CJEU Rules on Jurisdiction in Cases of Liability for Defective Products

by Jonas Steinle, LL.M.

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On 16 January 2014 the Court of Justice of the European Union (CJEU) has ruled on the interpretation of Art. 5 para. 3 Brussels I Regulation in cases of liability for defective products (C-45/13 – Andreas Kainz ./. Pantherwerke AG). The Court held that in such cases, the place of the event giving rise to the damage is the place where the product in question was manufactured.

The facts:

The claimant, Mr Kainz, is a resident of Salzburg in Austria. In a shop in Austria, he bought a bicycle which he rode in Germany, when the fork ends of that bicycle came loose and caused an accident from which Mr Kainz suffered injury. The bicycle had been manufactured by a company based in Germany. After having manufactured the bicycle, this company had shipped the bicycle to a shop in Austria from which Mr Kainz had finally purchased the item.

As a consequence of the suffered injury, Mr Kainz sued the German manufacturing company before the district court (*Landgericht*) in Salzburg. To establish jurisdiction, Mr Kainz argued that the district court in Salzburg had jurisdiction according to Art. 5 para. 3 Brussels I Regulation, since the bicycle had been brought into circulation in Austria and only there was made available to the end user for the first time.

In the following proceedings, the Supreme Court of Austria (*Oberster Gerichtshof*) referred the question to the CJEU for a preliminary ruling, as to

where the place of the event giving rise to the damage should be located in a case like the one at hand where the manufacturer of a defect product is sued. The Supreme Court offered three possibilities to the CJEU: (i) the place where the manufacturer is established, (ii) the place where the product is put into circulation and (iii) the place where the product was acquired by the user.

The ruling:

The CJEU decided for the first option and ruled that the place of the event giving rise to the damage must be located at the place where the product in question was manufactured.

To substantiate this ruling, the CJEU relied on two main arguments: First the Court held that it is at the place where the product in question was manufactured where it is most suitable to take evidence for a dispute that arises out of a defect product (para. 27). And secondly, the Court argued that locating the place where the event giving rise to the damage at the manufacturing site provides foreseeability and thereby legal certainty to the parties involved (para. 28).

In the further course of the reasoning, the CJEU also addressed the argument of the claimant, Mr Kainz, who had suggested to locate the place giving rise to the damage at the place where the product had been transferred to the end consumer (which would have led to a *forum actoris* for him). In this context, the CJEU ruled (para. 30 *et seq.*), that Art. 5 para. 3 Brussels I Regulation does not allow to take into account any such considerations to protect the claimant by determining the place where the harmful event occurred.

The evaluation:

With this ruling, the CJEU has further completed the picture of the application of Art. 5 para. 3 Brussels I Regulation in cases of liability for defective products. In the former case *Zuid Chemie* C-189/08, the Court had already located the place where the damage occurred (*Erfolgsort*) at 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." (para. 32). In *Zuid Chemie*, the location of the place giving rise to the damage (*Handlungsort*) had been left open by the Court since the parties of that case had agreed on the fact that this place should be located at the place where the defect product had been manufactured (para. 25). This interpretation has now been confirmed by the CJEU with the case at hand.

Another reason, why the Kainz ruling is interesting, is the statement of the CJEU on the relationship between the Brussels I Regulation and the Rome II Regulation. The Court clarified that these two pieces of legislation are to be interpreted independently, even if the legislator wanted them to be interpreted coherently (see therefore recital 7 of the Rome II Regulation). The interpretation of the Brussels I Regulation must not be influenced by the conception or the wording of the Rome II Regulation if this would be contrary to the scheme and the objectives of the Brussels I Regulation (para. 20).

Third Issue of 2013's Rivista di diritto internazionale privato e processuale

(I am grateful to Prof. Francesca Villata – University of Milan – for the following presentation of the latest issue of the RDIPP)

The third issue of 2013 of the Rivista di diritto internazionale privato e processuale (RDIPP, published by CEDAM) was just released. It features four articles and two comments.

Sergio Maria Carbone, Professor Emeritus at the University of Genoa, provides an assessment of party autonomy in substantive and private international law in **"Autonomia privata nel diritto sostanziale e nel diritto internazionale privato: diverse tecniche e un'unica funzione"** (Party Autonomy in Substantive and Private International Law: Different Techniques and a Single Function; in Italian).

> *The paper focuses on the techniques through which party autonomy may operate in contractual relationships with the aim of assessing that (i) such techniques are, in practice, more and more difficult to define as to their respective fields of application; (ii) irrespective of which of such different techniques is actually deployed, they all share the common objective and the*

unified task to accomplish, in the most exhaustive way, the plan that the parties intended to implement by executing their contract. Indeed, party autonomy may operate either as a tool for the regulation of an entire relationship or of parts thereof, or as a conflict of laws rule or, again, as a direct or indirect source of regulation of contractual relationships. Whatever the specific role played by party autonomy with regard to a given contract, party autonomy eventually pursues the aim of executing the parties' underlying programme, provided that the fulfillment thereof is consistent with public policy, overriding mandatory rules and with the mandatory rules of the State with which the contract is exclusively connected. In this view, it is also confirmed the gradual establishment of the so-called material considerations method with regard to private international law solutions and, in particular, to the choice of the national legal system which may come into play in determining the law applicable to contractual relationships.

Cristina Campiglio, Professor at the University of Pavia, examines the history of private international law from the Statutaries to the present day in **"Corsi e ricorsi nel diritto internazionale privato: dagli Statutari ai giorni nostri"** (History Repeating Itself in Private International Law: From the Statutaries to the Present Day; in Italian).

