CESL Conference in Tübingen, Germany

On 15 and 16 June 2012, the Publisher and Advisory Board of the "Zeitschrift für Gemeinschaftsprivatrecht – Journal of Common Private Law" (GPR) will host a conference on the Proposal for a Common European Sales Law at Tübingen University. More information (in German) is available here and here .

The programme reads as follows:

Freitag, 15. Juni 2012 (Friday, 15 June 2012)

13:30 **Grußwort und Einführung**

- *Prof. Dr. Heinz-Dieter Assmann*, Vice President of the University of Tübingen
- *Prof. Dr. Jörg Kinzig,* Vice Dean of the Law School at the University of Tübingen
- *Prof. Dr. Martin Gebauer*, University of Tübingen

I. Grundlagen und Anwendungsbereich

14:00 – 14:30 **Ein europäisches Kaufrecht für grenzübergreifende Kaufverträge – seine Bedeutung auf offenen Märkten**, *Prof. Dr. Jürgen Basedow*, Max Plack Institute for Comparative and International Private Law, Hamburg

14:30 – 15:00 **Überschießende Anwendung des EU-Kaufrechts – mitgliedstaatliche Optionen und Parteiautonomie ,** *Prof. Dr. Boris Schinkels*, University of Greifswald

15:00 – 15:30 **Diskussion** (Discussion), Chair: *Prof. Dr. Martin Gebauer*, University of Tübingen

15:30 – 16:00 **Kaffee-Pause** (Coffee break)

II. Die Wahl des EU-Kaufrechts und ihre kollisionsrechtliche Verortung

16:00 – 16:30 **Rechtsgrundlage des künftigen EU-Kaufrechts und**

kollisionsrechtliche Einordnung seiner Wahl, *Dr. Karl-Philipp Wojcik*, Brussels

16:30 – 17:00 **Dogmatische Konstruktion der Einwahl in das EU-Kaufrecht (2., 28. oder integriertes Regime) und die praktischen Folgen,** *Prof. Dr. Matthias Lehmann*, University of Halle

17:00 – 17:30 **Die aufgeklärte Entscheidung: Modalitäten der Einwahl und der kollisionsrechtliche Verbraucherschutz**, *Dr. Christoph Busch*, University of Osnabrück

17:30 – 18:30 Uhr **Diskussion** (Discussion), Chair: *Prof. Dr. Michael Stürner*, University of Frankfurt (Oder)

20:00 Uhr **Abendessen** (Dinner)

Samstag, 16. Juni 2012 (Saturday, 6 June 2012)

III. Maßstäbe der Lückenfüllung

9:00 – 9:30 **Interne und externe Lücken – die Rolle des EuGH und der mitgliedstaatlichen Gerichte,** *Prof. Dr. Beate Gsell,* University of Munich

9:30 – 10:00 **Externe Lücken, allgemeines Kollisionsrecht und die Rolle der Parteiautonomie, insbesondere beim Verbrauchervertrag**, *Prof. Dr. Dennis Solomon*, University oc Passau

10:00 – 10:30 **Diskussion** (Discussion), Chair: Prof. Dr. Peter Jung, University of Basel

10:30 – 11:00 **Kaffee-Pause** (Coffee break)

IV. Drittstaatensachverhalte und Perspektiven der praktischen Rezeption des EU-Kaufrechts

11:00 – 11:30 **Der Drittstaatensachverhalt und das EU-Kaufrecht: Perspektiven mitglied- wie drittstaatlicher Gerichte und die Wahrung des internationalen Entscheidungseinklangs**, *Prof. Dr. Stefan Leible*, University of Bayreuth

11:30 – 12:00 **EU-Kaufrecht und CISG – Konkurrenz, Gemeinsamkeiten,**

Unterschiede der zu erwartenden Akzeptanz in der Rechtspraxis, *Prof. Dr. Friedrich Graf von Westphalen*, Cologne

