# P.R. China's First Statute on Choice of Law (translated in English)

Following up on Xiao Fang's excellent post here regarding the Statute on the Application of Laws over Foreign-Related Civil Relations of the People's Republic of China which shall come into force as of April 1, 2011 and is the P.R. China's first statute on conflict rules, I am very pleased to report that Professor Lu, the Secretary General of the Chinese Society of International Law, has been kind enough to provide an English translation for our readers. The translation is available here (PIL China).

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# Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts" (1/2011)

Recently, the January/February issue of the German law journal "Praxis des Internationalen Privat- und Verfahrensrechts" (**IPRax)** was published.

Here is the contents:

- ***Heinz-Peter Mansel/ Karsten Thorn/Rolf Wagner:*** "Europäisches Kollisionsrecht 2010: Verstärkte Zusammenarbeit als Motor der Vereinheitlichung?" – The English abstract reads as follows:

> *The article gives an overview on the developments in Brussels in the judicial cooperation in civil and commercial matters, covering a period from November 2009 until November 2010. It summarises current projects and new instruments that are currently making their way through the EU legislative process. It also refers to the laws enacted on a national level in Germany which*

*were a consequence of the new European instruments. Furthermore, the article shows areas of law where the EU has made use of its external competence. The article discusses both important decisions and pending cases before the ECJ as well as important decisions from German courts touching the subject matter of the article. In particular, it critically analyses two decisions from the Court of Appeal of Munich and the Court of Appeal of Berlin. These two courts used the Grunkin Paul case as a starting point to develop their own kind of recognition principle based on art. 21 Treaty on the Functioning of the European Union, thereby, in the author's view, deciding legal questions that would have been better left to the ECJ to decide. In addition, the present article turns to the current projects of the Hague Conference as well.*

- ***Theodor Schilling***: "Das Exequatur und die EMRK"- the English abstract reads as follows:

*The article raises the question of the requirements the ECHR may pose for the enforcement of foreign judgments. It starts with discussing the human rights protection of creditor and debtor in enforcement proceedings within a single country. It goes on to consider that protection in foreign enforcement proceedings with special emphasis on the role of the exequatur and of possible alternatives to it. The next item is the level of protection granted by human rights law in foreign enforcement proceedings, exemplified by the Stolzenberg-Gambazzi story and a judgment of the German Federal Court. Finally the discussion turns to the abolition of the exequatur by certain EU regulations. The overall result is that the demands of the ECHR concerning the protection of the debtor in foreign enforcement proceedings are not very high but that human rights law is rather accommodating to the more muscular approaches to enforcement.*

- ***Matthias Lehmann/André Duczek***: "Zuständigkeit nach Art. 5 Nr. 1 lit. b EuGVVO – besondere Herausforderungen bei Dienstleistungsverträgen" – the English abstract reads as follows:

*The subject of this article is the application of Article 5 (1) (b) of the Brussels I Regulation on service contracts. The authors criticise the recent ECJ judgment in Wood Floor Solutions Andreas Domberger GmbH v. Silva Trade SA, case No. C-19/09. They argue that the decision conflicts with the primary goals of the*

*Brussels I Regulation, because (1) the competent court cannot be determined with certainty since the determination would depend on factual circumstances that may occur after the conclusion of the contract; (2) the court at the place where the main service is rendered is not necessarily close to the dispute between the parties; (3) the determination of the competent court would require a lot of futile time and effort; and (4) if no main service can be found, the service provider would be able to bring the claim at its domicile, contrary to the principle of actor sequitur forum rei. In light of these problems, the authors suggest a different approach: In their view, the court at the place of performance of the service that is the subject of litigation should have jurisdiction. Such interpretation would be in line with the goals of legal certainty and proximity and solve most of the problems that the ECJ judgment has produced. But it would create another difficulty since it allows the provider of services in multiple locations to bring its claim, e. g. for payment, virtually anywhere. This problem, the authors suggest, can be avoided through a contractual stipulation on the place of performance, which is explicitly allowed by Article 5 (1) (b) Brussels I Regulation.*