Private international law ("PIL") aims at pursuing its basic mission, i.e. coordinating the different legal systems and underlying legal cultures, by providing an array of practical solutions. However, no rigid recipe proves to be completely satisfying. As a matter of fact, a growing evidence is accumulating that a merely dogmatic approach is often inconclusive and that PIL implementation cannot be reduced to a mere sum of rigid techniques. Rather, it has turned into an art of its sort, where theories and legal sensibilities may be compounded time to time in different ways. Due to the difficulty (the impossibility, at times) to define a clear-cut hierarchy of values – whether arising from the national legal systems or inherent to individual rights – the legal operator has to come to terms with juridical relativism and, in the absence of any binding guidance, search the most suitable solution to the case in point. Concerning the family law field, which has been known to be the most affected by normocultural differences (i.e., differences in law which are a reflection of cultural differences), it appears that the preferred solution should be the one that assures the continuity of individual status both in time and in space. In the

past few years, this need of continuity has led scholars to revaluate old legal theories and to develop a new method (the so-called recognition method), which essentially put aside conflict rules. This method has been used occasionally by the domestic legislator, who has developed a number of "receptive" choice-of-law rules. However, the recognition method is hard to be applied when the foreign legal institution is unknown to the local court and an adaptive transposition is required. In such an event, another aged theory can be resurrected, i.e. the substitutive method. The main goal of this contribution is on the one hand to provide evidence of the persisting relevance of the old legal theories mentioned above (some of which dating back to the seventeenth century), while suggesting on the other hand the need to give methodological rigor up, in favor of a more eclectic and efficient exploitation of the variety of methods that PIL makes available.

Carla Gulotta, Associate Professor at the University of Milano-Bicocca, addresses jurisdiction over employers domiciled abroad namely with reference to the *Mahmadia* case in **"L'estensione della giurisdizione nei confronti dei datori di lavoro domiciliati all'estero: il caso *Mahamdia* e il nuovo regime del regolamento Bruxelles I-*bis*"** (The Extension of Jurisdiction over Employers Domiciled Abroad: The *Mahamdia* Case and the New Regime under the Brussels Ia Regulation; in Italian).

After years of doctrinal debate, public consultations and normative efforts, the Recast of the Brussels I Regulation was finally adopted on 12 December 2012. Among the most innovative features of the new Regulation is the extension of the jurisdiction of EU Member States' courts towards employers not domiciled in the Union. According to the author the new rules cannot be labeled as giving raise to "exorbitant grounds of jurisdiction", nor can they be entirely understood unless they are read as the outcome of the efforts of the EU's Legislator and judges to guarantee the enforcement of European rules aimed at employees' protection in international employment cases. The article also argues that while waiting for the new Regulation to become effective, the European Court of Justice is anticipating its effects through an unprecedented wide construction of the expression "branch, agency or establishment" ex Art. 18(2) of Regulation No 44/2001. Lastly, the author suggests that the difficulties envisaged as for the recognition and the enforceability of the judgments given on the new grounds of jurisdiction might be overcome in respect of those

Countries knowing similarly extensive rules of protective jurisdiction, or otherwise recurring to a principle of comity.

Rosario Espinosa Calabuig, Profesora Titular at the University of Valencia, examines the interface between the 1999 Geneva Convention on the Arrest of Ships and Regulations Brussels I and Brussels Ia in **"¿La desarmonización de la armonización europea? A propósito del Convenio de Ginebra de 12 de marzo de 1999 sobre embargo preventivo de buques y su relación con los reglamentos Bruselas I y Bruselas I *bis*"** (The Disharmonization of the European Harmonization? Remarks on the Geneva Convention of 12 March 1999 on the Arrest of Ships and Its Interface with Regulations Brussels I and Brussels Ia; in Spanish).

The International Convention on Arrest of Ships of 1999 came into force on September 14, 2011, and so far it has been ratified by only four EU Member States, including Spain. As the precedent Convention of 1952 – which is still in force in most of the EU Member States – the 1999 Convention prescribes rules on both international jurisdiction, and recognition and enforcement of decisions. Accordingly, the European Union seems to be the one entity having standing to ratify the 1999 Convention, at least with regard to those rules. To this effect, doubts arise about the legality of the aforementioned accession of EU Member States to the Convention but, in particular, about the EU interest in the ratification of the Convention of 1999. Such ratification ought to be encouraged by other Member States, but this is not granted at all. Still, the EU might authorize Member States to ratify the 1999 Convention as previously occurred with reference to other maritime Conventions, such as the 2001 Bunkers or the 1996 HNS. Meanwhile, the 1999 Convention is already operating in countries like Spain. Hence, conflicts arising from the non-coordination between its provisions and those of the Brussels I Regulation ought to be addressed. Among such conflicts are, for example, those arising from a provisional measure being adopted inaudita parte by different courts within the European area of justice. Furthermore, the Brussels I Regulation was recast by Regulation No 1215/2012 which will be in force as of 2015, and among other innovations abolishes exequatur. This paper aims at unfolding those conflicts which might be solved by resorting to the ECJ case-law, in particular Tatry and TNT Express.

In addition to the foregoing, the following comments are featured:

Lidia Sandrini, Researcher at the University of Milan, **"Risarcimento del danno da sinistri stradali: è già tempo di riforma per il regolamento Roma II?"** (Compensation for Traffic Accidents: Has the Time Come to Amend the Rome II Regulation?; in Italian).

