

New Dissertation: European Private International Law on Legal Parentage?

A new dissertation on legal parentage has recently been published: *Kees Saarloos* (Maastricht University), **European private international law on legal parentage? - Thoughts on a European instrument implementing the principle of mutual recognition in legal parentage.**

A summary has kindly been provided by the author:

The first part of the dissertation is a comparative analysis of the law on legal parentage in England & Wales, France, Germany, the Netherlands and Sweden. The second part examines the private international law on legal parentage in these countries. Special attention has been paid to the question to what extent legal parentage that has been established abroad, is recognised in the legal systems involved. In the third part, the influence of EU law on the free movement of persons on the recognition of civil status (Garcia Avello, Grunkin and Paul) has been analysed.

*The conclusion is that at this point in time, the case law of the ECJ only obliges Member States to recognise a civil status that has been established in another Member State, if the civil status does not violate the public policy of the recognising state and if there is no conflict of interest between the persons involved. Further implementation of the principle of mutual recognition in legal parentage requires action by the European legislator. In the final chapter, some suggestions have been made to work out the principle of mutual recognition in legal parentage. The starting point is that the law of the child's habitual residence should govern the registration of parentage at birth and the validity of the acknowledgment of parenthood; in court proceedings on parentage however, the grounds for jurisdiction should be limited and the courts should apply the *lex fori*.*

The electronic version, including an English and a French summary, is available free of charge at the website of the library of the University of Maastricht:

French Supreme Court Breaks Land Taboo

On June 23rd, 2010, the French Supreme court for private and criminal matters (*Cour de cassation*) held that French courts had jurisdiction to determine the succession to a property situated in a foreign country. 

The deceased person was a French national domiciled in Madrid. He owned two apartments, one in Spain and one in France, and monies on bank accounts. As his wife and his two children (one legitimate, one illegitimate) could not reach an agreement with respect to the succession, the wife sued the children before a French court. One of the children challenged the jurisdiction of the court on the ground that one of the properties was situated abroad.

The Court of appeal of Montpellier had retained jurisdiction over the Spanish immovable. Remarkably, the *Cour de cassation* dismissed the appeal lodged against this decision and held that French courts did have jurisdiction.

The *Cour de cassation* offered a most innovative reasoning to justify that outcome.

First, it underlined that French courts had jurisdiction to determine the succession to part of the estate of the deceased person. It had jurisdiction over the moveables because the plaintiff was a French national (Civil code, art. 14), and it had jurisdiction over the immovable situated in France because, well, it was situated in France.

But the best was still to come. The *Cour de cassation* ruled that, with regard to the Spanish immovable, Spanish **law** operated a *renvoi* to French **law**, and that such *renvoi* was **granting jurisdiction** to the French court to decide the entire dispute and determine the succession to the whole estate. The court held that jurisdiction was only granted “to the exception of legal and physical

operations flowing from the *lex situs*”, but it did not find that such operations were involved in the case and thus ruled that French courts had jurisdiction over the Spanish immovable.

The most important part of the judgement reads:

Mais attendu qu’ayant retenu, par motifs adoptés, que les juridictions françaises étaient compétentes pour connaître partiellement des opérations de liquidation et partage de la succession, tant mobilière en vertu de l’article 14 du code civil, qu’immobilière en raison de la situation d’un immeuble en France, la cour d’appel, constatant que la loi espagnole applicable aux dites opérations relatives aux meubles et à l’immeuble situés en Espagne, renvoyait à la loi française, loi nationale du défunt, en a exactement déduit que les juridictions françaises étaient, par l’effet de ce renvoi, compétentes pour régler l’ensemble de la succession à l’exception des opérations juridiques et matérielles découlant de la loi réelle de situation de l’immeuble en Espagne.

Publication: Black on Foreign Currency Claims in the Conflict of Laws

The second book in Hart Publishing’s new Studies in Private International Law is out, and it is Vaughan Black’s ***Foreign Currency Claims in the Conflict of Laws***. From the blurb:

Problems in assessment of damages remain among the most contentious aspects of private law disputes. The assessment exercise becomes particularly difficult when one of the parties asks that damages be assessed in some foreign currency or claims that, even though damages should be assessed in the currency of the forum, foreign exchange losses should form a head of loss.