- ***Jörg Pirrung:*** "Gewöhnlicher Aufenthalt des Kindes bei internationalem Wanderleben und Voraussetzungen für die Zulässigkeit einstweiliger Maßnahmen in Sorgerechtssachen nach der EuEheVO" – the English abstract reads as follows:

*Judgment and Opinion in case A give rise to the hope that the ECJ will interpret the Brussels IIa regulation 2201/2003 in a way leading to success fthe Brussels I regulation 44/2001, the former Brussels Convention of 1968. In view of the entry into force of the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children for all EU States, envisaged for 2010 (or 2011), the application of regulation 2201/2003 by courts in the EU should be open-minded. In order to avoid, as far as possible, differences in the development of the law concerning international jurisdiction and recognition of decisions in custody cases in the EU on the one hand and in the relations to the contracting states of the Hague Convention on the other hand, the courts in the EU should try to apply the regulation in conformity with the understanding of the international treaty.*

- ***David-Christoph Bittmann:*** "Das Verhältnis der EuVTVO zur EuGVVO" – the English abstract reads as follows:

*Today European Civil Procedure Law offers creditors several ways of executing a title in another Member State. Beside the "traditional" way of applying for a declaration of enforceability in the second state – as foreseen by Regulation (EC) 44/2001 – the creditor can make use of some modern legal instruments, which provide simplified procedures for getting a European title enforceable in all Member States. To reach this aim the European legislator especially created the European Payment Order and a Small-Claim-Procedure. Some years before, as a first step towards an original European title, the European Enforcement Order for uncontested claims was established by Regulation (EC) 805/2004. With the rising number of such parallel-regulations concerning cross-border enforcement the question of how to delineate the scope of application of these instruments appeared. A special problem discussed in German literature and jurisprudence was, if it should be possible for a creditor to apply for a declaration of enforceability in the second state according to Regulation (EC) 44/2001 although he already holds a European Enforcement Order issued by the court of the first state. The German Federal Supreme Court (BGH) denied this possibility by stating that the creditor does not have an interest in getting a declaration of enforceability when he can reach his aim of cross-border enforcement by making use of the European Enforcement Order. This article discusses the decision of the Federal Supreme Court.*

- ***Hans-Patrick Schroeder:*** "Zur Reichweite des § 110 ZPO im grenzüberschreitenden Konzernverbund" – the English abstract reads as follows:

*Under the preconditions of Sec. 110 et seq. German Code of Civil Procedure (Zivilprozessordnung, "ZPO"), a respondent in a civil action may request the court to order the claimant to provide security for costs. The statutory preconditions include that the claimant must have its seat or residence outside of the EU and that the claimant does not have any real property inside the EU which could enable the respondent to enforce a claim for reimbursement of costs. Starting with two recent decisions rendered by German courts, the article explores the scope of application of Sec. 110 et seq. ZPO in the context*

*of international groups of companies. Its first conclusion is that a German company may not be ordered to provide security for costs under any circumstances. This applies even if it is the subsidiary of a holding company outside of the EU and was created only to bring a claim instead of the holding company in order to circumvent the duty to provide security for costs. Under such circumstances, however, the assignment of the rights claimed might be void if the German company is insufficiently funded and the intent to frustrate the respondent's potential claim for reimbursement of costs is evident. Its second conclusion is that having a subsidiary within the territory of the EU does not exempt a claimant seated outside the EU from the duty to provide security for costs since the respondent cannot enforce a claim for the reimbursement of costs against the subsidiary which is not a party to the dispute. This is the main difference between a legally independent subsidiary and a branch lacking legal independence. Only in the latter case are the assets located at the branch attributable to the claimant. Consequently, they may then enable the respondent to enforce its claim for reimbursement of costs within the territory of the EU.*

- ***Nadjma Yassari***: "Die islamische Brautgabe im deutschen Kollisions- und Sachrecht" – the English abstract reads as follows:

