Adresses to the French PIL Committee, 2006-2008

The previous volume of the collection of the addresses to the French Private International Law Committee (*Comité français de droit international privé*) covers academic years 2006-2007 and 2007-2008.

The addresses discussed the following topics:

– Réflexions sur le rattachement des immeubles en droit international privé (Thierry Vignal)
– De quelques difficultés posées en droit français par la mise en oeuvre de la compétence répressive universelle (Renée Koering-Joulin)
– Le renouveau de la théorie des droits acquis (Etienne Pataut)
– La loi applicable à défaut de choix par les parties selon l'article 4 de la proposition de règlement Rome I (Franco Ferrari)
– L'ordre public de rattachement (Petra Hammje)
– La liberté de choix dans les instruments communautaires récents : Rome I et Rome II – L'autonomie de la volonté entre intérêt privé et intérêt général (Claudia Hahn)
– L'ordre public international à l'épreuve du relativisme des valeurs (Léna Gannagé)
– Le droit international privé espagnol aujourd'hui ou le dépassement des paradigmes (José Carlos Fernandez Rozas)

The first few pages pages of each paper can be freely downloaded here.

Publication of Michael Bogdan's

Hague Lecture

The latest volume in the pocket book serie of the Hague Academy of International Law is the General Course given by Michael Bogdan on Private International Law as Component of the Law of the Forum.

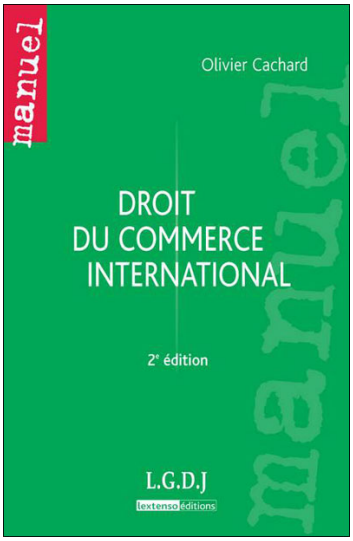
Michael Bogdan is Professor of Comparative and Private International Law in the Law Faculty of the University of Lund. He is member, and former President, of GEDIP (Groupe européen de droit international privé). He is also member of the International Academy of Comparative Law and associated member of the Institut de droit international.

In spite of the undoubtedly great and rising importance of the international legislative co-operation regarding private international law, it must be remembered that no successful unification or harmonization of conflict rules has ever taken place on the universal level, and that the conflict rules stemming from international legislative co-operation between a limited number of countries give rise to the same problems as non-harmonized rules, whenever they have to be used in relation to countries not participating in the legislative co-operation in question. This book will therefore focus on the last-mentioned problems and refrain from dealing with the particular issues arising from international legislative co-operation in the field of private international law. One of the principal aims of Michael Bogdan is to demonstrate the relationship between the national rules of private international law and the rest of the legal system of the forum country, in the first place its substantive private law and its law of civil procedure, as well as to illustrate the impact of the forum country's general ethical and other values on its private international law.

More information on the book can be found here.

New French Book on International Commercial Law

Olivier Cachard, who is a professor of law at Nancy University, has published the second edition of his manual on international commercial law.



In the French tradition, the book includes developments on international commercial contracts, the law governing corporations, international insolvency, international bank undertakings, and international commercial arbitration. The table of contents is available here.

More details can be found here.

The United States Gives Plaintiffs in ATS Cases an Early Christmas Present

By way of brief follow up to the post below, the United States just filed this brief (10-1491tsacUnitedStates) in the *Kiobel* case in support of petitioners in which the Government argues, among other things, that a corporation can be held liable under federal common law for a violation of the ATS. This brief is in tension with previous briefs filed by the United States in other ATS cases.

Assuming the United States participates in oral argument, the Justices should have very interesting questions for the Government's lawyer.