> *This article addresses Regulation EC No 864/2007 in so far as it deals with traffic accidents, at the aim of investigating whether there is an actual need for amendments to the rules applicable in this field. It is submitted that the coordination between the Regulation and the Motor Insurance Directives can be achieved through the interpretation of the different legal texts in the light of their respective scopes and objects. On the contrary, the impact of the application of the Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents definitely needs to be addressed by the EU legislator, in order to ensure the consistency of the solutions in the European judicial area. Finally, with regard to the interpretation of specific connecting factors provided for by the Regulation, it appears that most of the difficulties highlighted by Scholars and faced by judges are due, on one hand, to an inaccurate drafting, and, on the other hand, to the lack of explicit and detailed solutions with regard to general problems, such as the treatment of foreign law, the law applicable to the preliminary questions, and characterization.*

Luigi Pintaldi, Law Graduate, **"Il contrasto tra lodi arbitrali e decisioni dei giudici degli Stati dell'UE nel regolamento (CE) n. 44/2001 e nuove prospettive"** (The Conflict between Arbitral Awards and EU Courts Decisions under Regulation No 44/2001 and New Perspectives; in Italian).

> *This article addresses the exclusion of arbitration from the scope of Regulation EC No 44/2001, as interpreted by the Court of Justice of the European Union in the well-known case West Tankers. In West Tankers the Court maintained that the validity or the existence of an arbitration agreement determined as an incidental question comes within the scope of the Brussels Regulation when the subject-matter of the dispute comes within the scope of it. This unsatisfactory result raised the issue of recognition and enforcement of a judgment from a Member State in conflict with an arbitral award recognised and enforced in another Member State. The recognition and enforcement of a judgment may be*

refused in conformity with paragraphs 3 and 4 of Article 34 affirming that the arbitral award is treated like a judgment with res judicata effects. Alternatively, the recognition and enforcement of a judgment may be refused in accordance with the paragraph 1 of Article 34 stating that the New York Convention prevails over the Brussels I Regulation. Recently, the precedence of the New York Convention was explicitly provided by paragraph 2 of Article 73 and Recital 12 of the new Brussels I Regulation, i.e., Regulation EU No 1215/2012. The exclusion of arbitration was retained by the new Brussels I Regulation with further details: in fact, the ruling rendered by a Court of a Member State as to the validity or the existence of an arbitration agreement now falls within the scope of application of the Regulation, regardless of whether the Court decided on this as a principal issue or as an incidental question. In the light of the new Brussels regime, it seems clearer that the question whether a judgment from a Member State shall be recognized and enforced when it is in conflict with an arbitral award is left to each national law and international conventions.

Indexes and archives of RDIPP since its establishment (1965) are available on the website of the Rivista di diritto internazionale privato e processuale.

Van Den Eeckhout on Schlecker (Dutch Version)

Veerle Van Den Eeckhout (Leiden university (the Netherlands) and University of Antwerp (Belgium)), has posted The Escape-Clause of Article 6 Rome Convention (Article 8 Rome I Regulation): How Special Is the Case Schlecker? (De ontsnappingsclausule van artikel 6 lid 2 slot EVO Verdrag (artikel 8 lid 4 Rome I Verordening): Hoe bijzonder is de zaak Schlecker? 12 September 2013, C-64/12, Schlecker/Boedeker) on SSRN.

In the Schlecker case (12 September 2013, C-64/12), the Court of Justice decides that Article 6(2) of the Rome Convention must be interpreted as meaning that, even where an employee carries out the work in performance of

the contract habitually, for a lengthy period and without interruption in the same country, the national court may, under the concluding part of that provision, disregard the law of the country where the work is habitually carried out, if it appears from the circumstances as a whole that the contract is more closely connected with another country.

The author analyses the Schlecker case, commenting the special/ordinary character of Article 6 Rome Convention compared to Articles 3 and 4 Rome Convention, the special/ordinary character of the Schlecker case and the relevance of the decision for cases of international employment in which issues of freedom of movement/freedom of services are addressed as well as for cases of international tort in which article 4(3) Rome II regulation might be relevant.

Note: Downloadable document is in Dutch.

Book: Marongiu Buonaiuti, Le obbligazioni non contrattuali nel diritto internazionale privato

Fabrizio Marongiu Buonaiuti (Univ. of Macerata) has recently published "Le obbligazioni non contrattuali nel diritto internazionale privato" (Non-contractual Obligations in Private International Law) (Giuffrè, 2013). An abstract has been kindly provided by the author (the complete table of contents is available on the publisher's website):

The volume deals with non-contractual obligations in private international law, addressing both issues related to jurisdiction and to conflict of laws.

As concerns jurisdiction, the volume discusses the problems posed by the application of the rules on jurisdiction in civil and commercial matters as contained in EC Regulation No. 44/2001 (s.c. "Brussels I") to disputes

concerning non-contractual obligations. Special attention is devoted to the specific rule of jurisdiction in matters of tort or delict under Article 5.3 of the said Regulation (to be replaced, without modifications as to the substance, by Article 7.2 of EU Regulation No. 1215/2012 providing for its recast) and to its coordination with the other rules of jurisdiction. The volume addresses also the more recent case law of the European Court of Justice concerning the application of the said rule to non-contractual obligations arising from activities performed through the Internet and implying violations either of privacy and personality rights or of intellectual property rights.