*This article critically reviews a judgement of the German Federal Supreme Court on the characterisation of the Islamic dower (mahr, s. ada¯q, mehriye) in German private international law. On 9 December 2009, the German Federal Supreme Court (BGH) concluded a long-lasting dispute by deciding that the mahr was to be characterised as an effect of the marriage under Art. 14 EGBGB. The court rejected all other norms of international family law including the characterisation of the mahr under the matrimonial property regime of Art. 15 EGBGB. It mainly held that the mahr did not constitute, amend or replace a matrimonial property regime and that the unchangeable nature of the connection of the matrimonial property regime under Art. 15 EGBGB (Unwandelbarkeit) was too static to accommodate the changes in the lives of people who had immigrated to Germany, acquired German nationality and left behind any relation to the law of their former nationality. This view is contested. Rather it is argued that Art. 15 EGBGB provides for a better characterisation of the mahr. Firstly, the mahr is an important instrument of property transfer in marriage. Secondly, linking the mahr to the matrimonial*

*property regime in terms of characterisation will ensure that both the mahr and the financial equalization of the spouses' property upon divorce are governed by the same law, thus leading to more equitable results. The judgement of the BGH will lead to an increase of cases in which the mahr will fall under German law. Unfortunately, however, the court provides only for little guidance as to the accommodation of the mahr in German national family law. It declares the agreement on the mahr to be valid, but fails to give details on its relation to the native claims awarded under German law, i.e. post-marital maintenance and the equalisation of the matrimonial accrue. Finally, one also misses conclusive hints on the formal requirement for the validity of the mahr agreement under German law.*

- ***Dieter Henrich*** on a decision of the Higher Regional Court Stuttgart on the voidability of marriage: "Rechtsprechungsübersicht zu OLG Stuttgart, Beschluss v. 30.8.2010 – 17 UF 195/10"
- ***Peter Mankowski***: "Zur Abgrenzung des Individual- vom Kollektivarbeitsrecht im europäischen internationalen Zivilverfahrensrecht" – the English abstract reads as follows:

*Arts. 18–21 Brussels I Regulation establish a protective regime for labour suits. But this covers only individual law suits by individual employees or employers. It does not encompass actions by trade unions, employer's organisations, works councils or other institutional bodies. Yet the borderline between the two areas can be a slippery slope and can require quite some thought on which side of the line a case falls if for instance a local Works Councils sues substantially on an individual employee's behalf. Formal characterisation of the plaintiff body and concrete mode of claims pursued have to be reconciled.*

- ***Oriola Uka/Michael Wietzorek***: "Anerkennung einer deutschen Ehescheidung durch das Appellationsgericht Tirana" – the English abstract reads as follows:

*So far, it was disputed whether there is factual reciprocity as required by § 328 Sec. 1 Nr. 5 German Civil Procedure Code and § 109 Sec. 4 Family Procedure Law with regards to Albania, partially due to the circumstance that German literature was unaware of any decision of an Albanian court that recognised a German decision. Based on the decision of the Court of Appeals of Tirana dated*

*12 April 2010, which recognised a decision of the First Instance Court of Nuremberg regarding a divorce, and on the autonomous Albanian regulations regarding the recognition and enforcement of foreign court decisions, the present essay argues that German courts should assume that Albanian courts are generally willing and ready to recognise German decisions in Albania.*

- ***Erik Jayme*** on the conference of the European Group for Private International Law in Copenhagen: "Tagung der Europäischen Gruppe für Internationales Privatrecht (GEDIP) in Kopenhagen"

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# International Interdisciplinary Seminar, Surrey, 21 June 2011

The Surrey International Law Centre (SILC) announces a call for papers for an international interdisciplinary seminar on cultural legitimacy and the international law and policy on climate change that will take place on 21 June 2011 at the School of Law, University of Surrey.

The seminar seeks to contribute to research on the international law and policy of climate change by focusing on the issue of cultural legitimacy. Beginning from the premise that legitimacy critiques of international climate change regulation have the capacity to positively influence policy trends and legal choices, we seek a range of papers, from across all the disciplines that investigate the link between the efficacy of international legal and policy mechanisms on climate change and cultural legitimacy or local acceptance.

Abstracts for poster presentations, short papers (10 minutes) and research papers (20 minutes) on these themes will be accepted until 15 February 2011. They should be a maximum of 300 words, in English, sent either by fax or by email. Selected papers from the conference will be published in an edited book.

You will find more information here.