Issue 2011.3 Nederlands Internationaal Privaatrecht

The third issue of 2011 of the Dutch journal on Private International Law, *Nederlands Internationaal Privaatrecht* includes the following contributions on the Brussels I Recast (lis pendens and choice of court), Voluntary Assignment, and case notes on *TNT Express v. Axa* and *Pammer/Hotel Alpenhof*:

Marielle Koppenol-Laforce, Herschikking Brussel I: litispendentie en forumkeuze, een positieve stap voorwaarts!?, p. 452-460. The English abstract reads:

This article deals with the proposed changes to the Brussels I Regulation in the field of the choice-of-forum clause and the related lis abili pendens provisions. The aim was to make choice-of-forum clauses more effective. The proposal of the Commission is that the chosen court be given priority over the other courts to deal with the questions of the validity and scope irrespective whether it is the first or the second court seized. The proposed articles, however, do not make clear to what extent the non-chosen court may deal with questions of validity and scope. The proposal also introduces a conflict of law rule for the applicable law to the substantive validity of the choice-of court clause, which is somewhat controversial. The conclusion of this article is nonetheless that the proposals are definitely an improvement. The priority given to the chosen court can certainly help to increase effectiveness of such clauses. However, for the proposed measures to be really effective in practise, the text could be made more precise and some inconsistencies should be resolved. This would also prevent courts from having to follow different approaches when dealing with a choice-of-court clause under the Brussels I Regulation and under the Hague Choice-of-Forum Convention.

Cornelis A. de Visser, The law governing the voluntary assignment of claims under the Rome I Regulation, p. 461-467. The conclusion reads:

Although the assignee and assignor can agree to whatever they wish and that shall be the law as between them, such an agreement cannot affect the rights of third parties, whether such third party is the debtor of the assigned claim or another third party. The position of the debtor of the assigned claim under the assignment is exclusively governed by the law governing the claim. Based on the private international version of the nemo plus principle, it is a straightforward, simple and consistent conclusion that the law governing the claim should also determine the validity and the effect of the assignment against third parties other than the debtor. Any proposal for a different EU conflict of laws rule on the third-party effect of the assignment of a claim does not provide a solution to the conflict of laws, will lead to situations of deadlock, will provide meaningless flexibility, will increase legal uncertainty and would thus only complicate the already rather complex litigation and practice in the cross-border voluntary assignments of claims.

M.A.I.H. Hoeks, CMR of EEX? Van samenloop, litispendentie en het vrij verkeer van beslissingen in Europa, p.468-472. The English abstract reads:

The seed from which the problem sprouted in the TNT-AXA case is the fact that the CMR, an international road carriage convention, refers to national law in Article 29 CMR. This Article determines that if the CMR carrier has caused damage to the cargo 'by such default on his part as, in accordance with the law of the court or tribunal seised of the case, is considered as equivalent to wilful misconduct', he is no longer entitled to exclude or limit his liability under the CMR. As a result, it is more likely for a German court of law to consider that a CMR carrier has caused damage by such default than for a Dutch court. Since this type of default denies the carrier the option to limit his liability to approximately Euro 11½ per kilogram as per Article 23 CMR, it is in the carrier's best interest to avoid the German legal system. Initially carriers thereto sped to Dutch courts in order to gain declaratory judgments of non-liability, or at least limited liability when damage occurred. As soon as the case became pending, it was thought that the lis pendens rule of Article 31(2) CMR would bar the cargo interest's access to any other forum, including the German one. However, when the German Bundesgerichtshof (the BGH) determined that such an action for a negative declaration did not concern the same subject as an action for a substantive claim,