As concerns conflict of laws, the volume examines the rules contained in EC Regulation No. 864/2007 (s.c. "Rome II") on the law applicable to non-contractual obligations, stressing parallelism and differences in respect of the solutions achieved as concerns jurisdiction under the Brussels I Regulation. Furthermore, the volume deals with the problems of coordination of the conflict of laws rules as contained in the Rome II Regulation with the rules contained in international conventions applicable in the field concerned, to which the Regulation grants priority. The volume finally addresses the domestic rules on conflict of laws as contained in Law No. 218 of 31 May 1995 providing for the reform of the Italian system of private international law, which apply residually to non-contractual obligations not governed by the Regulation.

Title: "Le obbligazioni non contrattuali nel diritto internazionale privato", by *Fabrizio Marongiu Buonaiuti*, Giuffrè (series: Pubblicazioni del Dipartimento di Giurisprudenza dell'Università degli Studi di Macerata, Nuova serie, vol. 139), Milano, 2013, X – 254 pages.

ISBN: 9788814182419. Price: EUR 26. Available at Giuffrè.

Second Issue of 2013's Journal of

Private International Law

The latest issue of the *Journal of Private International Law* was just released. 

Sixto Sánchez-Lorenzo, Common European Sales Law and Private International Law: Some Critical Remarks

> *The Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales constitutes an attempt to avoid transaction costs caused by legal diversity within the European Union. However, the character and scope of CESL rules, together with their complex interaction with European conflict-of-laws rules and the substantive acquis, leads to a scenario of legal uncertainty. This means that the intended objective will not be achieved and, in certain cases, that consumer protection is sacrificed in favour of traders' interests. In order to illustrate this critical conclusion, this article analyses the character and scope of CESL rules. Secondly, the application of CESL rules is considered in cases of an express or implied choice of law and in the absence of such a choice. Finally, further reflections will focus on the application of overriding mandatory rules and on the seminal question of the applicable law to interpret contracts.*

Gregor Christandl, Multi-Unit States in European Union Private International Law

> *When in private international law reference is made to a multi-unit State, the question arises which one of the various territorial legal regimes applies to the specific case. With the predominance of territorial connecting factors in EU private international law, this question will become more important in the near future, given that territorial legal regimes will increasingly have to be applied also to non-nationals of multi-unit States. An analysis of the provisions on reference to multi-unit-States in the EU Succession Regulation as well as in previous EU-Regulations on private international law shows a lack of continuity and coherence which reveals that there may be insufficient awareness of the different features of the three models that can be identified for solving the problem of multi-unit-States in private international law. By offering a system of these basic models, this Article puts the provisions on multi-unit-States of the EU Succession Regulation under critical review and pleads for a general, simple and coherent solution with the hope of improving future EU private international law legislation on this point.*

Tena Ratkovic, Dora Zgrabljicrotar, Choice-of-Court Agreements under the Brussels I Regulation (Recast)

> *In court proceedings commenced after 10 January 2015 the choice of court agreements in the European Union will be regulated by the new Brussels I*

Regulation (recast). The amendments introduced by the Recast aim to increase the strength of party autonomy as well as predictability of the litigation venue. Therefore, several changes have been made – the requirement that at least one party has to be domiciled in a Member State was abandoned for choice of court agreements, the substantive validity conflicts rule and a rule on severability have been introduced. Most importantly, the rules on parallel proceedings have been altered. This article examines those modifications and discusses their effect on the European Union courts' desirability as a place for litigation.

Peter Arnt Nielsen, Libel Tourism: English and EU Private InternationalLaw

Libel tourism, which is much related to the UK, is caused by a mixture of factors, such as the law applicable, national and European rules of jurisdiction, national choice of law rules, and case law of the CJEU. These issues as well as aspects of recognition and enforcement of libel judgments in the US and EU are examined. Proposals for reform and legislative action in the EU are made. The effect of the Defamation Act 2013 on libel tourism, in which the UK attempts to strike a better balance between freedom of expression and privacy and to deal with libel tourism, is examined.

Stephen Pitel, Jesse Harper, Choice of Law for Tort in Canada: Reasons for Change

In 1994 the Supreme Court of Canada in Tolofson v Jensen adopted a new and controversial choice of law rule for tort claims. Under that rule, the law of the place of the tort applies absolutely in interprovincial cases and applies subject only to a narrow exception in international cases. The approaching twentieth anniversary of this important decision is an appropriate time to consider how the rule is operating. In particular, the rule needs to be assessed in light of (a) calls for legislative reform from the Manitoba Law Reform Commission, (b) the European Union's adoption of the Rome II Regulation for choice of law in non-contractual obligations, (c) the ongoing operation of a competing rule under Quebec's civil law and (d) the application of the rule by Canadian courts since 1994. This article will assess Canada's tort choice of law rule and analyse the desirability of reform, looking in particular at the rigidity of the rule, the scope of its exception and possible alternative rules.

Henning Grosse Ruse-Khan, A Conflict-of-Laws Approach to Competing Rationalities in International Law: The Case of Plain Packaging Between Intellectual Property, Trade, Investment and Health

The idea of employing conflict-of-laws principles to address competing rationalities in international law is unorthodox, but not new. Existing research

focusses on inter-systemic conflicts between different areas of international law – but has stopped short of proposing concrete conflict rules. This article goes a step further and reviews the wealth of private international law approaches and how they can contribute to applying rules of another, 'foreign' system. Against the background of global intellectual property rules and their interfaces with trade, investment, health and human rights, the dispute over plain packaging of tobacco products serves as a test case for conflict-of-laws principles. It shows how these principles can provide for concrete legal tools that allow a forum to apply external (ie foreign) rules – beyond interpretative concepts such as systemic integration. The approach hence is one way to take account of the pluralism of global legal orders with significant overlaps and intersections.