12:00 – 12:30 **Diskussion** (Discussion), Chair: Prof. Dr. Matthias Lehmann, University of Halle

13:00 **Ende der Tagung** (End of conference)

Conference: New Challenges in International Distribution (Venice, 18-19 May 2012)

On 18-19 May 2012, the International Distribution Institute (IDI) will hold its annual conference on international distribution law in Venice: "New Challenges in International Distribution – Distribution contracts with Department Stores and Sales through Internet". Here's an excerpt of the event's presentation (programme in .pdf):

> *The conference is addressed to lawyers and businessmen involved in negotiating, drafting and managing international distribution contracts (agency, distributorship, franchising, etc.) and will deal with a number of topical issues which justify an in-depth discussion between the participants and qualified experts in this field. The conference is divided into a main session (on Friday 18 May) and three parallel workshops on specific issues chosen by IDI in collaboration with its members (on Saturday 19 May, morning).*
>
> *Friday 18 May*
>
> - *Morning Session (9h00 – 13h00): Negotiating agreements for distribution within department stores (concessions, corners, etc.);*
> - *Afternoon Session (14h30 – 19h00): Selling through the Internet without jeopardizing the existing network and the supplier's corporate*

image.

Saturday 19 May

- *Workshop 1 (9h00 – 13h00): Critical issues arising in case of termination of a master franchise agreement.*
- *Workshop 2 (9h00 – 13h00): Drafting sales contracts/general conditions for distributors: would the European Common Sales Law be an appropriate tool?*
- *Workshop 3 (9h00 – 13h00): The notion of commercial agency and its borderlines. Are there alternative solutions with other types of contracts?*

For the full list of speakers and further information (including fees), see the conference programme and IDI's website.

(Many thanks to Prof. Fabrizio Marrella for the tip-off)

Reflections of Legal Pluralism in Multicultural Settings (article)

Prof. Zamora Cabot and Victoria Camarero (University of Castellón), have just published a new, co-authored article in the series Working Papers "El Tiempo de los Derechos" (ISSN: 1989-8797).

Focusing on the USA, Canada and the United Kingdom, the authors of the paper have carried out an extensive, thoroughly documented initial survey (published elsewhere) of the relationship between legal pluralism and multiculturality. Along this line, in the present study they offer some introductory reflections to frame the complex and multifaceted world of legal pluralism, highlighting the religious factor (especially Muslims and the Sharia). They then proceed with two sections devoted to analyze the existence of elements of plurality, both in the domestic substantive law and in the systems of private international law of the

abovementioned jurisdictions. The authors conclude that those elements are far from being enough to address the challenges arising from the presence of Muslim minorities in Western European, particularly against the current background of economic crisis.

Click here for the whole text.

Luxembourg Conference on Exequatur in the Grande Region

On May 21st, I will present the preliminary results of an empirical study conducted by the university of Luxembourg on Exequatur in Luxembourg and surrounding regions of France, Belgium and Germany. A team of researchers of the university has collected data on judgments rendered by courts of Arlon, Trier, Saarbrücken, Lorraine and Luxembourg.

The presentation will take place at lunch time in French. More information is available here.

Competition in International Sales Law – Perspectives on Choice

On Friday, 15 June 2012, the Maastricht European Private Law Institute (M-EPLI) will host a one-day roundtable conference at the Feestzaal of Maastricht Law Faculty.

From the official announcement:

> *This roundtable is divided into three panels, distinguished on the basis of perspective. Contributions in the first panel offer an institutional perspective on the choices available. A second panel focuses on competition between the instruments and how parties may be expected to choose. The third sheds some light on the similarities and differences between the instruments, suggesting criteria to evaluate these instruments, as well as views on what the best instrument is. Speakers are drawn from academia, legal practice, as well as commercial interests.*

Attendance is free, but access is limited. Admissions can be submitted until 8 June 2012 by email to mepli@maastrichtuniversity.nl.