The 1975 decision of the House of Lords in Miliangos v George Frank (Textiles) Ltd was revolutionary in that it permitted English courts to award judgment in a foreign currency. Miliangos has been influential throughout the common law world and courts in the commonwealth and the United States now contemplate awarding damages in currencies other than their own. However, that modernisation has hardly eliminated the problems in this area. When may a judge assess damages in a currency other than that of the forum? If a court elects to assess damages in its own currency, what conversion date should it select in converting from a foreign currency that was relevant to the obligations between the parties? In an age of fluctuating currencies questions of this nature present judges with choices involving significant financial implications.

This book takes a comparative look at how common law courts have addressed damages claims when foreign currencies are involved, and at statutory responses to that issue. It describes the practices of UK, Commonwealth and American courts in this field and draws both on principles of private international law and of damages assessment to analyse current practice.

It is £55 on the Hart website.

New South Wales and Singapore Supreme Courts Enter Into a Memorandum of Understanding on Questions of Foreign Law

From the press release:

The Supreme Courts of New South Wales and Singapore have entered into a Memorandum of Understanding (MOU) to work closely and expeditiously on issues arising under foreign law.

It is the first time a formal agreement has been forged between an Australian and foreign court on a legal issue, as distinct from one related to education or mutual assistance.

NSW Chief Justice James Spigelman and Singapore Chief Justice Chan Sek Keong jointly made the announcement today.

Chief Justice Spigelman said the MOU and supporting amended Uniform Civil Procedure Rules would prove valuable in determining complex cross-border commercial and family disputes.

“Money and people are more mobile today and courts are increasingly being asked to adjudicate on matters spanning multiple jurisdictions,” he said.

“This MOU reflects both the fluid and complicated nature of some modern legal proceedings, and the growing need for closer cooperation between courts and judges.”

Chief Justice Chan added: “The written agreement recognises the importance of facilitating legal cooperation in a way that has never been done before,” he said.

“I look forward to its more widespread adoption in the future as a new means of determining complex questions of foreign law.”

Usually, when an issue of foreign law arises in a case before the Supreme Court, each party to the proceedings engages an expert to provide advice and to attend court – often travelling from overseas – for cross-examination.

In effect, the presiding judge is asked to adjudicate between conflicting expert witnesses.

In a speech to commercial judges in Asia in Hong Kong earlier this year, Chief Justice Spigelman said this practice was “a costly process and leads to significant ‘lost in translation’ problems, with a real prospect that an incorrect understanding of the foreign law will be adopted and applied”.

In the same speech, he raised the possibility of courts directly referring questions of foreign law for determination to the court of the governing law. Now, consenting parties will have the option to seek a ruling directly from the

foreign court about its own laws.

Chief Justices Spigelman and Chan agreed a judgment by a foreign court would be more authoritative, accurate and expedient than opinions by conflicting expert witnesses.

The Supreme Court of Singapore was the first to refer a question of foreign law to a foreign court (Westacre Investments Inc v The State-Owned Company Yugoimport SDPR (also known as Jugoimport-SDPR) [2009] 2 SLR (R) 166), when it sought a determination of a question of English law. The Commercial Court in London answered the question (Westacre Investments Inc v Yugoimport SDPR [2008] EWHC 801 (Comm.)).

Earlier this year, the NSW Court of Appeal delivered judgment in Murakami v Wiryadi & Ors, which involved the Courts of Australia, Indonesia and Singapore.

Under the new Rules, parties involved in NSW cases will have another option to have questions of foreign law answered by a single referee. This process is expected to be highly cost-effective. The Supreme Court has a long established system of referees. However, it has not previously been used to determine an issue of foreign law.

Many thanks to Adrian Briggs for the tip-off.

Latest Issue of “Praxis des Internationalen Privat- und Verfahrensrechts” (4/2010)

Recently, the July/August issue of the German law journal “Praxis des Internationalen Privat- und Verfahrensrechts” (**IPRax**) was published.

Here is the contents:

- **Christoph Thole:** “Anscheinsbeweis und Beweisvereitelung im harmonisierten Europäischen Kollisionsrecht – ein Prüfstein für die Abgrenzung zwischen lex causae und lex fori” – the English abstract reads as follows:

The harmonisation of European private international law has been heavily debated. However, the new Rome Regulations (Rome I and II) have not been fully scrutinized with respect to the distinction between procedural law and substantive law and its implications for the applicability of the lex fori-principle. This article focuses on two well-known issues of civil procedure law – prima facie evidence and obstruction of evidence. It examines the difficult question of how to deal with these legal institutes in private international law under the regime of the Rome Regulations.

