Buxbaum and Michaels on International Antitrust Law

Hannah Buxbaum (Indiana) and Ralf Michaels (Duke) have posted Jurisdiction and Choice of Law in International Antitrust Law – A U.S. Perspective on SSRN.

> *This essay was written for a forthcoming book on international antitrust litigation in Europe. It provides a comparative perspective on the U.S. approach to the jurisdictional and choice-of-law issues raised in international antitrust litigation. The chapter examines personal jurisdiction over foreign defendants involved in anticompetitive conduct, as well as the question of applicable law in cross-border antitrust litigation — including the possibility of applying foreign antitrust law. It also focuses on the intersection between antitrust claims and contract claims, and on the special conflict-of-laws issues that arise in the context of class actions.*

Sciences Po PILAGG Workshop Series, January-February 2012

The list of speakers at the workshop on Private International Law as Global Governance at the Law School of the Paris Institute of Political Science (*Sciences Po*) has been updated and is available on the PILAGG website.

The speakers for January and February will be:

• 20th January: Mads ANDENAS ("*External effects of national ECHR judgments*")
• 25th January (doctoral workshop): Shotaro HAMAMOTO ("*L'arbitrage investisseur-État est-il hostile aux intérêts publics?*")
• 27th January: Ingo VENZKE ("*On words and deeds: How the practice of interpretation develops international norms*")
• 9th February (doctoral workshop): Benoit FRYDMAN ("*Approche pragmatique*

du droit global")
• 11th February (doctoral workshop): David KENNEDY ("*The renewal of political economy and global governance*")
• 16th February: Michael WEIBEL ("*Privatizing the adjudication of sovereign defaults*")

PILAGG has also launched a new stream on epistemology and methodology of human-rights in transnational context.

Another Comment on Aguirre Pelz

Dr. Mónica Herranz, full time Professor of Private International Law at the National Distance Education University in Madrid (Spain), has just published a paper on the ECJ ruling *Aguirre Pelz* (C- 491/10 PPUU), under the title "El control por el juez de origen de las decisiones dictadas en aplicación del artículo 42 del R. 2201/2003: el asunto *Aguirre Pelz*", *Revista General de Derecho Europeo*, (25) 2011.

The author analyzes critically the reasoning of the parties in the proceedings, as well as the approach taken by the General Advocate and the solution adopted by the ECJ. Other relevant ECJ rulings in kidnapping cases are discussed. The paper also includes an explanation of the different legal channels for appealing a decision when a fundamental right has been violated (in the State of origin, in the destination State and before the ECHR).

The study shows the need to review the legal solution for intra-community kidnapping cases.

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Cross-Border Civil Litigation in Peru: a New Draft

A Bill for International Litigation was presented to the Congress of Peru in November 2011. Based on the Latin American Model Bill for International Litigation of 2004, it is an apparently simple draft – just ten articles-, which nevertheless covers some of the most important topics in cross-border litigation: service of process; evidence; damages (compensation); appeals; settlements; *lis pendens*; actionability; and mass claims.

The Peruvian project aims to provide a practical tool for Peruvians plaintiffs in Peruvian cross-border conflicts. Article 1 makes this task easier by accepting summons in any form admitted in the country where the documents are to be served, therefore allowing an enormous saving of time and money.

Article 2 declares the admissibility of evidence already used in a foreign proceeding; such materials will nevertheless be considered again by the Peruvian judge "according to the principles of sound criticism." Only the relevant part of the foreign documents needs translation: again, a measure to save time and money.

Article 3 deals with damages, which will be awarded (calculated) following the parameters of the relevant foreign law. Though the conflict rule is adequate, it could still be improved through a *favor laesi.*

Appeal as a delaying tactic is prevented by Article 4. Appeal will normally deploy only suspensive effect, thus allowing the international procedure to be carried out speedily.

Article 5 prevents defendant and plaintiff from reaching an agreement without the latter's counsel being informed. The purpose of the rule is to protect both the lawyer who has invested time and money in the process and the actor who, pressed by necessity, accepts an inconvenient settlement.

Article 6 recalls an already existing rule: in cases of concurrent international proceedings the court where the lawsuit was filed first keeps jurisdiction, just as it happens in domestic cases.

Article 7 of the Bill provides with a separate action against all unjustifiable harm committed abroad. The rule tends to the protection of Peruvians interests when no other remedy is available.

The project includes a ten-year statute of limitations that can be extended to fifteen years in case of debtor's bad faith. Prescription is interrupted under several circumstances: for instance, when the creditor did not know about the damage or its source; the fact of filing overseas also suspends the limitation period. This is reasonable and should be welcomed in view of the technical development that has led, for example, to diseases with a long period of latency, as it happens with exposure to chemicals products.

Consolidation of claims in cases involving a large number of actors or defendants is provided for in Article 9. It is for the judge to take "practical steps for the case to develop rapidly within the limits of due process." It seems that this Article contains the seeds of mass action or class actions.