parallel proceedings before a German court became an option. At that point it was no longer sufficient for the carrier to be the first to address a court. It became necessary to be the first to gain a final decision in order to bar the recognition and enforcement of any German decisions on the subject in the Netherlands. Unfortunately for TNT, the Dutch court of first instance that was addressed in the web of the TNT-AXA proceedings failed to decide in a manner that was favourable to the carrier. TNT was therefore forced to appeal, with the result that there was no final decision on the matter when the cargo interest's insurer, AXA, attempted to have the judgment it had sought in Germany recognised and enforced in the Netherlands. To prevent this, TNT asserted that, according to Article 71 Brussels I Regulation, it is not the Brussels I Regulation but the CMR that determines whether this is possible, because it was of the opinion that the CMR would prevent the recognition and enforcement of the German judgment on the grounds that the German court had no jurisdiction, due to the CMR's lis pendens rule. Conversely, the Brussels I Regulation only offers the option to refuse recognition because the court whose decision is to be recognised lacked jurisdiction in a very limited set of situations. None of which occurred in the TNT-AXA case. All in all, it took six legal procedures and seven years for the parties to reach the ECJ, the European Court of Justice. When asked whether the recognition and enforcement was in this case governed by the CMR or by the Brussels I Regulation, and whether some light could be shed on the meaning of Article 31 CMR, the ECJ determined that it was indeed the CMR that regulated the matter as it, in principle, is granted precedence by Article 71 Brussels I Regulation, and that it did not have the authority to interpret the meaning of the provisions of the CMR as this is not an EU instrument. However, since Article 71 Brussels I Regulation cannot be interpreted as leading to a result that is irreconcilable with one of the basic principles of the Brussels I Regulation, the favor executionis principle in this case, the rules of the CMR can only apply in the EU Member States insofar as they lead to a result that is in accordance with this principle. The precedence of the CMR can therefore not result in the recognition and enforcement of the German decision being rejected. Thus, it is only in theory that the rules of the CMR govern the matter, not in actual practice.

W. van den Aardweg, De gerichte activiteit van artikel 15 lid 1, onderdeel c, Brussel I: meer duidelijkheid door Luxemburgse gezichtspunten, p. 473-477. The English abstract reads:

This article reviews the recent ECJ decision in the joined cases of Alpenhof and Pammer on the notion of 'directed activity' as contained in Article 15, paragraph 1, under c, of the Brussels I Regulation in the context of e-commerce. This rule assigns jurisdiction to the courts of the country where the consumer resides whenever a trader directs commercial or professional activities to that Member State and the contract falls within the scope of such activities. In this case, the Grand Chamber clarified that in order to have 'directed activity' an intention on the part of the trader to target his activity towards a certain Member State is required. The mere use of a website with information which enables a consumer to contact the trader is insufficient to conclude that such an intention exists on the part of the trader. The Court considered several factors which could provide evidence of an intention on the part of the trader to target his professional and commercial activities towards a Member State. In his note the author comments on the decision and reviews several factors considered to be relevant by the Court, in particular the role of information required by statute and how the factors considered by the Court should be considered and duly weighed.

If you are interested in contributing to this journal, please contact Ms. Wilma van Sas at W.van.Sas-Wildeman@asser.nl

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ITA Winter Forum: February 2-3, 2012, San Francisco

The Institute for Transnational Arbitration has announced the content of its 2012 Winter Forum, and is including several topics of interest to private international law. The program includes, *inter alia*, discussions on the Role of Courts in Aid of International Arbitration and Precedent and Accuracy in Arbitration, and a Luncheon Interview with Prof. George A. Bermann, Chief Reporter of the ALI Restatement (Third) of the US Law of International Commercial Arbitration.

According to Susan Frank, one of the Co-Chairs of the Forum, "This is not just

another arbitration conference. Rather it is the first of its kind that seeks to build upon ITA's academic tradition and bring together practitioners and academics, executives and government officials, at both the junior and senior levels to foster a collaborative exchange on international arbitration. The first half of the forum will be targeted towards a group of works-in-progress, [and] the afternoon session we will be a Tylney-Hall style interactive discussion."

The full program and registration materials are available here.

Bermann on Figueiredo Ferraz v. Republic of Peru

George A. Bermann is the Gellhorn Professor of Law & Jean Monnet Professor of European Union Law at Columbia University School of Law, and the Chief Reporter for the ALI Restatement (Third) of the US Law of International Commercial Arbitration.