- **Götz Schulze:** “Moralische Forderungen und das IPR” – the English abstract reads as follows:

Moral claims articulate ethical positions of values which are hardly considered in the judicial discourse. This article first shows the moral implications of judicial claims in the field of the substantive civil law, which can be denominated as “minima moralia” of the civil law. Furthermore, moral claims exist as a social phenomenon. Their characteristic is the indeterminableness in claiming for an intrinsically pursued purpose which is regarded to be a good one. In Private International Law the ethical axiom of mutual recognition obtains a specific meaning. There, recognition refers to the claim of the other for being recognised. Thereby the other in Private International Law can be both, the individual and the state. The claims for identity of states and individuals are shaped by the law. The law of a state has to be acknowledged as a cultural achievement. Therefore, if there is a strong link to the facts, legal ethics demand an application of foreign law as a question of respecting state and individual. Beyond cosmopolitically conceived legal ethics demand to amend the applied law by cultural virtues. The judicial “gateways” for such ethical aspects are the general clauses like the good faith. Thus, the “moral-data”-doctrine of Jayme obtains a legitimation by legal ethics. Furthermore, ethical virtues may gain recognition in non-governmental treaties such as the

Washington-Conference-Principles on Nazi-Confiscated Art. For provisions that articulate moral claims without comprehending an enforceable legal consequence Jayme has developed the term “narrative norms”. They allow to balance contradicting moral positions and claims by finding a compromise instead of strict all-or-nothing-results. This can be shown on the basis of the ruling in the Sachs-case, which has dealt with the restitution of Nazi-Confiscated art-posters (Kammergericht Berlin on 28 January 2010).

- **Rolf Wagner/Ulrike Janzen:** “Das Lugano-Übereinkommen vom 30.10.2007” – the English abstract reads as follows:

The revised Lugano Convention has entered into force on 1 January 2010 between the EU, Norway and Denmark. Switzerland will probably join the Convention in 2011. The aim of the Lugano revision was to achieve parallelism between the provisions of Regulation (EC) No. 44/2001 (“Brussels I”) and the Lugano Convention, as it had existed between the Lugano Convention of 1988 and the Brussels Convention of 1968. In addition, as the ECJ has decided the Lugano Convention falls entirely within exclusive Community competence, the EU Member States (except Denmark) are no longer Contracting Parties to the Convention. This article explains the history and the concept of the “new” Lugano Convention. Further on it aims at exposing the differences between the “old” and the “new” Lugano Convention as well as the latter’s relationship with Regulation No. 44/2001.

- **Christian Schmitt:** “Reichweite des ausschließlichen Gerichtsstandes nach Art. 22 Nr. 2 EuGVVO” – the English abstract reads as follows:

This article analyzes the scope of exclusive jurisdiction pursuant to Art. 22 no. 2 of the Brussels I-Regulation („Brussels I”). Besides investigating whether Art. 22 no. 2 of Brussels I is merely applicable to formal organ decisions, it mainly deals with the question whether preliminary questions have to be considered in determining the matter in dispute. The ratio of Art. 22 no. 2 Brussels I is to avoid contradictory decisions about the existence of the company and the effectiveness of its organ’s decisions. Taking into consideration this ratio and the established case law by the ECJ which leads to a restrictive interpretation of the provisions of Art. 22 of Brussels I, this article comes to the conclusion that Art. 22 no. 2 of Brussels I is not applicable to cases in which the effectiveness of

the organ's decision is merely a preliminary question.

