

# Commentaire romand LDIP/CL



*Commentaire Romand. Loi sur le droit international privé. Convention de Lugano*, is the first comment that involves both the analysis of the law on private international law and the new Lugano Convention. Thanks to the emphasis on case law, the practitioner and the researcher will find a comprehensive data base on Swiss private international law.


The book covers a wide range of topics, such as family law and inheritance, property rights and securities, contract law, trusts and corporations and bankruptcy. It also includes an updated review of the law of international arbitration. All these matters are also discussed in the context of the Lugano Convention, insofar as it applies to them.

Edited by Andreas Bucher, professor emeritus of the Faculty of Law, University of Geneva. Authors: Andrea Bonomi, Andrea Braconi, Andreas Bucher, Philippe Ducor, Louis Gaillard, Florence Guillaume and Pierre-Yves Tschanz.

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## Ruehl on Statut und Effizienz: Ökonomische Grundlagen des Internationalen Privatrechts

Giesela Ruehl (Friedrich-Schiller University Jena and our new editor for  Germany) has published her *Habilitationsschrift* on **Statut und Effizienz: Ökonomische Grundlagen des Internationalen Privatrechts [Applicable Law and Efficiency. Economic Foundations of Private International Law]**. Here's an English description (the monograph itself is in German):

*Is private international law an efficient answer to the problems of international transactions? In her recent book on the economic foundations of private international law, Giesela Rühl explores this question in great detail.*

*She analyses choice of law-rules on a broad comparative basis and uses economic theory to tackle fundamental conceptual issues just as well as specific problems in the private international law of contracts and torts. Focusing on the recently adopted Rome I- and Rome II-Regulations she contributes to the understanding of the developing European private international law.*

*The book is organized in four parts. In the first part, the author analyses the problems of international transactions from an economic perspective. She takes a closer look at the specific problems associated with international transactions and asks whether private international law – as compared to other governmental, non-governmental, regulatory or non-regulatory mechanisms – is a suitable or at least necessary instrument to deal with these problems. In the second part, the author lays the theoretical foundation for an economic analysis of private international law. She explores whether economic theory may be used to analyse issues in private international law and whether the basic assumptions and assessment criteria of economic theory may claim application. In the third part, the author re-conceptualises private international law from an economic perspective. She develops a general economic framework for the determination of the applicable law essentially based on free choice of law. In the fourth and final part, the author applies this framework to specific issues in choice of law, most importantly contracts and torts.*

ISBN 978-3-16-150698-7. Leinen € 99.00. More information is available on the publisher's website.

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# **The Controversial Succession of**

# Dali

Prof. Pilar Jiménez Blanco (University of Oviedo) published recently an article on the *Dali* ECJ's ruling, a case referred to the Court by the Tribunal de Grande Instance de Paris, af. C-518/08. I have asked her to summarize her opinion. Here it goes:

The most important aspect of the ECJ judgment in the *Dali* case (C-518/08) is what the Court of Justice *does not say*: which law determines the beneficiaries of the resale right of Dali's original work . The problem is analysed within French law, which establishes a specific system of succession to the *droit de suite*. But, is French law applicable to the instant case?. Actually, neither the approach from the perspective of intellectual property rights nor the approach from the viewpoint of succession law justify determining the beneficiaries of the resale right under French law. It should be for Spanish law, as the law applicable to the succession, to determine both the validity of Dali's will and whether the Spanish State is beneficiary of the resale right. However, it is unlikely that the French judge, who is the one to rule on the merits, obviates the special rule of the *Code de la propriété intellectuelle*. Even if this will be a wrong solution that does not correspond neither with the will of the artist, nor with the assumed trend in the European Union towards a unitary conception of the succession.

Pilar Jiménez's article appeared in *Noticias de la Unión Europea*, 2011, núm. 220.

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## Cuadernos de Derecho Transnacional, Issue 2/2011

✖ The second issue for 2011 of the Cuadernos de Derecho Transnacional, the Spanish journal published twice a year by the Área de Derecho Internacional Privado of Univ. Carlos III of Madrid under the editorship of *Alfonso Luis Calvo-Caravaca* (Univ. Carlos III) and *Javier Carrascosa-González* (Univ. of Murcia), has

been recently published. It contains seventeen articles, shorter articles and casenotes, encompassing a wide range of topics in conflict of laws, conflict of jurisdictions and uniform law, all freely available for download. The journal's website provides a very useful search function, by which contents can be browsed by issue of publication, author, title, keywords, abstract and fulltext.