The overall conclusion is that the Bill, if approved, will certainly help cross-border litigation to be easier and more efficient in Peru.

Many thanks to Henry Saint Dahl, Inter-American Bar Foundation, for the hint.

Brand on Rome I and Party Autonomy

Ronald Brand, who is a professor at the University of Pittsburgh School of Law, has posted Rome I's Rules on Party Autonomy for Choice of Law: A U.S. Perspective on SSRN.

> *This chapter was presented at a conference in Dublin on the (then) new Rome I Regulation of the European Union in the fall of 2009. It contrasts the Rome I rules on party autonomy with those in the United States. In particular, it*

considers the rules in the Rome I Regulation that ostensibly protect consumers by discouraging party agreement on a pre-dispute basis to the law governing a consumer contract. These rules are compared with the absence of private international law restrictions on choice of forum and choice of law in the United States, even in consumer contracts. The result in Europe is the "protection" of the right of the consumer to his or her home law, but often with the resulting reduction of consumer choice and increase of consumer cost. In the United States, cases have instead provided more of an economic analysis, often tying a consumer to the merchant's choice of law (and choice of forum), but resulting in increased access to goods and services at what is generally a lower cost. Both systems "protect" consumers, they just choose to protect different consumer interests.

Ecuador Court Upholds Ruling against Chevron

See these posts here and here over at *Opiniojuris*.

Unidroit Seeks to Recruit its Deputy Secretary-General

UNIDROIT is inviting applications for the position of Deputy Secretary-General of the Organization. The position is for two years, renewable for periods of five years.

The ideal candidate is an outstanding lawyer who, in addition to a distinguished

career in his/her field (governmental, academic, intergovernmental or other), has a solid knowledge of comparative private law, commercial and private international law and experience in international negotiations or domestic law reform projects.

A national of a member State of UNIDROIT, he (or she) is a good communicator with excellent interpersonal relations skills, judgment and discretion who brings strong organisational, planning, analytical and drafting skills to support the Secretary General in representing UNIDROIT and managing a small team of professionals and technical support staff. Other essential qualifications include sensitivity to a multicultural environment; ability to work under pressure; knowledge and experience in strategic planning, management and promotion; as well as proficiency in using computer systems and standard office software.

The deadline for applications is March 12th, 2012, for an entry on duty no later than September 2012.

More information is available here.

Third Edition of Niboyet & La Pradelle's Droit international privé

The third edition of the manual of Marie-Laure Niboyet and Géraud Geouffre de la Pradelle (both professors at Paris Ouest Nanterre La Défense University) on the French conflict of laws was published earlier this fall.

In the French tradition, the book covers not only choice of law, jurisdiction and judgments, but also the law of citizenship and emmigration.

It is an excellent book. Marie-Laure Niboyet being one of the finest French scholars of international civil procedure, the book is especially comprehensive in this respect, discussing topics often neglected by many other books.

More information on the book can be found here.

Franzina on Negrepontis v. Greece

Pietro Franzina (University of Ferrara) has published Some Remarks on the Relevance of Article 8 of the ECHR to the Recognition of Family Status Judicially Created Abroad in the last issue of the Italian journal *Diritti umani e diritto internazionale*.

The paper is a note discussing the implications of the recent jugdment of the European Court of Human Rights in *Negrepontis v. Greece* where the court held that Greece had violated Article 8 by denying recognition to an adoption order issued by a Michigan court.

The note is also available on the website of the Italian society for international law.

SSRN Max Planck Research Paper Series, Vol. 1, No. 4 (2011)

The latest issue of the Max Planck Institute for Comparative & International Private Law Research Paper Series was released on December 20, 2011. The papers are available on SSRN. The table of contents reads as follows:

Shoot-Out Clauses in Partnerships and Close Corporations – An Approach from Comparative Law and Economic Theory

> Holger Fleischer, Max Planck Institute for Comparative and International Private Law, Stephan Schneider, Max Planck Institute for Comparative and

International Private Law
forthcoming in: European Company and Financial Law Review 2012

This article analyses shoot-out clauses as a popular means of resolving deadlocks in two member partnerships or close corporations. It presents the different varieties of shoot-out clauses developed in Anglo-American legal practice that are being increasingly discussed on the European continent. It goes on to look at their advantages and disadvantages by exploring the rich economic literature on partnership dissolution mechanisms in game theory. Finally, it focuses on the permissibility of these clauses and the doubts cast upon them in Germany, Austria, England and the United States.