- **Marius Kohler/Markus Buschbaum:** "Die „Anerkennung“ öffentlicher Urkunden? – Kritische Gedanken über einen zweifelhaften Ansatz in der EU-Kollisionsrechtsvereinheitlichung" – the English abstract reads as follows:

On October 14th, 2009 the European Commission presented a proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and authentic instruments in matters of succession and the creation of a European Certificate of Succession. The proposed Regulation is aimed at unifying and simplifying the rules governing successions, increasing their predictability and providing more effective guarantees for the rights of heirs and/or legatees and other persons linked to the deceased, as well as creditors of the succession. In this context, the proposal is also aimed at guaranteeing that authentic instruments in matters of succession can move freely in the European Union. To this end the European Commission proposes to simply transfer the well-known concept of recognition as is used to enable the cross-border circulation of judicial decisions to authentic instruments. Kohler/Buschbaum seize upon this approach which they criticize as being inapt and even harmful to the objective of strengthening the free circulation of authentic instruments. In particular, it turns out that the approach chosen by the Commission would even serve to circumvent the – harmonised – provisions of Private International Law on validity and legal effects of the legal acts underlying authentic instruments. A French version of the article is available under www.iprax.de.

- **Paul Oberhammer:** "Im Holz sind Wege: EuGH SCT ./.. Alpenblume und der Insolvenztatbestand des Art. 1 Abs. 2 lit. b EuGVVO" – the English abstract reads as follows:

Three decades after the ECJ decision in the case Gourdain ./.. Nadler, the ECJ has rendered three decisions relating to the scope of application of the Brussels I Regulation and the Insolvency Regulation with respect to litigation emerging from insolvency proceedings in 2009 (Seagon ./.. Deko Marty Belgium, SCT Industri ./.. Alpenblume and German Graphics ./.. van der Schee). The contribution discusses the procedural history, the relevant issues and future

effects of the ECJ's decision SCT Industri ./ Alpenblume in detail.

- **Moritz Brinkmann:** “Der Aussonderungsstreit im internationalen Insolvenzrecht – Zur Abgrenzung zwischen EuGVVO und EuInsVO” – the English abstract reads as follows:

In German Graphics, a German title retention seller tried to enforce in the Netherlands an order for the adoption of protective measures by a German court against the trustee of the Dutch buyer. On a reference by the Hoge Raad, the ECJ clarified that Art. 25 II EuInsVO must be interpreted as meaning that the words “provided that that Convention is applicable” imply that it is necessary to determine whether a judgment falls inside the scope of application of the EuGVVO. Thus, the case raised once more the question of the scope of the exception provided for in Art. 1 II lit. b) EuGVVO, this time in a recognition and enforcement context. The court held that a seller’s claim based on his reservation of title does not fall under Art. 1 II lit. b) EuGVVO.

In his comment, Moritz Brinkmann argues that the court’s reasoning in German Graphics is convincing with respect to title reservation clauses. Here, the seller tries to recover a piece of property that is not part of the buyer’s estate. Such a claim is independent of the buyer’s insolvency and is not related to the insolvency proceedings. The mere fact that the order has to be enforced against the trustee is irrelevant. Title reservation clauses, however, must be carefully distinguished from situations where the claimant is the owner of the asset in question by virtue of a fiduciary transfer of ownership for security purposes. Under such circumstances the claim of the secured creditor – who is technically the owner – might nevertheless be characterized as a claim falling under Art. 1 II lit. b) EuGVVO. The author, furthermore, shows the consequences of the ECJ’s decision for the validity of choice of court clauses.

- **Jan von Hein:** “Die Produkthaftung des Zulieferers im Europäischen Internationalen Zivilprozessrecht” – the English abstract reads as follows:

The most recent decision of the ECJ on Article 5 No 3 of the Brussels I-Regulation, Zuid-Chemie v. Philippo’s, deals with the interpretation of the provision in a case involving product liability. The ECJ held that the place where the harmful event occurred’ designates the place where the initial damage

occurred as a result of the normal use of the product for the purpose for which it was intended. Jan von Hein agrees with the decision, but criticises the lack of harmonisation of Art. 5 (3) of Brussels I with the new provision on the law applicable to claims for product liability in Article 5 of the Rome II-Regulation. He examines in detail whether and to which extent a harmonious interpretation of the two provisions is possible. He comes to the conclusion that the diverging policies and methodological foundations underlying Art. 5 No. 3 Brussels I, which follows the traditional principle of ubiquity, on the one hand, and Art. 5 Rome II, which is a variation of the cascade system of connecting factors pioneered by the Hague Convention on Product Liability, on the other, will inevitably lead to scenarios where jurisdiction and the applicable law do not coincide.