The recent decision of the Second Circuit panel in *Figueiredo Ferraz e Engenharia de Projeto Ltda. v. Republic of Peru* is sadly misguided.

It is regrettable, but understandable, that the panel felt bound by the Second Circuit's 2002 decision in *In re Arbitration between Monegasque de reassurances S.A.M. v. NAK Naftogaz of Ukraine*, making forum non conveniens stays or dismissal available to defeat actions to enforce New York Convention awards. I say regrettable because, as is clear from the position taken by the ALI Restatement of the US Law of International Commercial Arbitration, exercising a purely discretionary ground like forum non conveniens to deny enforcement of a Convention award is essentially inconsistent with U.S. treaty obligations. The common argument, embraced by the panel majority, that doctrines like forum non conveniens are "saved" by Article III of the New York Convention, which provide that enforcement under the Convention shall be in accordance with the rules of the forum where enforcement is sought, is bogus. When the Convention drafters "saved" forum procedure, they undoubtedly contemplated purely procedural rules

such as those governing pleadings, time limitations, evidentiary rules and the like. The drafters were not about to supplant all those rules by a Convention that is silent on the procedures applicable to actions to enforce Convention awards. That would result in a bizarre procedural vacuum. But forum non conveniens is not, in any event, a rule of that sort. It doesn't determine "how" an adjudication shall be conducted. It determines "whether" an adjudication shall be conducted." And it was precisely the purpose — indeed the *core* purpose — of the Convention to ensure that timely applications for the enforcement of Convention awards would be entertained as a matter of international treaty obligation, subject only to the defenses limitatively set out in the Convention.

The *Monegasque* decision of the Second Circuit may indeed have left the panel in *Figueiredo Ferraz e Engenharia de Projeto Ltda. v. Republic of Peru* no choice but to entertain the forum non conveniens claim.

But there is still more to regret in this decision, and it is nothing that adherence to *Monagesque* required. In effect, the court used the forum non conveniens doctrine to give effect to a Peruvian ceiling on damages that the court had no business vindicating. The statute purported to limit to three percent of an agency's annual budget the amount of money that an agency of the Peruvian government could pay out annually to satisfy a judgment against it. The majority gave Peru's interest, as reflected in the statute, dispositive weight in the interest balancing that forum non conveniens entails, and it did so without the parties even having designated Peruvian law as the law governing their relationship.

To the extent that an arbitral award grants relief in excess of that allowed by Peruvian law means that the award was, at worst, legally erroneous if judged under Peruvian law. But legal error — even egregious legal error — is decidedly not a ground for denying enforcement of an award under the Convention. Quite frankly, what the decision does, without of course so saying, is to give effect to the public policy of Peru as a basis for denying enforcement of the award, despite the fact that the Convention by its own clear terms entitles a court to deny enforcement of an award on public policy ground only to the extent that enforcement would be "contrary to the public policy *of the country where enforcement is sought*," viz. the United States, not the public policy of some other jurisdiction.

In so deciding, the majority also disrespected the clear holding of the U.S.

Supreme Court in the foundational *Piper Aircraft Co. v. Reyno* decision to the effect that little if any weight should be given, in a forum non conveniens analysis, to whether resort to the doctrine would result in application of a different body of law, and even lead to a different substantive result, than the body of law that would have been applied and the result that would have obtained had the U.S. court retained jurisdiction.

But the decision is not to be entirely regretted, for the simple reason that it elicited a dissenting opinion by Judge Gerard Lynch that is nothing less than brilliant in its demonstration, not only that forum non conveniens is an unwelcome presence under the Conventions, but also that it was in any event folly to apply that doctrine in the circumstances of this case. As Judge Lynch observed in dissent, the net effect of the judgment is perversely to send the parties for enforcement back to a Peruvian court when it is all but certain that they had selected arbitration as their dispute resolution mechanism precisely to avoid the Peruvian court's jurisdiction and when they had reason to believe that the resulting award would win enforcement in a U.S. court, unless one of the stated grounds for denying enforcement could be established.