Weighing European Private International Law in the Balance

The United Kingdom Government is currently undertaking a review of the competences of the European Union, asking what the European Union does, and how it affects government and the general public in the United Kingdom.

As part of that review, the Ministry of Justice has published a Call for Evidence on the impact of European civil justice instruments and has organised two consultation events, in collaboration with Eva Lein, Research Fellow in Private International Law at the British Institute of International and Comparative Law. The first, on the instruments dealing with civil and commercial matters, was held on Monday 3 June. The second, examining the instruments in the area of family and succession law, is due to be held on Thursday 20 June. Chaired by John Hall of the Ministry, the list of speakers is as follows:

- Carolina Marín Pedreño, Dawson Cornwell
- Mark Harper, Withersworldwide
- Richard Frimston, Russell Cooke
- Professor Paul Matthews, King's College London

The event is free, but places are limited. If you would like to attend, please book

online at the Institute's website. The Ministry has also invited written responses to the Call for Evidence (e-mail to balanceofcompetences@justice.gsi.gov.uk or in hard copy to Ministry of Justice, 102 Petty France, SW1H 9AJ). You can also, if this is your thing, share your thoughts about #BOCreview on Twitter @MojGovUK.

The current malaise among many in the UK with the European Union, its institutions and laws is well known. This, however, is an area in which the *acquis*, although not problem free, seems to be working relatively well and to have been favourably received by commercial organisations, including in the financial sector. The Brussels I and Rome I Regulations are generally well-regarded, and (although it is too early to pass judgment) the Rome II Regulation seems to be bedding down without undue difficulty. Moreover, the UK's opt-out in the civil justice field has given it the flexibility to participate in those instruments that it considers likely to be in the overall interest of businesses and citizens, while exercising caution in other areas. Greater disparities between the common law and the civil law in the areas of family law, wills and succession have resulted in the more frequent exercise of the opt-out, but the UK has remained engaged during negotiations to see if a better fit, satisfactory to other Member States, can be achieved (as in the case of the Maintenance Regulation). Overall, therefore, the balance of EU competence in this area appears satisfactory from the UK's perspective.

It should follow that the UK's policy goal in this area should not be one of retrenchment, but of continued engagement with its partners in the EU to enhance co-operation in the civil justice field, to the benefit of all. That does not, it must be emphasised, require a raft of new measures, or consistent tinkering with the old ones. Instead, it is submitted, the following activities should provide the focus of co-operation in the coming years:

- Strenghtening the EU's institutional framework in the civil justice field, notably by establishing a specialist chamber or court (with specialist judges) dealing only with private law matters. This step, above all, is essential if the EU's legislative activity is to be effective and to maintain the confidence of the Member States and the citizens.
- Ensuring better integration of the private international law instruments with other legislative instruments (particularly Directives) adopting substantive private law rules for the internal market, including for the

protection of consumers and employees. The Commission should, as a matter of course, assess the inter-action of proposed, private law measures with the private international law instruments at an early stage.

- Monitoring the application and judicial development across the EU of the civil justice *acquis* as a whole over a longer period, allowing a period of reflection to assess its impact and encourage discussion of possible refinements and incremental developments to ensure better co-ordination of the instruments. The practice of routinely including "5-year review" clauses in civil justice instruments, resulting in a merry-go round of legislative reviews and proposals, should be abolished. It's time to take stock of what we have – after all, it doesn't look too bad.

First Issue of 2013's Journal of Private International Law

The latest issue of the *Journal of Private International Law* was just released.

Reid Mortensen, Woodhouse Reprised: Accident Compensation and Trans-Tasman Integration

> *Australia and New Zealand have created a single civil judicial area, which gives all courts in each country a complete adjudicative jurisdiction and a barely qualified enforcement jurisdiction throughout the whole trans-Tasman market area. The risk of concurrent proceedings and incompatible judgments is minimised only by the power of courts to stay proceedings on the ground of forum non conveniens or when enforcing a choice-of-court agreement. The scheme rests on the 'strikingly similar' quality of the two countries' legal systems. However, New Zealand's Accident Compensation Act 2001 maintains a unique, comprehensive no-fault compensation scheme for accidents which also prohibits all court-based claims for compensation for personal injuries. It is 'strikingly dissimilar' to the common law systems of personal injuries compensation found in the Australian states. And, given that the Australian common law systems are often much more generous in the awards given for*

personal injuries, the New Zealand scheme has been a significant motivation for New Zealanders' forum shopping in Australia. This does not appear to have been addressed well by the new trans-Tasman scheme for civil jurisdiction. The article considers the confounding role that the Accident Compensation Act may continue to play in trans-Tasman civil jurisdiction, and its implications for the principles of forum conveniens, choice-of-law and the enforcement of personal injuries awards between Australia and New Zealand.

Samuel Zogg, Accumulation of Contractual and Tortious Causes of Action under the Judgments Regulation

This article examines jurisdictional issues under the Judgments Regulation in cases where a claimant alleges to have, from one and the same incident, a contractual and a tortious cause of action, both providing for full compensation. It analyses the relationship between Article 5(1) and 5(3); particularly, whether and to what extent these provisions are mutually exclusive and whether they provide for accessory jurisdiction for related claims. Furthermore, the question is raised whether the claimant is free to "choose" the jurisdictional rule by skilful drafting of his claim.