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# Choice of Law in American Courts 2010

Once again, Dean Symeon Symeonides has compiled his annual choice of law survey. Here is the abstract:

> *This is the Twenty-Fourth Annual Survey of American Choice-of-Law Cases. It is written at the request of the Association of American Law Schools Section on Conflict of Laws, and is intended as a service to fellow teachers and students of conflicts law, both within and outside the United States. The Survey covers cases decided by American state and federal appellate courts from January 1 to December 31, 2010. Of the 1,271 appellate conflicts cases decided during this period, the Survey focuses on those cases that may contribute something new to the development or understanding of conflicts law—and, particularly, choice of law.*
>
> *This has been an unusually rich year in choice-of-law developments. Some of the highlights include:*
> ** Four decisions by the U.S. Supreme Court (on extraterritoriality, sovereign immunity, class actions, and the Hague Convention on International Child Abduction, respectively), and several circuit court decisions on the extraterritorial reach of federal laws;*
> ** A constitutional amendment in Oklahoma purporting to prohibit its courts from using international law, foreign law, and Sharia law;*
> ** Three cases involving efforts to recover art lost during the Nazi era and also implicating federal affairs questions;*
> ** Several cases affirming class certification in consumer protection cases and one case holding that the application of one state's consumer credit law to*

*soliciting out-of-state lenders was unconstitutional under the dormant Commerce Clause;*
** A major decision by the California Supreme Court refining its comparative impairment approach and a richer than usual assortment of cases involving tort, contract, product liability and insurance conflicts, as well as domestic relations conflicts; and*
** Several opinions written by Judge Posner in his always interesting style, including one questioning the value of using foreign-law experts.*

The full survey is available for free here.

Thanks to Dean Symeonides for providing this valuable resource on the state of American conflicts law.

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# Job offer in Brussels – lawyer experienced in Private International Law of the Family required

ADDE (Association pour le Droit des Étrangers), is an association for permanent education which promotes the rights of foreigners through the respect of the principles of equality, non discrimination and human rights.

ADDE recruits a lawyer to support its "Point d'Appui DIP familial" under a contract of full-time job for 8 months, possibly renewable, from 1 March 2011.

Functions:

– Provide legal advice in family private international law, and keep and monitor the records;
– Write analyses and studies;

– Organize training and animations;
– Strengthen the network of legal support.

Profile:

– Master / Bachelor of Law;
– Professional experience in the field of international private law concerning the family;
– Ability to work as a team and to energize a network;
– Excellent verbal and written communication skills;
– Proficiency in computer skills;
– Knowledge of Dutch would be considered an advantage.

CV and a letter explaining motivation must be addressed to Isabelle Doyen, Association pour le droit des étrangers asbl, rue du Boulet, 22-1000 Brussels. Deadline: 1 February 2011.

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# ECJ Rules on Human Rights and Abolition of Exequatur

On December 22nd, the European Court of Justice delivered its judgment in *Joseba Andoni Aguirre Zarraga v. Simone Pelz*. For the timebeing, it is only available in Spanish, German and French.

The case was concerned with a Spanish judgment which had ruled on the divorce of a German-Spanish couple, and had ordered the return of a child to Spain. According to Article 42 of the Brussels IIa Regulation, this part of the judgment was immediately enforceable in Germany, as exequatur has been abolished for such judgments. Yet, the German party tried to resist enforcement in Germany on the ground that the Spanish judgment had been rendered in violation of human rights, as it appeared that the child had not been heard in the Spanish proceedings, and this was arguably contrary to Article 24 of the European Charter on Human Rights.

The Court of appeal of Celle, Germany, thus referred the matter to the ECJ, and asked whether, despite the abolition of exequatur, enforcing courts still had the power to review judgments rendered by courts from other member states on the ground that they would have been made in gross violation of the European Charter on Human Rights.

The ECJ answered that there was no such power. It put forward two reasons in support of its decision. First, in matters regarding child custody, time is of the essence and judgments should be immediately enforced. Second, the principle of mutual trust demands that foreign judgements be not reviewable on other grounds than those kept by the Regulation.

The German party should thus have challenged the Spanish judgment in Spain, and not in Germany.