Second Circuit Denies Enforcement of Arbitral Award on Forum non Conveniens Grounds

On December 14th, 2011, the United States Court of Appeals for the Second Circuit dismissed a suit seeking confirmation of an international arbitration award on the ground of *forum non conveniens* in *Figueiredo Ferraz e Engenharia de Projeto Ltda. v. Republic of Peru*.

By doing so, the Court followed its own 2002 precedent in *In re Arbitration between Monegasque de reassurances S.A.M. v. NAK Naftogaz of Ukraine*.

Facts

In *Figueiredo,* the dispute had arisen out of a consulting agreement entered into by Figueiredo and a Peruvian public entity, pursuant to which Figueiredo was to prepare engineering studies on water and sewage services in Peru. After a fee dispute arose, arbitral proceedings were commenced in Peru, and eventually lead to a 2005 award ordering the Peruvian party to pay more than USD 21 million. Figueiredo had designated itself as a Peruvian domiciliary in the agreement, but later claimed that it was a Brazilian corporation.

Under Peruvian law, a statute prevents governmental entities to pay more than 3% of their budget each year to satisfy judgments. The Peruvian party began to pay the award, but at a slow pace, as it respected the statutory cap.

In 2008, Figueiredo decided to seek enforcement in the United States, as the Peruvian Republic held there substantial assets resulting from the sale of bonds.

Judgment

The U.S. Court of Appeals dismissed the action on the ground that it was *forum non conveniens* in favor of the courts of Peru.

First, the court refused to consider that the fact that the assets located in the U.S. could only be attached by a U.S. court made the foreign court inadequate as, the court held, it would otherwise mean that the doctrine of forum non conveniens could never be used in enforcement proceedings.

Second, the Court found that the Peruvian cap statute was a highy significant public factor warranting dismissal.

> *there is (…) a public interest in assuring respect for a sovereign nation's attempt to limit the rate at which its funds are spent to satisfy judgments.*

The court drew a parallel with its domestic case law on abstention in the U.S. federal system, insisting that deferring to litigation in another jurisdiction is appropriate where the litigation is intimately involved with sovereign prerogative.

Finally, the court insisted that the case was more closely connected to Peru, where the contract had been executed between two entities declaring to be domiciled in Peru, and performed.

Justice Lynch dissented.

Another ATS Case Seeking Supreme Court Review

As previously reported here, the United States Supreme Court recently granted certiorari in the case of Kiobel v. Royal Dutch Petroleum to consider the following questions: (1) Whether the issue of corporate civil tort liability under the Alien Tort Statute, 28 U.S.C. § 1350, is a merits question or instead an issue of subject matter jurisdiction; and (2) whether corporations are immune from tort liability for violations of the law of nations such as torture, extrajudicial executions or genocide or may instead be sued in the same manner as any other private party defendant under the ATS for such egregious violations. In addition to *Kiobel*, the Court also granted cert. in Mahamad v. Rajoub to consider whether whether the Torture Victim Protection Act of 1991 permits actions against defendants that are not natural persons.

There is now another cert. petition pending that follows up on the Ninth Circuit's recent decision in *Sarei v. Rio Tinto*, discussed here. Among other things. the petitionsers in *Sarei* ask the Supreme Court to grant the petition and to hear the case along with *Kiobel*. Unlike *Kiobel*, the *Sarei* petitioners raise arguments beyond the question of corporate liability under the ATS for human rights violations. Their questions presented are as follows: 1. Whether U.S. courts should recognize a federal common law claim under the ATS arising from conduct occurring entirely within the jurisdiction of a foreign sovereign, especially where the claim addresses the foreign sovereign's own conduct on its own soil toward its own citizens. 2. Whether U.S. courts should recognize a federal common law claim under the ATS based on aiding-and-abetting liability, even absent concrete factual allegations establishing that the purpose of the defendant's conduct was to advance the principal actor's violations of international law. 3. Whether a plaintiff asserting a federal common law claim under the ATS addressed to conduct occurring entirely within the jurisdiction of a foreign sovereign must seek

to exhaust available remedies in the courts of that sovereign before filing suit in the United States, as international and domestic law require. 4. Whether federal common law claims asserted under the ATS for violations of international human rights law.