As far as the claimant is free to pursue his claims in different fora, questions of how to deal with such parallel proceedings are discussed; namely, whether lis pendens exists (Article 27) and whether Article 28 applies. After termination of such proceedings, delicate res judicata issues arise; particularly whether and to what extent a judgment on one claim precludes judgment on the other and, if not, how double satisfaction may be prevented.

Rita Matulionyte, Calling for Party Autonomy in Intellectual Property Infringement Cases

This article discusses the possibility of parties choosing the applicable law for intellectual property (IP) infringements. Although party autonomy in IP cases has been explicitly denied in the Rome II Regulation, the recent worldwide academic proposals, such as ALI, CLIP, Transparency and the Joint Japanese-Korean proposal, have suggested a party autonomy rule in IP infringement cases. This paper demonstrates that, as a general matter, this approach is reasonable. It further discusses the most suitable scope and limitations of party

autonomy for IP infringements.

José Velasco Retamosa, International Protection of United Nations System Emblems: Private International Law Issues

This article deals with the international protection that national and international Law grants to the United Nations system emblems. The study is carried out from a multidisciplinary perspective due to its relation with the different areas of Law, with special reference in each case to questions referred to in Private International Law. The intervention of the rules of public as well as private law supposes that the symbols and emblems that represent the international Organization and, more specifically, their protection, comes from the observation of the different areas of the legal system which range from Public and Private International Law in general to the specific regulations on industrial property rights. In this regard, when the protection transcends borders and the interest is located in more than one State, the rules of International private Law find their importance in the protection of these types of symbols and emblems.

Laurens Timmer, Abolition of *Exequatur* under the Brussels I Regulation: Ill Conceived and Premature?

On the 6 December 2012, the Council of EU Justice Ministers adopted a recast of the Brussels I Regulation. Among other changes, the recast provides for the abolition of the exequatur procedure. The changes had been proposed by the Commission in 2010, but have been significantly revised before being adopted by the European Parliament and the Council. This article examines and criticises both the adopted changes and the claims made in the political arena in regard to the necessity of these changes. The author favours the use of less radical measures to achieve the goal of abolition, which is avoiding unnecessary costs and delays in cross-border procedures within the European Union.

Martina Melcher, (Mutual) Recognition of Registered Relationships via EU Private International Law

An ever growing number of bi-national couples and increased population mobility together with highly heterogenous national substantive and conflict rules regarding couple relationships, such as same-sex marriage or registered partnerships, inevitably lead to limping relationships, different legal effects and disparate decisions. In addition to practical difficulties for such couples, the

non-recognition of already registered relationships likely infringes their fundamental freedom of movement and human rights. For these reasons, the current article argues that registered relationships with cross-border effects should be recognised as such outside their state of origin. An analysis of several options to recognise those relationships shows that unified conflict rules are best suited to achieve this purpose. Whereas automatic recognition appears to be particularly attractive as it would not require the Member States to adopt new rules, such an instrument could not replace conflict rules altogether, but would only add to the legal complexity. In contrast, an EU regulation on the law applicable to registered relationships would create a comprehensive set of unified rules, thus guaranteeing an equal legal treatment of the relationship independent from the location of the competent court within the EU.In order to ensure the recognition of an already registered, or somehow formalised, relationship in another Member State, the article favours the place of registration as the main connecting factor for questions on the establishment, the personal legal effects and the dissolution of such couple relationships. Other possible connecting factors, such as domicile, nationality or habitual residence, are discussed as well. Furthermore the potential necessity to limit the registration of aliens in order to confine system shopping and fraus legis is assessed. Finally, the article also tackles the problem of a possible refusal of recognition based on grounds of public policy and evaluates some arguments that have been brought forward in this context in national legal systems.

Fabrício Bertini Pasquot Polido, Review Article: How Far Can Private International Law Interact with Intellectual Property Rights? A Dialogue with Benedetta Ubertazzi's book *Exclusive Jurisdiction in Intellectual Property*

Vogeler on Free Choice of Law in

Private International Law of Non-Contractual Obligations

Andreas Vogeler has written a book on free choice of law in the European Private International Law of non-contractual obligations (*Die freie Rechtswahl im Kollisionsrecht der außervertraglichen Schuldverhältnisse.* Tübingen, Mohr Siebeck 2013). The official summary reads as follows:

> *With the codification of Art. 14 of the Rome II Regulation, European lawmakers harmonized the exercise of party autonomy for non-contractual obligations in European law. Andreas Vogeler does a systematic study of party autonomy in the framework of international private law, at the same time providing recommendations for politics and practical use.*

Further information is available on Mohr Siebeck's website (in German).

Van Calster on European Private International Law

Geert Van Calster, Professor at the University of Leuven, authored a new text book on European Private International Law that has just been published: Geert Van Calster, European Private International Law, Hart Publishing 2013 (382 pages). This book is a valuable addition to the existing text books on European Private International Law. It focuses on those instruments and developments that are most important in the commercial area.

The blurb reads:

Usable both as a student textbook and as a general introduction for legal professionals, European Private International Law is designed to reflect the reality of legal practice throughout the EU. The private international law of the

Member States is increasingly regulated by the EU, making private international law ever less 'national' and ever more EU based. Consequently, EU law in this area has penetrated national law to a very high degree, making it an essential area of study and an area of increasing importance to practising lawyers throughout the EU. This book provides a thorough overview of core European PIL, including the Brussels I, Rome I and Rome II Regulations (jurisdiction, applicable law for contracts and tort), while additional chapters deal with PIL and insolvency, freedom of establishment and corporate social responsibility.