- **Bettina Heiderhoff:** “Einzelheiten zur öffentlichen Zustellung” – the English abstract reads as follows:

The due and timely serving of documents, especially those instituting proceedings (writ of summons), is an essential element of judicial proceedings. However, when the address of the recipient (respondent to the claim) is unknown, most European legal systems allow service by publication. In the two cases at hand, the courts had to deal with the prerequisites of such a service by publication. The German Federal High Court (BGH) decided that service by publication may be excluded when the claimant has not invested enough effort in to discovering the address of the defendant. From a general perspective, this attitude seems convincing as it is important that fictitious forms of service be avoided whenever possible. It seems less convincing, however, that, through the introduction of the requirement of “sufficient effort”, the rules on service by publication (and, in particular, foreign rules) are softened and legal certainty and predictability are reduced.

- **Reinhold Geimer:** “Zurück zum Reichsgericht: Irrelevanz der merger-Theorien – Kein Wahlrecht mehr bei der Vollstreckbarerklärung”

The article analyses a judgment given by the German Federal Court of Justice (BGH, 2 July 2009, IX ZR 152/06) confirming the predominant opinion according to which an exequatur decision given by a third state cannot be declared enforceable in other states. In derogation from a previous judgment

(BGH, 27 March 1984 – IX ZR 24/83) according to which the principle of the inadmissibility of double *exequatur* does not apply in case of the application of the doctrine of merger, the BGH now held that also in these cases there was no reason to derogate from this principle and thus returned to the approach adopted already by the Supreme Court of the German Reich.

- **Maximilian Seibl:** “Kollisionsrechtliche Probleme im Zusammenhang mit einem Mietwagenunfall im Ausland – Anknüpfungsgrundsätze, Haftungsbeschränkung und grobe Fahrlässigkeit” – the English abstract reads as follows:

*Traffic accidents abroad prove to be one of the most relevant matters in the area of International Tort Law. As the Convention of 4 May 1971 on the law applicable to traffic accidents has not been signed by Germany the question as to which law governs such cases must be answered by the general International Tort Law provisions, i.e. by the Regulation (EC) No. 864/2007 (Rome II) or, in older cases, by Art. 40 EGBGB. The Federal Court of Justice of Germany (BGH) had to decide on a case in which two medical students had spent three months in South Africa together in order to pass practical education required for their studies. During their stay they had commonly rented a car. Both of them had assumed that the insurance modalities in South Africa in case of an accident were comparable to those in Germany, so that they had not contracted private insurance offered by the car rental company. In fact there was only the so-called “South African Road Accident Fund” which offered victims of car accidents compensation to the amount of 25.000 South African Rand (ca. 3.000 e) at that time. Since one of the students was not accustomed to driving on the left, she caused an accident after turning into a National Road resulting in severe injuries to the other. The BGH held that according to Art. 40 (2) EGBGB German law as the *lex domicilii communis* was applicable in the case. As the application of this rule can lead to a situation where strict liability applies to the keeper of the car while there is no insurance available, there is a controversy in German literature as to whether or not this rule should be applied if rented cars are involved. However, in this case the BGH provided a solution in the area of substantive law by assuming the existence of a tacit nonliability clause, which generally proves to meet the interests of the parties involved better than a modification of the Private International Law provision. In respect to classification the question as to whether or not such a clause can actually be*

*assumed to have been concluded is a question of the law applicable to the contract, which was German law in the case. On the other hand it is up to the applicable tort law to decide as to whether or not such a clause is effective. Since German law, however, was also applicable in respect to tort matters, there was no problem concerning a possible restriction on the effectivity of the tacit clause in the present case. As a result the driver in the case would only have been liable if she had acted with gross negligence. On principle, the standards of conduct derive from local data whose applicability does not depend on the respective International Tort Law provision. However, in case a *lex domicilii communis* exists, the standards of conduct in respect to the relation of passengers in the same car must be taken from this law, insofar it makes no difference whether the tortuous act was committed inland or abroad. Since the condition for gross negligence according to German law had not been met in the case, the BGH found for the defendant.*

- **Anna Radjuk:** “Grenzen der Anwendung des ausländischen Rechts in Russland” – the English abstract reads as follows:

In Russia, International Private Law was recently newly codified into the Russian Civil Code. Among others, new provisions with regard to the imperative norms and public policy were implemented. The present article investigates the impact of the imperative norms and public policy on the freedom of choice of law both in theory and practice from the time of the new codification.

