Private International Law"

The latest title in the Oxford Private International Law Series has just been published: *Substance and Procedure in Private International Law* by Professor Richard Garnett.

The OUP abstract reads:

> *When the law of a foreign country is selected or pleaded by a claimant or defendant, a question arises as to whether the issue pertains to substance, in which case it may be resolved by foreign law, or procedure, in which case it will be governed by the law of forum. This book examines the distinction between substance and procedure questions in private international law, and analyses where and whether each is appropriate. To do so, it examines previous attempts to define the scope of procedure in private international law, considers alternative choice of law methods for referring matters to the law of forum, and examines the influence of the doctrine of characterization on procedure.*
>
> *Substance and Procedure in Private International Law also provides detailed analysis of the decisional law in which the substance-procedure distinction has*

been employed, creating a clear assessment of its application in various practical situations and providing valuable guidance for practitioners on how the distinction should be applied. The book also considers 'procedural' topics such as service of process and the taking of evidence abroad, in order to show how the application of forum law may further be limited by foreign laws.

The book:

- Examines the rules governing substance and procedure in private international law to provide a clear and precise delimitation of their function
- Outlines the procedural classification and its importance as a tool within forum law
- Discusses important areas of legal doctrine, such as damages, evidence, and statutes of limitation, to demonstrate the distinctions used
- Provides practical guidance on how the substance-procedure distinction might be applied in future cases

As introductory topics, the book covers the origins, rationale and definition of the substance and procedure distinction, and characterisation, alternative methods of forum reference and harmonization. It then considers specific areas which raise the substance/procedure distinction: service and jurisdiction; parties to litigation; judicial administration; evidence, both general principles and specific issues concerning taking evidence abroad and privilege; statutes of limitation; and remedies, dealing with general principles, non-monetary relief, statutory restrictions, and damages and statutory compensation.

Throughout, the book refers to cases from a variety of jurisdictions, including England, the EU, the USA, Canada, Hong Kong, Singapore, New Zealand and Australia. It is comprehensive in scope, exhaustively researched and clearly written. The book will be of great assistance to any practitioner in the private international law field but is also an academic work of the highest quality. As Sir Anthony Mason, former Chief Justice of the High Court of Australia, concludes in his forward to the book:

This work is not just an admirable statement of the law as it currently stands; it identifies and engages with deeper underlying issues and offers persuasive solutions to them. In addition, it presents a penetrating analysis of the existing

rules and the decided cases.

The first chapter is available for free download here.