Further information can be found here. The programm reads as follows:

10.00-10.25 **Registration and coffee**

10.25-10.30 **Welcome address**, *Professor Jan Smits* (Maastricht)

Panel 1 – A view from the institutions

10.30-11.00 **An arbitrator's perspective,** *Professor Christina Ramberg* (Stockholm)

11.00-11.30 t.b.a., *Professor Jan Smits* (Maastricht)

11.30-12.00 **Discussion**

12.00-13.30 **Lunch**

Panel 2 – How parties (ought to) choose

13.30-13.50 **A psychology of choice of laws**, *Dr Gary Low* (Maastricht)

13.50-14.10 **Choice of jurisdiction**, *Prof Jan Dalhuisen* (King's College London)

14.10-14.30 **A commercial perspective**, *Mr Eric Poelman* (Philips CE)

14.30-15.00 **Discussion**

15.00-15.20 **Coffee break**

Panel 3 – Comparing choices

15.20-15.40 **Formation/Incorporation**, *Dr Sonja Kruisinga* (Utrecht)

15.40-16.00 **Interpretation of Contracts**, *Dr Nicole Kornet* (Maastricht)

16.00-16.20 **Remedies for Breach**, *Dr Olaf Meyer* (Bremen)

16.20 – 16.50 **Discussion**

16.50-17.00 **Closing remarks**

17.00 **Reception**

Rome II – Parliament Calls for Action on Defamation and Privacy

Yesterday (10 May), the European Parliament adopted an own-initiative (non-legislative) resolution on the law applicable to non-contractual obligations (Rome II) calling for action in the area of claims for violations of privacy and rights relating to personality, including defamation. As is well known (and long debated on this site – see https://conflictoflaws.de/2010/rome-ii-and-defamation-online-symposium/), such claims are currently excluded from the material scope of the Rome II Regulation by Art. 1(2)(g).

In the key paragraphs of the Resolution (rapporteur: Cecilia Wikström, taking over from Diana Wallis, one of the key proponents of the original Regulation), the Parliament:

> *1. Requests the Commission to submit, on the basis of point (c) of Article 81(2) of the Treaty on the Functioning of the European Union, a proposal designed to add to the Rome II Regulation a provision to govern the law applicable to a non-*

contractual obligation arising out of violations of privacy and rights relating to personality, including defamation, following the detailed recommendations set out in the annex hereto;

2. Further requests the Commission to submit, on the basis of point (d) of Article 81(2) of the Treaty on the Functioning of the European Union, a proposal for the creation of a centre for the voluntary settlement of cross-border disputes arising out of violations of privacy and rights relating to personality, including defamation, by way of alternative dispute resolution; …

It remains to be seen how the Commission, with limited resources in the civil justice area and an already full in-tray, will respond.

First Issue of 2012's Journal of Private International Law

The last issue of the *Journal of Private International Law* was just released. It includes the following articles:

Review of the Brussels I Regulation: A Comment from the Perspectives of Non-Member States (Third States), by Koji Takahashi

The review of the Brussels I Regulation is in progress. Quite naturally, the discussions have been centred on the viewpoints of the Member States. Yet, both the current Regulation and the Commission's proposal have significant implications for non-Member States. In fact, stakes for non-Member States are higher in Brussels I than in Rome I or II. This analysis evaluates the current regime and the proposed reform from an angle of non-Member States, focusing on three issues of particular relevance to the interests or positions of such States. They are (1) recognition and enforcement of judgments founded on exorbitant bases of jurisdiction (2) denial of "effet réflexe" and (3) lis pendens

between the courts of a Member State and a non-Member State. The analysis reveals that views from inside and outside the Union do not necessarily diverge on the desirable contents of reform but may differ on the priorities of reform. While the EU is entitled to construct its internal legal regime in whatever manner it sees fit, to the extent there are implications for the outside world, it is hoped that due consideration will be given to views from outside.