- **Christian Hoppe:** “Englisch als Verfahrenssprache – Möglichkeiten de lege lata und de lege ferenda”

The article presents a current attempt in Germany to admit – in certain cases – English as the language of procedure. Two German states (“Bundesländer”), North Rhine-Westphalia and Hamburg have presented a legislative proposal according to which special chambers for international commercial matters should be introduced which should, according to the proposal, litigate in English.

- **Erik Jayme/ Carl Friedrich Nordmeier** on a seminar held on 12 November 2009 at the “Pontifícia Unversidade Católica” in Rio de Janeiro

on international maintenance law: “Neue Wege im Internationalen Unterhaltsrecht: Parteiautonomie und Privatisierung des ordre public Seminar in Rio de Janeiro”

- **Erik Jayme** on a conference held in Heidelberg on living wills and private international law: “Patientenverfügung und Internationales Privatrecht Tagung im Italienzentrum der Universität Heidelberg”

French Supreme Court Recognizes Foreign Gay Adoption

Yesterday, the French supreme court for private and criminal matters (*Cour de cassation*) held that an American judgment permitting the adoption of a child by the female partner of the mother was not contrary to French public policy and could be recognized in France. 

The women were two doctors living in the United State. They had entered into a domestic partnership. The mother was a American national, while her partner was French. After the child was born, the Superior Court of the county of Dekalb, Georgia, permitted the adoption of the child by the French female partner of the mother in 1999. As a consequence, the birth certificate mentioned that the American woman was the mother, and that the French woman was a parent.

The Paris court of appeal had denied recognition to the judgment. The appeal against their decision is allowed by the *Cour de cassation* which rules that the American judgement is recognised. The French text of the judgment of the *Cour de cassation* can be found [here](#).

This decision is presented as historic by French newspaper *Le Monde*.

Van Den Eeckhout on Transnational Corporate Social Responsibility

Veerle Van Den Eeckhout, who is professor of private international law at Leiden university (the Netherlands) and the University of Antwerp (Belgium), has posted International Environment Pollution and some other PIL-Issues of Transnational Corporate Social Responsibility on RefGov and on SSRN. The Article is in Dutch. The English abstract reads:

A case-study of the instrumentalisation of Private International Law in the year 2010: developments at the beginning of a new decade

On the 30th of December 2009, the court of The Hague accepted international competence in the case “Shell/Shell Nigeria”. As the jurisdiction issues have been solved, legal proceedings can actually start.

During these legal proceedings it is possible that issues about applicable law will come forward. In this article, the author focuses on Private International Law Issues as related to cases like Shell, without focusing however on the PIL-issues of the specific Shell case itself.

The article focuses on the Rome II Regulation – the new European PIL-source including rules of applicable law on torts. The crucial question is the following: in how far does the Rome II regulation allow to declare applicable – if desired by the victims – Dutch tort law in cases of “Transnational Corporate Social Responsibility” as they might be brought in future against parent companies holding their seat in the Netherlands, either before the Dutch judge or before another European judge, especially if the claim of the victims concerns Parent Corporation liability for damages occurred in developing countries.

In her attempt to answer this question, the author gives some comments on the impact of national PIL-rules of EU-Member States – e.g. national rules about “surrogate law” – and the interaction of these rules with European interference in PIL, as well as on the impact of the way issues of “qualification” are solved by the EU-Member States – e.g. the complication of the delimitation between

“tort law issues” and “corporate law issues” – and the interaction thereof with European interference.

In this analysis, issues about respect for Fundamental Rights as related to Transnational Corporate Social Responsibility come forward. Particularly, the case of Transnational Corporate Social Responsibility shows how national practices of EU-Member States could lead to more – or less – respect for Fundamental Rights and, more in general, more – or less – protection of “victims”, interrelating with European interference in PIL.

It can be freely downloaded here (extensive version) and here.