The holding of the decision reads:

> ***Unter Umständen wie denen des Ausgangsverfahrens kann sich das zuständige Gericht des Vollstreckungsmitgliedstaats der Vollstreckung einer mit einer Bescheinigung versehenen Entscheidung, mit der die Rückgabe eines widerrechtlich zurückgehaltenen Kindes angeordnet wird, nicht mit der Begründung entgegenstellen, dass das Gericht des Ursprungsmitgliedstaats, das diese Entscheidung erlassen hat, gegen Art. 42 der Verordnung (EG) Nr. 2201/2003 des Rates vom 27. November 2003 über die Zuständigkeit und die Anerkennung und Vollstreckung von Entscheidungen in Ehesachen und in Verfahren betreffend die elterliche Verantwortung und zur Aufhebung der Verordnung (EG) Nr. 1347/2000 nach dessen mit Art. 24 der Charta der Grundrechte der Europäischen Union konformer Auslegung verstoßen habe, da für die Beurteilung der Frage, ob ein solcher Verstoß vorliegt, ausschließlich die Gerichte des Ursprungsmitgliedstaats zuständig sind.***
>
> ***En circunstancias como las del asunto principal, el órgano jurisdiccional competente del Estado miembro de ejecución no puede oponerse a la ejecución de una resolución certificada que ordena la restitución de un menor ilícitamente retenido por considerar que el órgano jurisdiccional del Estado miembro de origen del que emana esta resolución ha vulnerado el artículo 42 del Reglamento (CE)***

***nº 2201/2003 del Consejo, de 27 de noviembre de 2003, relativo a la competencia, el reconocimiento y la ejecución de resoluciones judiciales en materia matrimonial y de responsabilidad parental, por el que se deroga el Reglamento (CE) nº 1347/2000, interpretado conforme al artículo 24 de la Carta de los Derechos Fundamentales de la Unión Europea, por cuanto la apreciación de la existencia de tal vulneración compete exclusivamente a los órganos jurisdiccionales del Estado miembro de origen.***

***Dans des circonstances telles que celles de l'affaire au principal, la juridiction compétente de l'État membre d'exécution ne peut pas s'opposer à l'exécution d'une décision certifiée ordonnant le retour d'un enfant illicitement retenu au motif que la juridiction de l'État membre d'origine qui a rendu cette décision aurait violé l'article 42 du règlement (CE) n° 2201/2003 du Conseil, du 27 novembre 2003, relatif à la compétence, la reconnaissance et l'exécution des décisions en matière matrimoniale et en matière de responsabilité parentale abrogeant le règlement (CE) n° 1347/2000, interprété conformément à l'article 24 de la charte des droits fondamentaux de l'Union européenne, l'appréciation de l'existence d'une telle violation relevant exclusivement de la compétence des juridictions de l'État membre d'origine.***

*Many thanks to Patrick Kinsch for the tip-off.*

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# Fourth Issue of 2010's Belgian PIL E-Journal

The fourth issue of the Belgian bilingual (French/Dutch) e-journal on private international law *Tijdschrift@ipr.be / Revue@dipr.be* was released at the end of December.

The journal essentially reports European and Belgian cases addressing issues of

private international law, but it also offers academic articles. This issue offers one article in English from Herman Verbist on *Investment arbitration under public scrutiny and the new European competence in the field*.

The issue can be freely downloaded here.

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# Journal of Private International Law Conference 2011 (Milan) – Programme and Registration

The editors of J.Priv.Int.L are very pleased to announce that the **4th Journal of Private International Law Conference will take place in the University of Milan from Thursday 14th April 2011 at 2pm until Saturday 16th April at 5pm**. Over 50 early career papers are expected in parallel sessions on Thursday afternoon and Friday morning and 24 papers from experienced academics on Friday afternoon and Saturday.

- The fees for the conference are:

1. full price: 100 euros;
2. academics: 50 euros
3. students (undergraduate and postgraduate) and speakers: free

- The price for the dinner on Friday evening is 60 euros
- The price range for University accommodation per night is between 45-100 euros
- The price range for hotel accommodation per night is between 125-220 euros.