More information is available here.

5th Journal of Private International Law Conference, Madrid, 12-13 Sep 2013

Building on the very successful Journal of Private International Law conferences in Aberdeen (2005), Birmingham (2007), New York (2009), and Milan (2011) the **5th Conference of the Journal will take place in Madrid on 12-13 September 2013**. The organization of the Conference is shared by the Law Faculties of Universidad Autónoma de Madrid and Universidad Complutense. The Programme is reproduced in full below. All of the details on venue, accommodation and registration can be found on the **conference website**.

The Programme

Thursday 12th September 2013

9.00 – 9.30 Registration

9.30 – 10.00 Welcome session (J. Harris + local judicial or academic authorities)

10.00 – 11.30 Panels

Group 1 – MINORS & NAME

CARPANETO, Laura	Few proposals on the “adaptation” of Brussels II-bis with specific reference to the rules on parental responsibility
FIORINI, Aude	The Hague Child Abduction Convention and the Habitual Residence of Newborns – a Comparative Study
GONZÁLEZ MARTÍN, Nuria	International Child Abduction and Mediation: Feasibility and Suitability of a Guide of Good Practice
TRIMMINGS, Katarina	Embryo transfer in international context
GUZMÁN ZAPATER, Mónica	The right to a name: observatory on the progress made by the EU on the continuity of civil status
Mikša, Katažyna	New rule – old problem? The law applicable to surnames in new Polish Act on Private International Law

Group 2 – CODIFICATION

FRANZINA, Pietro	Codifying Private International Law – Some Thoughts on the Reasons of a Resurgent Trend
ERDÖS, Itsvan	Unity or Diversity? Should there be a European Code of Private International Law?
PAUKNEROVA, Monika & PFEIFFER, Magdalena	New Act on Private International Law in the Czech Republic: Starting Points and Perspectives within the European Union
ALMEIDA, Bruno& ARAUJO, Nadia	Two steps forwards, one step back? Recent developments and pending challenges of PIL practice in Brazil

Deskoski, Toni &Dokovski, Vangel	Choice of court agreements in Macedonian Private International Law and in the Brussels I Regulation (and the influence of the Brussels I Regulation on the legal systems of the third countries)

Group 3 – TORTS – JURISDICTION

DYRDA, Lukas	Autonomous interpretation in European private international law – several remarks on the notion of "the place where the harmful event occurred or may occur" under the Brussels I Regulation and the new Regulation No 1215/2012 in intellectual property infringement cases
CORDERO, Clara Isabel	The need for an EU coordinated legislative approach on cross-border violations of privacy
VALLAR, Julia	Is art. 5.3 of EC Reg. NO. 44/2001 applicable in respect of an action for a negative declaration in tort matters?
KNÖFEL , Oliver	Taming the Leviathan – Liability of States for Sovereign Acts (Acta Iure Imperii) as a Challenge for EU Private International Law

Group 4 – ARBITRATION

ASON, Agnieszka	The Revised Brussels Regulation: A New Approach To Arbitration in the European Rulemaking
HAUBERG WILHEMSEN, Louise	European Perspectives on International Arbitration
ZACARIASIEWICZ, Maciej	Vindicating public interest through application of mandatory rules in international commercial arbitration
GROSSU, Manuela	Waving the Right to Challenge Arbitral Awards as the Outcome of Hybrid Procedures
Hacibekiroglu, Ekin	Taking evidence in international commercial arbitration

11.30 – 12.00 Coffee Break

12.00 – 13.30 Panels

Group 5 – MARRIAGE & MATRIMONIAL PROPERTY

RAITIERI, Marco	Citizenship as a connecting factor in private international law for family matters
SHAKARGY, Sharon	Marriage by the State or Married to the State? On Choice of Law in Marriage and Divorce
QUINZA, Pablo	The establishment of an optional common European matrimonial property regime: an alternative way for international couples.
TORGA, Maarja	Establishing the 'cross-border' nature of a matrimonial property dispute under the proposed EU regulation on the matrimonial property regimes
SAPOTA, Anna	Compromise or enhanced cooperation – the possible ways to deal with EU proposal on matrimonial property regimes and property consequences of registered partnership

Group 6 – GENERAL PIL

CANOR, Iris	The Principle of Non-Discrimination in Private International Law
FULLI-LEMAIRE, Samuel	Characterisation – a problem reborn?
MAUNSBACH, Ulf	Justifying the exclusion of choice
HOLLOWAY, David &SCHULTZ, Tomas	Comity in European PIL
SHRIVASTAVA, Vishal	A Case Study on the Need for Strengthening the International Court of Justice

Group 7 – RECOGNITION AND ENFORCEMENT IN THE EU

TORRALBA, Elisa & RODRÍGUEZ PINEAU, Elena	What's in a Judgment? Reflections on res judicata, jurisdiction and ECJ's activism
AZCÁRRAGA MONZONÍS, Carmen	New Developments in the Scope of Free Movements of Public Documents in the European Union
SERRANO, Giuseppe	Private enforcement of administrative acts adopted by a foreign competition authority: a PIL perspective
DOWERS, Neil	Underpinning the internal market: the doctrine of mutual trust, the fundamental freedoms, and European private international law
GILLIES, Lorna	Assessing the Role of Public Policy and the Utility of Jurisdiction and Choice of Law Rules for the Effective Return of Cultural Property Objects Unlawfully Removed from a Member State