Challenges for the European Law Institute

Reinhard Zimmermann, Max Planck Institute for Comparative and International Private Law
forthcoming in: Edinburgh Law Review 2012

This is the text of a speech given on the occasion of the Inaugural Congress of the European Law Institute in Paris on 1 June 2011. It attempts to familiarize the audience with essential features of that Institute and it does so by highlighting a number of specific challenges facing the Institute. These challenges arise, inter alia, from the Institute's ambition to be comprehensive, as far as legal professions, legal disciplines, and legal traditions are concerned. Specific attention is devoted to the notion of legal tradition(s) and the relationship between law and language. Finally, the position of the European Law Institute vis-à-vis other existing "networks" and organizations, the official organs of the European Union, and other organizations, worldwide, aiming at the harmonization of law, is highlighted. Throughout the speech, reference is made to the American Law Institute and the question is asked to what extent it can serve as a model for the European Law Institute.

Testamentary Formalities in Historical and Comparative Perspective

Reinhard Zimmermann, Max Planck Institute for Comparative and International Private Law, Kenneth Reid, University of Edinburgh – School of Law, Marius Johannes De Waal, affiliation not provided to SSRN
also published in: TESTAMENTARY FORMALITIES, COMPARATIVE SUCCESSION LAW, Vol. 1, pp. 432-471, Kenneth G.C. Reid, Marius J. de Waal

and Reinhard Zimmermann, eds., Oxford University Press, October 1, 2011

This essay is the concluding chapter of a project analysing testamentary formalities in historical and comparative perspective. It provides an assessment of the overall development of the law in the countries surveyed, as well as some wider reflections on the nature and purpose of testamentary formalities. More specifically, the essay focuses on the salient features of holograph wills, witnessed wills, public wills, and special wills; it analyses shared features (such as the requirements of the testator's signature, witnesses, date, unitas actus, incorporation of formal documents, wills by disabled persons); and it discusses the steady shift away from strict formalism which is a significant theme in many legal systems.

Europäisches Privatrecht – Irrungen, Wirrungen (European Private Law – Delusions, Confusions)

Reinhard Zimmermann, Max Planck Institute for Comparative and International Private Law
also published in: Begegnungen im Recht: Ringvorlesung der Bucerius Law School zu Ehren von Karsten Schmidt anlässlich seines 70, Geburtstags, Mohr Siebeck, pp. 321-350, 2011

This essay critically examines the way in which European private law has developed over the past ten years. It emphasizes that we now have six sets of model rules which have not yet been subjected to critical and comparative scrutiny. None the less, a new Group is busy drafting yet another text which is to obtain an authoritative status. The new Group is working under the same pressure of time that has bedevilled the drafts of the DCFR and the PCC. As far as consumer contract law is concerned, we have about the same number of textual layers. In addition, we seem to have two projects, running side by side. However, neither of them is based on a proper and critical revision of the acquis comunautaire. The essay also draws attention to a number of other peculiarities in both the arguments advanced by official actors and the processes chosen by them. And it expresses the hope that the establishment of a European Law Institute may help to avoid the present delusions and confusions.

Die Regelung der Willensmängel im Vorschlag für eine Verordnung über

ein Gemeinsames Europäisches Kaufrecht (Defects in Consent in the Proposal for a Regulation on a Common European Sales Law)

Sebastian A.E. Martens, Max Planck Institute for Comparative and International Private Law
forthcoming in: Archiv für die civilistische Praxis

This article provides an in-depth analysis of Chapter 5 'Defects in consent' of the optional Common European Sales Law that was proposed by the Commission 11th October 2011. The provisions of this chapter are put into perspective, and the author takes account of the developments of each norm from the PECL to the DCFR and the feasibility study of the Expert Group that was published in May 2011. Each provision is commented upon and, where necessary, detailed suggestions for changes are made. If, but only if, these suggestions are taken up, Chapter 5 of the optional Common European Sales Law will generally be in line with the modern development in the European legal systems and a wide consensus amongst legal scholars in Europe. In the present state, Chapter 5 could not yet serve as part of an acceptable Common European Sales Law.

Das neue Internationale Privatrecht der Volksrepublik China: Nach den Steinen tastend den Fluss überqueren (The New Private International Law of the People's Republic of China: Crossing the River by Feeling the Stones)

Knut Benjamin Pissler, Max Planck Institute for Comparative and International Private Law
forthcoming in: Rabels Zeitschrift für Ausländisches und Internationales Privatrecht

On October 28, 2010, the "Law of the Application of Law for Foreign-related Civil Relations" was promulgated in the People's Republic of China. The law aims to consolidate the Chinese conflict of laws regime and signals a new step towards a comprehensive codification of civil law in China.

The promulgated law emphasizes party autonomy and the closest connection as general principles. The law furthermore replaces nationality with habitual residence as the principal connecting factor for personal matters in Chinese private international law. However, some lacunas remain and new questions

arise from the law. The legislative gaps concern the form of legal acts, the maintenance duties after divorce as well as the assignment and transfer of rights and duties in general. New questions arise from the provisions in the law establishing alternative connecting factors. Regarding the free choice of law with regard to rights in movable property provided by the law, it is additionally questionable how the rights of third parties are protected where they are not aware of such a choice of law. The decision of the legislator to exclude renvoi will force Chinese courts to apply foreign law even if the foreign private international private law refers back to Chinese law.