Accommodation has been reserved until the end of February 2011 and will be allocated on a first come first service basis. For registration to the conference and for further details, as well as to book any University accommodation, please contact Dr Giuseppe Serranò and Paola Carminati at jpil_2011@unimi.it. For any

other accommodation, please directly contact the hotel at issue, quoting the participation in the *JPIL 2011 conference*.

# Programme

## Thursday 14 April 2011: 14.00-15.45

*Group 1 – Treatment of Foreign Law, Preliminary Questions, PIL Treaties*

- C. Azcárraga Monzonís, The urgent need of harmonization of the application of foreign laws by national authorities in Europe
- A. Gardella, Foreign law in member States' courts and its relationship with European Union law
- S. Gössl, The Preliminary Question in European Private International Law
- S. Grossi, An international convention on conflict of laws: the path to Utopia?
- T. Kyselovská, Bilateral (Multilateral) Treaties on Legal Aid as Sources of Law in the European Judicial Area

*Group 2 – Jurisdiction in civil and commercial cases*

- A. Arzandeh, Twenty five years of Spiliada
- U. Grusic, Jurisdiction in complex contracts under the Brussels I Regulation
- J. Kramberger Škerl, A. Jurisdiction over third party proceedings: articles 6/2 and 65 of the Brussels I Regulation and the countries in-between
- U. Maunsbach, New Technology, new problems and new solutions – Private International Law and the Internet Revisited

*Group 3 – Family law – Adults*

- J. Borg-Barthet, Family Law in Europe: Should Civil Rights be Divorced from Questions of Sovereignty?
- M. Harding, The public effect of marriage and the un-oustable jurisdiction of the English Matrimonial Courts over the financial consequences of marriage
- M. Melcher, An EU Regulation on the law applicable to registered relationships

- A. Sapota, What happened with Regulation Rome III? Seeking the way for unifying the rules on applicable law in divorce matters.
- S. Shakargy, Local Marriage in a Globalized World: Choice of Law in Marriage and Divorce

## 16.15-18.00

*Group 4 – General PIL*

- V. Macokina A new bill of Polish private international law – double edged sword?
- C. Staath, Human Rights Protection in Private International Law: the role of access to justice
- E. Tornese, Mandatory rules within the European legal system
- T. Kozlowski, Ever Growing Borders in the Ever Closer Union of the EU

*Group 5 – Choice of Law in Contract*

- A. Dyson, Interpreting Article 4(3) of the Rome I Regulation: Something Old, Something Borrowed or Something New?
- M. Erkan, Examining the Overriding Mandatory Rules under the Rome I Regulation and the Turkish Private International Law Perspective
- E. Lein, The Optional Instrument for European Contract Law and the Conflict of Laws
- W. Long, Mandatory Rules in Cross-Border Contracts: Is China Looking Towards the EU?

*Group 6 – Recognition and enforcement of judgments*

- P. Mariani, The free movement of judgements in the European Union and the CMR
- C. Nagy, Recognition and enforcement of US judgments involving punitive damages in Europe
- W. Zhang, A Comparative Research on the Exequatur Procedure within the EU and China
- G.B. Özçelik, Application of the Brussels I Regulation and property disputes in Cyprus: reflections on the Orams case

# Friday 15 April 2011: 09.00-10.30

*Group 7 – Choice of Law in Tort/Delict*

- J. Papettas, Rome II, Intra-Community Cross Border Traffic Accidents and the Motor Insurance Directives
- D. Krivokapic, Potential impact on the US Speech Act: Influence of the Speech Act on Ongoing PIL Debate within EU and Third Countries
- J.J. Kuipers, Towards a European approach in cross-border infringement of personality rights
- T. Thiede, The protection of personality rights against supra-national invasions by mass-media

*Group 8 – Family Law – children*

- P. Jimenez Blanco, The Charter of fundamental rights of the European Union and international child abduction
- I. Kucina, K. Trimmings, P. Beaumont, Loopholes in the Brussels IIbis Child Abduction Regime
- A. Muñoz Fernández, Recognition of guardianships that were established abroad and preventive powers of attorney granted abroad
- F. S. ?ahin, S. Ünver, Affiliation in surrogate motherhood in private international law perspective
  M. Wells-Greco, Cross-border surrogacy and nationality: achieving full parent status