Recognition and Enforcement of Judgments in Carriage of Goods by Road Matters in the European Union, by Paolo Mariani

This article discusses the relationship between Brussels I Regulation and The Convention on the Contract for the International Carriage of goods by road (CMR). The Court of Justice in TNT Express Nederland decision (case C-533/08) confirms the international specialised conventions' primacy on the Regulation, provided the respect of the principles underlying judicial cooperation in civil and commercial matters in the European Union. The Court also acknowledges its lack of jurisdiction to interpret the CMR.

TNT Express Nederland contributes in the elaboration of the EU principles underlying judicial cooperation. Unfortunately, this contribution risks being useless for national courts since the decision fails to answer the question as to how CMR provisions should be applied lacking the compliance with the European standard.

The article concludes by supporting the Court of Justice power to provide the interpretation of the Brussels I Regulation in the context of the application of Article 31 CMR in order to enable the national court to assess whether the CMR can be applied in the European Union.

Avoid the Statutist Trap: The International Scope of the Consumer Credit Act 1974, by Christopher Bisping

This article takes a fresh look at the role statutes play within the conflict of laws. The author argues that statutes can only ever apply within the framework of conflict-of-laws rules. Parliament's intention must be taken to subject legislation to the conflict-of-laws system. The opposing view would commit the mistake of falling into the 'statutist trap' and overload statutes with meaning,

which they do not have. The author uses the Consumer Credit Act 1974 and the House of Lord's decision in OFT v Lloyds to illustrate the argument.

Preliminary Questions in EU Private International Law, by Susanne Goessl

Whenever a rule contains a legal concept, such as "matrimony", rarely are the legal requirements for the concept clarified in the same rule. Determining the meaning of such a concept (preliminary question) is often necessary to resolve the principal question. In an international context, one can apply the lex fori's or the lex causae's PIL to determine the law applicable to the preliminary question. This article analyses which of those two approaches is preferable in the PIL of the EU.

Traditional advantages of the lex causae approach loose its cogency in the European context, esp. the deterrence of forum shopping, the presumption of the closer connection and the international harmony. On the other hand, many traditional and new reasons support the lex fori approach, eg national harmony, foreseeability, practicability and further integration.

The article comes to the conclusion that, no matter whether the concept occurs in a PIL or a substantive rule the lex fori approach is the better solution. Only in limited cases with an urgent need of international harmony the lex causae approach should prevail.

Statutory Restrictions on Party Autonomy in China's Private International Law of Contract: How Far Does the 2010 Codification Go?, by Liang Jieying

The "Law on the Application of Laws to Foreign-Related Civil Relationships of the People's Republic of China" became effective on 1 April 2011. This is the first statute in China that specifically addresses private international law issues. The party autonomy principle is positioned in the first chapter as one of the "General Provisions". This article provides a critical commentary on the relevant rules in the new law concerning the restrictions on party autonomy in contractual choice of law. The author investigates how the new Codification responds to the problems existing in the previous legal rules and judicial practice, and argues that, although the Codification has provided several rules to resolve some previously unclear questions, it fails to address

comprehensively the more critical issues relating to the operation of the party autonomy principle.

The Law Applicable to Intra-Family Torts, by Elena Pineau

Courts increasingly face at the domestic level cases of intra-family torts. Two kinds of answers are provided to the question whether there is a right to reparation and, if so, to what extent: either the answer is given by the same family law rules which are infringed; or resort is had to the general system of tort law as a default solution. At the conflict rules' level, European judges dealing with intra-family torts are confronted with an interesting problem since the Rome II Regulation expressly excludes damages arising out of family relationships out of its scope of application. This being so, the case is posed which are the possible solutions. Two options have been considered: either applying the same law which governs the 'family duty' allegedly infringed, ie, the underlying lex causae; or considering whether it would be reasonable to extend the application of the Rome II Regulation to these cases. It is contended that the first option is to be preferred.