Interestingly, petitioners rely a great deal on former statemens of interest filed by the United States filed in various ATS suits to buttress many of their arguments related to these questions presented. Given that the United State has not weighed in yet in *Kiobe*l, it will be interesting to see how the Solicitor General deals with these arguments, either in *Kiobel* or in this case in the event it is granted.

It could be a very big Supreme Court Term indeed for the ATS and for international law litigation generally before the Supreme Court.

Third Issue of 2011's Journal of Private International Law

The latest issue of the *Journal of Private International Law* has just been published. The contents:

Arbitration and the Draft Revised Brussels I Regulation: Seeds of Home Country Control and of Harmonisation?

Luca G Radicati di Brozolo

> *In this article I discuss the provisions on arbitration of the European Commission's December 2010 draft recast of Reg (EC) 41/2001 against the backdrop of the earlier proposals on the inclusion of arbitration within the scope of the Regulation. The analysis focuses principally on the functioning and implications of the lis pendens mechanism laid down by Article 29(4) of the*

draft, pointing out the analogy between the role conferred on the law and forum of the seat of the arbitration and the mechanism of home country control that is at the heart of European Union law. The article also analyses the reasons and positive consequences of the Commissions' restraint in not extending the scope of the Regulation to other arbitration-related issues, especially the circulation of judgments dealing with the validity of arbitration agreements and awards. The article's conclusion is that the Commission's proposal is well balanced. Whilst it does not solve all problems relating to conflicts between court proceedings and arbitration within the EU, it addresses the most pressing one, that of concurrent court and arbitration proceedings. Moreover, it does so in terms which, in contrast to the use of anti-suit injunctions in aid of arbitration, are reconcilable with the basic tenets of European Union law. Its approach is indisputably favourable to the development of arbitration and does not jeopardise the acquis in terms of arbitration law of the more advanced member States.

European Public Policy (with an Emphasis on *Exequatur* Proceedings)

Jerca Kramberger Škerl

After addressing the historical role of the public policy defence in private international law, the author defines European public policy and researches its protection in the case-law of the Court of Justice of the EU and the European Court of Human Rights.

The paper further discusses the possible differences and contradictions between the fundamental values of the European Convention on Human Rights and EU law in the context of giving effect to foreign judgments. Regulations already abolishing the exequatur are assessed from the human rights point of view. The relationship between European public policy and the fundamental values arising from public international law is also treated.

Finally, the author evaluates the impact of the adoption of the Lisbon treaty and the process of revision of the Brussels I Regulation on the protection of European public policy in the EU Member states.

Reflections on the Mexico Convention in the Context of the Preparation of the Future Hague Instrument on International Contracts

José Antonio Moreno Rodriguez and María Mercedes Albornoz

The Hague Conference is creating a soft law instrument on international contracts, whicis expected to promote a general admission of the principle of party autonomy. Even if it is nowadays accepted in developed countries, this principle still needs consolidation in other regions of the world, like Latin America. In this context, the importance of the modern solutions adopted by the Mexico Convention on the law applicable to international contracts is outstanding. It is not only that the Mexico Convention clearly accepts party autonomy, but it is also well-known even outside the American continent, for its reception of lex mercatoria –an achievement that we do not find in the European Rome I Regulation. This article carries out an analysis of the main provisions of the Mexico Convention, in order to highlight some of the reflections it should provoke during the preparation of the Hague instrument.

Where Does Economic Loss Occur?

Matthias Lehmann

It is well-known that rules of private international law for torts often refer to the place where the damage has occurred. Locating this place poses serious difficulties if no physical object has been harmed, but only economic or "financial" loss has been suffered. These cases are of tremendous practical importance. The contribution provides an in-depth analysis of the problem and compares solutions adopted by EU and Swiss courts. Finally, the author suggests an original step-by-step approach as to how to determine the place of economic loss.