*Group 9 – Competition Law and Intellectual Property*

- M. Danov, Cross-border EU competition law actions: should private international law be relied upon by the EU legislator in the European context?
- P. Dolniak, The rule in Article 6 of the Rome II Regulation as a „clarification" of general rule specified in Article 4
- S. Neumann, The infringement of intellectual property rights in European private international law – meeting the requirements of territoriality and private international law
- B. Ubertazzi, Intellectual Property Rights, Exclusive (Subject-Matter) Jurisdiction and Public International Law
- N. Zhao, China's Choice-of-law Rules in International Copyright and

Related Right Disputes

## 11.00 – 12.30

*Group 10 – Trusts and insolvency*

- N. Zitkevits, Recognition of trusts in the European Union countries
- R. Yatsunami, The Choice of Law Rules on Trust in Japan
- Z. Crespi Reghizzi, Jurisdiction, recognition of judgments and law applicable to reservation of title in insolvency proceedings
  A. Leandro, EU cross-border insolvency: a free zone for the anti suit injunctions?

*Group 11 – Choice of Court and Arbitration*

- V. Salveta, The Enforceability of Exclusive Choice-of-Court Agreements
- L. Manigrassi, Arbitration Exception and Brussels I -Time for Change? An appraisal in light of the review of the Brussels I Regulation
- N. Zambrana Tévar, A new approach to applicable law in investment arbitration
  B. Yüksel, The relevance of the Rome I regulation to international commercial arbitration in the European Union

*Group 12 – Class actions, Property and Succession*

- V. Ruiz Abou-Nigm, Maritime Liens in the Conflict of Laws Revisited
- M. Casado, The investigation of the debtor´s assets abroad
- K. Svobodova, Relation Between Succession Law Determined under the EU Draft Regulation on Succession and the Lex Rei Sitae
- B. Glaspell, Global Class Actions Prosecuted in Canadian Courts

## 12.30 – 14.00 Lunch break

## 14.00-15.45

*PLENARY SESSION*

*Theory of PIL and party autonomy*

- R. Michaels, What Private International Law Is About

- T. Kono, P. Jur?ys, Institutional Perspective to Private International Law
- M. Keyes, Party autonomy in private international law beyond international contracts
- A. Mills, Party Autonomy in Non-Contractual Private International Law Disputes

## 15.45-16.15 Coffee break

## 16.15 -18.00

*Connecting Factors, Law Reform and Model Laws*

- E. Schoeman, The connecting factor in private international law: neglected in theory, yet key to just solutions
- I. Canor, Reform of Choice-of-Laws in Torts in the Israeli Legal System – A Normative Perception and a Comparative Perspective
- D. E. Childress III, Courts and the conflict of norms in private international law
- J.A. Moreno Rodríguez, M.M. Albornoz, The Contribution of the Mexico City Convention to the Reflection on a New Soft Law Instrument on Choice of Law in International Contracts

## 20.00 Conference Dinner – After Dinner Speaker is Hans Van Loon, Secretary General of the Hague Conference on Private International Law

## Saturday 16 April 2011: 09.00-10.45

*Characterisation, external relations in PIL, declining jurisdiction and choice of law in contract*

- G. Maher, B. Rodger, The respective roles for the lex fori, the applicable law and autonomous/harmonised concepts in international private law, with particular focus on key aspects of the law of obligations
- P. Mostowik, M. Niedzwiedz, Five Years after ECJ "Lugano II Opinion" – Its Current Developments and Further Consequences
- S. Pitel, The Canadian Codification of Forum Non Conveniens

- G. Tu, Contractual Choice of Law in the People's Republic of China: the Past, the Present and the Future

## 11.15-13.00

*Lex mercatoria, arbitration and consumer protection*

- C. Gimenez Corte, Lex mercatoria, independent guarantees and non-state enforcement
  L. Radicati di Brozolo, Conflicts between arbitration and courts in the EU: free for all, harmonization or home country control?
- S.I. Strong, Resolving mass legal disputes in the international sphere: are class arbitrations an option? lessons from the United States and Canada
  G. Rühl, Consumer Protection in Private International Law