Here's the table of contents of issue 2/2011 (each contribution is accompanied by an abstract in English):

## **Estudios**

- *José M<sup>a</sup> Alcántara, Frazer Hunt, Svante O. Johansson, Barry Oland, Kay Pysden, Milos Pohunek, Jan Ramberg, Douglas G. Schmitt, William Tetley, C.M.Q.C, Julio Vidal*, A Blue Print for a Worldwide Multimodal Regime;
- *Nuno Andrade Pisarra*, Breves considerações sobre a lei aplicável ao contrato de seguro;
- *María José Cervell Hortal*, Pacientes en la Unión Europea: libertad restringida y vigilada;
- *Sara Lidia Feldstein de Cárdenas, Luciane Klein Vieira*, La noción de consumidor en el Mercosur;
- *Pietro Franzina*, The law applicable to divorce and legal separation under Regulation (EU) no. 1259/2010 of 20 December 2010;
- *Federico F. Garau Sobrino*, Las fuentes españolas en materia de obligaciones alimenticias. ¿Hacia un Derecho Internacional Privado extravagante?;
- *Cesáreo Gutiérrez Espada*, La adhesión española (2011) a la Convención de las Naciones Unidas sobre las inmunidades jurisdiccionales de los Estados y de sus bienes (2005);
- *Francesco Seatzu*, La proposta per la riforma del Regolamento «Bruxelles I» e i provvedimenti provvisori;
- *Sara Tonolo*, L'Italia e il resto del mondo nel pensiero di Pasquale Stanislao Mancini.

## **Varia**

- *Ana-Paloma Abarca Junco, Marina Vargas-Gómez Urrutia*, Vecindad civil de la mujer casada: nuevas reflexiones en torno a la inconstitucionalidad sobrevenida del art. 14.4 C.c. y la retroactividad de la Constitución

- española en relación a los modos de adquisición de su vecindad civil;
- *Elisa Baroncini*, La politica cinese sulle esportazioni dinanzi al sistema di risoluzione delle controversie dell'OMC: il report del Panel nel caso China – Raw Materials;
  - *Pilar Juárez Pérez*, La inevitable extensión de la ciudadanía de la Unión: a propósito de la STJUE de 8 de marzo de 2011 (asunto Ruiz Zambrano);
  - *Carlos Llorente Gómez de Segura*, “Forum non conveniens” revisited: el caso Spanair;
  - *Pilar Maestre Casas*, El pasajero aéreo desprotegido: obstáculos a la tutela judicial en litigios transfronterizos por incumplimientos de las compañías aéreas (A propósito de la STJUE de 9 julio 2009, Rehder, As. C-204/08);
  - *María Dolores Ortiz Vidal*, Ilonka Fürstin von Sayn-Wittgenstein: una princesa en el Derecho internacional privado;
  - *Esther Portela Vázquez*, La Convención de la UNESCO sobre la Protección del Patrimonio Subacuático. Principios Generales;
  - *Alessandra Zanobetti*, Employment contracts and the Rome Convention: the Koelzsch ruling of the European Court of Justice.

*(Many thanks to Federico Garau, Conflictus Legum blog, for the tip-off)*

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## **4th Max Planck PostDoc-Conference on European Private Law**

The Max Planck Institute for Comparative and International Private Law in Hamburg calls for applications for the 4th Max Planck PostDoc-Conference on European Private Law. The conference will take place on 7 and 8 May 2012. Applicants are expected to be working on their senior thesis or second book in the wide field of European private law, including private international law, commercial law, company law, capital market law, and competition law. The

deadline for application is 31 October 2011. More information are available [here](#).