International Litigation Trends in Environmental

Liability: A European Union–United States Comparative Perspective

Carmen Otero García-Castrillón

At times where environmental concerns take a predominant role and corporate social responsibility is at the forefront of various legal debates, the fact that the laws and/or the judicial proceedings -to establish it and to order remedies- in the country of damage could be inadequate or even non-existent, makes it appropriate to reflect on the opportunities provided by the international litigation system of the European Union (EU) as compared to the system of the United States (US). Responding to the recent case law, this paper reflects on the international environmental litigation trends from a private international law perspective, analysing the jurisdiction and conflict of laws issues that, within this field, interact with a number of international civil liability conventions. In this regard, the complex determination of the applicable law and the liability limitations in the EU do not prevent the conclusion that, due to recent jurisdiction and applicable law trends in the US, international environmental litigation may be turning to the eastern side of the Atlantic.

Intellectual Property Rights Infringements in European Private International Law: Meeting the Requirements of Territoriality and Private International Law

Sophie Neumann

The article tends to compare and analyse the private international law solutions adopted by the European legislator and their possible justification for the infringement of intellectual property rights against the background of territoriality of intellectual property rights and against the background of the different methodological approaches adopted, on the one hand, by the Rome II Regulation for the applicable law and, on the other hand, by the Brussels I Regulation for jurisdiction. The thesis to be analysed is that the respective solutions concerning the infringement of intellectual property rights can be read both in an intellectual property perspective against the background of

territoriality and in a private international law perspective against the background of a more "genuine" private international law interests' analysis. Both perspectives are affected by territoriality and therefore often lead, notwithstanding the methodological differences, to the same result in practice.

Dual Nationality = Double Trouble?

Thalia Kruger and Jinske Verhellen

The occurrence of dual nationality is increasing, due to several reasons. This article investigates the considerations private international law uses to deal with dual nationality, especially in civil law countries, where nationality is an important connecting factor and is sometimes even used for purposes of jurisdiction. Four such considerations are identified: preference for the forum nationality, the closest connection, the influence of EU law, and the principle of choice by the parties. When analysing the applications of these four considerations in issues of jurisdiction, applicable law and the recognition of foreign authentic acts or judgments, one sees that not all conflicts are real. The authors argue that false conflicts (for instance where jurisdiction can be based on the common nationality of the spouses under the Brussels IIbis Regulation) need no resolution. Both nationalities can carry equal weight in these cases. For real conflicts (for instance application of the law of the common nationality of the spouses under Art. 8c of the Rome III Regulation), a broad closest-connection test should be maintained, rather than a preference for the forum nationality (which relies heavily on arguments of State sovereignty). A closest-connection test based on objective factors is the most reliable in ensuring an outcome respectful of legal certainty.

International Surrogacy Arrangements: An Urgent Need for Legal Regulation at the International Level

Katarina Trimmings and Paul Beaumont

Recent developments and research in the area of reproductive medicine have resulted in various treatment options becoming available to infertile couples.

One of them is the use of a surrogate mother. Over the last two decades, surrogacy has become an increasingly popular method of reproductive technology.

Surrogacy targets the same clientele as its counterpart, adoption. It follows that with an increasingly limited global market for adoption, surrogacy will continue expanding. It is no exaggeration to say that the modern world has already witnessed the development of an extensive international surrogacy market. This market, although initially largely unnoticed, has recently attracted a great deal of interest by the media.

A source of worry, however, is the completely unregulated character of global surrogacy. Addressing this issue, this paper seeks to outline a potential legislative framework for a private international law instrument that could regulate cross-border surrogacy arrangements.

Review Article

A review article by Sirko Harder of K Boele-Woelki, T Einhorn, D Girsberger and S Symeonides (eds), *Convergence and Divergence in Private International Law: Liber Amicorum Kurt Siehr*

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