## Lunch break 13.00-14.00

## 14.00-15.30

*Torts and Intellectual Property*

- I. Kunda, Overriding mandatory rules in intellectual property contracts
- M. Lehmann, Where Do Pecuniary Damages Occur?
- C. O. García-Castrillón Private international law issues of non-contractual liability with special reference to environmental law claims
- E. Rodriguez Pineau, The law applicable to intra-family torts

## Coffee break 15.30-15.45

## 15.45-17.00

*Family law, succession, nationality and Europeanisation of PIL*

- K. Trimmings, P. Beaumont, International Surrogacy Arrangements – An Urgent Need for a Legal Regulation at the International Level
- T. Kruger, J. Verhellen, Dual nationality = double trouble?
- J Fitchen, The Cross-Border Recognition and Enforcement of Authentic Instruments in the proposed European Succession Regulation

- L. Gillies, The Europeanisation of the Conflict of Laws and Third States: Scottish Perspectives

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# Joerges on Conflicts Law as Europe's Constitutional Form

Christian Joerges, who is a professor of law at Bremen University (and formerly at the European University Institute) has posted Unity in Diversity as Europe's Vocation and Conflicts Law as Europe's Constitutional Form on SSRN. The abstract reads:

> *"Unity in Diversity" was the fortunate motto of the otherwise unfortunate Draft Constitutional Treaty. The motto did not make it into the Treaty of Lisbon. It deserves to be kept alive in a new constitutional perspective, namely the re-conceptualisation of European law as new type of conflicts law. The new type of conflicts law which the paper advocates is not concerned with selecting the proper legal system in cases with connections to various jurisdictions. It is instead meant to respond to the increasing interdependence of formerly more autonomous legal orders and to the democracy failure of constitutional states which result from the external effects of their laws and legal decisions on non-nationals. European has many means to compensate these shortcomings. It can derive its legitimacy from that compensatory potential without developing federal aspirations.*
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> *The paper illustrates this approach with the help of two topical examples. The first is the conflict between European economic freedoms and national industrial relations (collective labour) law. The recent jurisprudence of the ECJ in Viking, Laval, and Rüffert in which the Court established the supremacy of the freedoms over national labour law is criticised as a counter-productive deepening of Europe's constitutional asymmetry and its social deficit. The second example from environmental law concerns the conflict between Austria and the Czech Republic over the Temelin nuclear power pant. The paper*

*criticises the reasoning of the ECJ, but does not suggest an alternative outcome to the one the Court has reached.*

*The introductory and the concluding sections generalise the perspectives of the conflicts-law approach. The introductory section takes issue with max Weber's national state. The concluding section suggests a three-dimensional differentiation of the approach which seeks to respond to the need for transnational regulation and governance.*

It can be freely downloaded here.

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# Rome III Regulation Published in the Official Journal

The Rome III regulation (see our most recent post here, with links to the previous ones) has been published in the Official Journal of the European Union n. L 343 of 29 December 2010. The official reference is the following: **Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation** (OJ n. L 343, p. 10 ff.).

Pursuant to its Art. 21(2), **the regulation should apply from 21 June 2012 in the 14 Member States which currently participate in the enhanced cooperation** (Belgium, Bulgaria, Germany, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia).

Art. 18 (*Transitional provisions*) provides that "[the] regulation shall apply only to legal proceedings instituted and to agreements of the kind referred to in Article 5 [choice of the applicable law by the spouses] concluded as from 21 June 2012". The same article stipulates that "effect shall also be given to an agreement on the choice of the applicable law concluded before 21 June 2012, provided that it complies with Articles 6 and 7" (rules governing material and formal validity of

the agreement). As regards proceedings commenced in the court of a participating Member State before 21 June 2012, the regulation will be without prejudice to *pacta de lege utenda* concluded in accordance with the law of that State (Art. 18(2)).

In order to make national rules concerning formal and procedural requirements of an *optio legis* fully accessible, Art. 17 (applicable from 21 June 2011) requires the participating Member States to communicate any relevant information in respect thereof to the Commission, which will make them publicly available, in particular through the website of the European Judicial Network in civil and commercial matters.

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