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# Kuipers on Cross-Border Infringement of Personality Rights

Jan-Jaap Kuipers, an Assistant Professor of European Law at the Radboud Universiteit Nijmegen, has written an interesting article on cross-border infringement of personality rights. It has just been published in the German Law Journal and can be downloaded [here](#). The abstract reads as follows:

*Globalization has led to the emergence of broadcasting services and books aimed at a global audience. Authors of books, journals, and articles have gained readers worldwide. Due to the Internet, the spreading of ideas on a global level has never been easier. The other side of the coin is that authors run a risk of being exposed to civil proceedings in many jurisdictions. What is considered to be proactive journalism, or a provocative academic comment in some jurisdictions is considered to be libel or defamation in others. Although both the freedom of speech and the right to private life have received constitutional protection in all Member States, different balances have been struck between the competing fundamental rights. In a cross-border context, the infringement of the right to private life by foreign media becomes an international horizontal conflict between fundamental rights. The issue is therefore extremely sensitive and during the Rome II negotiations no consensus could be reached on the appropriate conflict of laws rule. The infringement of personality rights was therefore excluded from the scope of that Regulation. The present paper attempts to analyze to what extent it is necessary to revise the “defamation exclusion” of Rome II. If it would be necessary to include defamation in Rome II, what would be the most appropriate conflict of laws rule?*

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# Fornasier on European Contract Law and Choice of Law

Matteo Fornasier, a senior research fellow at the Max Planck Institute for Comparative and International Private Law in Hamburg, has written an interesting article on the optional instrument of European contract law and choice of law. The article is forthcoming in *Rabels Zeitschrift für ausländisches und internationales Privatrecht* and can be downloaded [here](#). The English abstract reads as follows:

*Ten years after placing the idea of a European contract law on the political agenda, the European Commission has announced its intention to take legislative action soon. A proposal for a regulation on an optional instrument of European contract law is expected in the fall of 2011. The regulation would create a set of European contract rules which would exist alongside the various national regimes and could be chosen as the applicable law by the parties to the contract. Such an instrument raises a number of questions with regard to private international law in general and the Rome I Regulation in particular. Should the choice of the European contract law be subject to the general rules on party choice under Rome I or does the new instrument call for special rules? Also, should the European contract law be eligible only where the relevant choice of law rules refer the contract to the law of a Member State or should the parties also be allowed to opt for the European rules where private international law designates the law of a third state as the law applicable to the contract? And finally, how does the optional instrument relate to the CISG and other uniform law conventions? The following paper discusses possible models of how to fit the optional instrument into the system of private international law. In particular, it examines which solution is the best suited to achieve the primary goal of the optional instrument, i.e. to improve the functioning of the internal market.*

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# Towards a Coherent European Approach to Collective Redress

The Commission's consultation on collective redress, aiming to identify common legal principles on collective redress, ended in April 2011. On 15 July 2011, the European Parliament published a draft report on collective redress. I might be wrong, but I think the document has gone unfairly unnoticed. You can have a look at it [here](#).

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## Twenty Years' Work by GEDIP

A new book gathering 20 years of work by the European Group for Private International Law has just been published. Building European Private International Law. Twenty Years' Work by GEDIP was edited by Marc Fallon, Patrick Kinsch and Christian Kohler.

*During the last 20 years, private international law has been significantly transformed in Europe. Since its creation in 1991, the European Group for Private International Law (EGPIL, also commonly known as GEDIP) sustained this evolution. Composed of specialists in private international law who are also interested in European law, the GEDIP focuses on the interaction between these two fields of research. The work of the GEDIP focuses on international instruments of various nature – in particular, those of the Hague Conference on Private International Law, and the European Convention for the protection of human rights and fundamental freedoms. The issues covered by the annual meetings are chosen and analyzed in an independent way without a mandate from European or international institutions. The aim is to foster progress of knowledge by using an issue-by-issue method. This working method allowed the GEDIP to develop new tools which turned out to sustain the preparation of*



*several European acts in civil and commercial matters – namely, the Regulations Brussels II, Rome I, Rome II, and Rome III, as well as possibly the forthcoming regulation on succession or the revision of the Brussels I Regulation. GEDIP documents reflect the evolving debate on private international law in Europe for 20 years. Their publication into a monograph at the occasion of the GEDIP's 20th anniversary aims to improve their dissemination and is accompanied by a detailed index to facilitate their consultation.*

The full table of content is available [here](#). More details are available [here](#).

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## **European Parliament's Workshop on the Brussels I Proposal (rescheduled)**

The workshop organized by the EP JURI Committee on the review of the Brussels I regulation, originally scheduled on 20 September 2011 (see our previous posts [here](#) and [here](#)) is taking place in Brussels this morning (h 10.00 – 12.00).

The live video streaming is broadcasted on this page. The link to the recorded session can be found [here](#).