Dickinson on The Rome II Regulation: Supplement Now Available

Andrew Dickinson’s monograph on **The Rome II Regulation - The Law  Applicable to Non-Contractual Obligations** was published in December 2008, and subsequent contributions from courts and academics have been seen throughout 2009 and 2010. To ensure that his work stays up-to-date and comprehensive, Dickinson has published an **Updating Supplement** to accompany the monograph. From the OUP website:

- This supplement updates *The Rome II Regulation: The Law Applicable to Non-Contractual Obligations*, which is the leading practitioner work which focuses on the Rome II regulation
- This supplement incorporates all major substantive developments since publication of the Main Work in December 2008 including the implementation of the Regulation in the UK, recent ECJ cases concerning other EC private international law instruments and new decisions of the English courts concerning the pre-Regulation rules of applicable law

Written by an experienced practitioner, who had substantial involvement in the consultation process leading to the regulation, offering valuable insight into the background and working of the regulation

This updating supplement brings the Main Work The Rome II Regulation up to date and incorporates substantive developments since publication of the book in December 2008. In particular it draws attention to legislation implementing the Regulation in the United Kingdom, to recent ECJ cases concerning other EC private international law instruments, to new decisions of the English courts concerning the pre-Regulation rules of applicable law, and to recent books and journal articles providing further colour to the picture surrounding the Regulation since its adoption in January 2009. It is an essential purchase for all who already own the Main Work, and maintains its currency.

You can buy the main work together with the commentary for £200, or just the supplement for £45.

Southampton Colloquium on Maritime Conflict of Laws

The Institute of Maritime Law at the University of Southampton, together with the Universities of Oslo and Tulane, is hosting a colloquium on maritime conflict of laws on 1st -2nd October 2010. The programme looks excellent (it doesn't seem to be available on the web anywhere, so you'll just have to trust me on that). Details can be obtained from Mrs Anita Rogers-Ballanger – for contact information see the IML website.

Getting to know Spanish PIL Particularities

One of the most particular traits of the Spanish legal system results from art. 149.1.8 of the Constitution, under which “1. The State has exclusive jurisdiction over the following matters: 8- Civil legislation, without prejudice to the preservation, modification and development by Autonomous Communities of civil rights (...), where they exist.”

Due to this possibility Spain has become a State characterized by legal pluralism; it is a “plurilegislative” State, that is, a single sovereign territory where several civil law coexist- though not, however, several jurisdictions.

The coexistence of different systems of civil law generates inter-regional conflicts. Only the State is empowered to make rules in relation to them. As said by art. 149.1.8: “In any case, [The State has exclusive jurisdiction over] the (...) rules for resolving conflicts of law (...)”. The Autonomous Communities do not have competence on the subject.

The clarity of this provision has not prevented regional lawmakers from including criteria determining the spacial scope of the autonomous rules (see eg art. 188 of the Civil Law of Galicia, “Galicians are allowed to make a joint will either in Galicia or outside Galicia”), although, as repeatedly pointed out by the authors, in doing so they may be invading the exclusive jurisdiction of the State . In some cases, this trespass on the State exclusive competence has led to a constitutional complaint before the Constitutional Court.

Art. 16 Civil Code (Cc) contains the rule for solving inter-local conflicts: “Conflict of Laws that may arise from the coexistence of different civil laws in the country will be resolved according to the rules contained in Chapter IV”. This means that the lawmaker has chosen to extend the Spanish solution for private international situations to inter-local conflicts. The option has been criticized in academic circles, where the need for a specific solution has been highlighted considering the lack of analogy between the conflicts.

At any rate, art. 16 Cc must be understood beyond its literal meaning, that is, the reference to “the rules contained in Chapter IV” extends to any rule conceived to

solve a conflict of laws in autonomous PIL system, and encompasses all solutions, regardless of the legislative technique used (eg, conflictual or unilateral) . Much more controversial is what happens with conventional (or European Community) regulation. The issue requires a detailed review for which we hope we will get an expert opinion sometime later this year.

In order to apply Chapter IV of the Civil code to inter-regional situations, art. 16 Cc replaces the nationality as connecting factor: “Personal Law will be determined by civil neighbourhood (*vecindad civil*)”. Regulation of the civil neighbourhood is a matter of exclusive jurisdiction of the State (see arts. 14 and 15 Cc).

Finally, art. 16 Cc excludes the provisions of paragraphs 1, 2 and 3 of Article 12 Cc: the rules on characterisation, renvoi and public policy will not apply to inter-local situations. Conversely, that apparently means that the prohibition of fraud (art. 12.4 Cc) remains in effect. However, despite some case law supporting the opposite view, scholars and academics reject that the fraud rule be applicable in merely inter-local situations. Another issue that we must leave open, to be (hopefully) explained by an expert contribution.