Unmarried Fathers and Child Abduction in European Union Law, by Pilar Blanco

The treatment that the laws of some Member States of the European Union give to the custody rights of unmarried fathers should be regarded as contrary to the European Convention of Human Rights and the Charter of Fundamental Rights, insofar as the unmarried father who is responsible for the child cannot prevent the removal of said child to another State because of the absence of automatic acquisition of rights of custody under national law. Although the Charter only applies to Member States expressly when they are implementing European Union law, this paper has argued for a broad construction of a uniform EU law meaning of "custody rights" under Brussels IIa, including the inchoate custody rights of unmarried fathers, influenced by a desire to avoid unnecessary and disproportionate restrictions on the right to non-discrimination on the grounds of sex in the application of the right to object to a child abduction by fathers compared to mothers.

Save the Date – Journal of Private International Law Conference 2013

The 5th Journal of Private International Law Conference will take place in Madrid from 12th – 13th September 2013.

A call for papers as well as the conference programme will be published later this year.

First Issue of 2012's Belgian PIL E-Journal

The first issue of the Belgian bilingual (French/Dutch) e-journal on private international law *Tijdschrift@ipr.be / Revue@dipr.be* for 2012 was just released.

The journal essentially reports on European and Belgian cases addressing issues of private international law. It includes an article by Patrick Wautelet (Liège University) presenting three recent developments in choice of law in matrimonial property matters (*Les règimes matrimoniaux en droit international privé – Autour de trois questions d'actualité*).

June at the Academy of European Law (ERA)

June is going to be quite charged at the Academy of European Law (ERA). The program starts with the seminar on **Rome I and Rome II** (31 May-1 June, see here. Update: there are still some places left; fees include two nights at a hotel).

Then, a five-day course will provide training on cross-border civil litigation (18-22 June 2012). Key topics of this **summer course** are:

- Challenges for cross-border litigation
- Specific procedures that help to obtain a judgment abroad faster and more easily
- Law applicable to contracts and torts

There will be conferences as well as workshops, led by Angelika Fuchs, Ivana Kunda, Jens Haubold, Jan von Hein, Xandra Kramer, John Ahern, Raquel Ferreira Correia and Brian Hutchinson.

Another five days (25-29 June) will be devoted to European labour law, PIL included (for those interested also on social security law, the Annual conference on the topic will be held also at the ERA on June, 4-5. The conference will address the new EU social security coordination rules in force since May 2010; problems in terms of implementation at national and local level for the new regulations; and the challenge of Administrative cooperation between social security institutions.)

Key issues of the labour law summer course are

- Free movement of workers
- Applicable law to employment contracts
- Posting of workers
- Transfer of undertakings
- Information and consultation rights
- Equality and non-discrimination
- Part-time, fixed-term and temporary agency work
- Working time

And the list of speakers: Ronald M. Beltzer; Nicola Braganza, Guy Castegnaro,

Stefan Clauwaert, Szymon Kubiak, Jean-Philippe Lhernould, Nicolas Moizard, Filip Van Overmeiren, Nuria Elena Ramos Martin, Corinne Sachs-Durand, and Claudia Schmidt.

The summer program goes on at the very beginning of July with a five-days summer course on European intellectual property law (2-6 July). Key topics, this time

- Legal and institutional framework
- Trade marks and designs
- Geographical indications
- Copyright and related rights
- Protection of databases
- Patents
- Intellectual/industrial property and the internal market (competition law and free movement of goods)
- Jurisdiction and dispute resolution
- Enforcement

Expected speakers are Philippe de Jong, Stefan Enchelmaier, Elisabeth Fink, Irina Kireeva, Anne MacGregor, David Por, Marius Schneider, Martin Senftleben, Paul L.C. Torremans and Guido Westkamp.

Participants in summer courses are given the opportunity to visit the European Court of Justice in Luxembourg (though the number of places is limited by the Court for practical reasons to 35).