Group 8 – COMPANY LAW & FINANCE

MUCCIARELI, Federico Maria	Company's private international law in the 21st Century: dealing with complexity
WINSHIP, Verity	Jurisdiction Over Corporate Groups
Yüksel, Burcu	The Choice of Law Aspects of International Funds Transfers
WAHAB, Mohamed S. Abdel	The Law Governing Public Private Partnership Agreements: BetweenParty Autonomy and Overriding Regulatory Policies
AKSELI, Orkun	Assignment of Receivables and the Conflict of Laws

13.30 – 15.00 Lunch (a short guided visit to "La Corrala" will be available at 14.30)

15.00 – 16.30 Panels

Group 9 – SUCCESSION

Yatsunami, Ren	Characterization of Trust in Consideration of Neighboring Legal Relationships
HOLLIDAY, Jayne	Habitual residence: room for improvement?
PERONI, Giulio	From the principle of unity to the principle of divisibility of the patrimony: new tendencies in international private law
NAGY, Csongor Itsván	The functions of party autonomy in international family and succession law – an EU perspective
WYSOCKA-BAR, Anna	Modification and revocation of professio iuris under the EU Succession Regulation

Group 10 – CONTRACTS

RESZCZYK	Law applicable to voluntary representation
Van Hoek, Aukje	Private international law for cross-border posting of workers: one union, many models of protection
ÁLVAREZ ARMAS, Eduardo	Private International Law and the rights of air and sea passengers in the EU: A puzzle and a lock in the access to justice.
POLIDO, Fabricio	Critical interactions between Private International Law and the Vienna Convention on Contracts for the International Sale of Goods of 1980 – CISG: A view from the Brazilian legal environment
ÖZGENC, Zeynep	Choice of Law in contract of affreightment: the approach of Turkish private international law.

Group 11 – BRUSSELS I RECAST – JURISDICTION

CAMPUZANO DÍAZ, Beatriz	The scope of application of the rules on jurisdiction after the recast of Brussels I Regulation
MIGLIO, Alberto	The Recast of Brussels I and Jurisdiction Over Third State Defendants
HERRANZ BALLESTEROS, Mónica	Law applicable to choice of court agreements in Brussels I Recast
SÁNCHEZ DÍAZ, Sara	Choice of court agreements: Brussels I Regulation Recast
AÑOVEROS TERRADAS, Beatriz	Collective Redress and Consumer Protection in Europe

Group 12 – JURISDICTION & ENFORCEMENT

ARZANDEH, Ardavan	Spiliada: An unpredictable doctrine?
TARMAN, Zeynep Derya	Jurisdiction Turkish courts
KEYES, Mary & MARCHALL, Brooke	*Potestativité* and party autonomy
DARIESCU, Cosmin	When Forum non Conveniens objection can be invoked before Romanian Courts?
Ozcelik, Gulum	Public Policy Intervention in the Recognition and Enforcement of Foreign Judgments: Turkish Perspective

16.30 – 17.00 Coffee Break

17.00 – 18.30 Panels

Group 13 – TORTS- APPLICABLE LAW

Grusic, Ugljesa	Regulating the Environment and Private International Law
ERKAN, Mustafá	Product Liability in Turkish Private International Law: Is Turkey Looking Towards the Rome II Regulation?
BRIGHT, Clair	Civil Liability for Corporate Human Rights Abuse; The issue of extraterritorial jurisdiction
Sousa Gonçalves, Anabela Susana de	The General Rules of the EU Regulation No 864/2007 (Rome II)
PITEL, Stephen & HARPER, Jesse	The Law Governing Tort Claims: Twenty Years of the *Lex Loci Delicti*

Group 14 – INSOLVENCY

HEREDIA CERVANTES, Iván	Arbitral agreements and arbitral procedures in the Insolvency Regulation.
PENADÉS FONS, Manuel	Conflict of laws to solve laws in conflict: Balancing cross-border insolvency and international arbitration.
McCORMACK, Gerard	Reforming the European Insolvency Regulation – changing what is on the menu
GUANJIAN Tu, andXiaolin Li	Cross-Border Bankruptcy: A Call and A Suggestion for Cooperation within China

Group 15 – SALES/CESL

HEIDEMANN, Maren	Choice of law under the proposed Common European Sales Law
PORCHERON, Delphine	Unification of substantive rules and private international law: a study of their relationship through the example of the Common European Sales Law
RUIZ ABOU NOGM, Verónica	Designing Ways Forward: Lateral Thinking, Private International Law and the Common European Sales Law’

Strecker, Sophie & BERRY, Elspeth	Rome I, Party Autonomy and the Choice of Non-State Law: Difficulty or Opportunity?
SÜRAL, Ceyda	Conflict of laws rules: a barrier before the application of Unidroit principles or not?

20.30 Conference Dinner in Pabellón de los Jardines de Cecilio Rodríguez (El Retiro)

Friday 13th September 2013

9.30 -11.00 Plenary session I RECOGNITION & ENFORCEMENT

Chair: Francisco J. Garcimartín Alférez

GASCÓN INCHAUSTI, Fernando	The abolition of exequatur proceedings in the "new" Brussels Regulation
TUO, Chiara E.	The re-evaluation of foreign judgments under EU Regulation 1215/12: between prohibitions and mutual trust
LEHMANN, Matthias	A System sui generis?Res judicata effect of Member State Judgments in the European Union
BEAUMONT, Paul & WALKER, Lara	Recognition and Enforcement of Judgments in Civil and Commercial Matters: Lessons from Brussels for the Hague
OPPONG, Richard Frimpong & NIRO, Lisa	Recognition and Enforcement of Judgments of *International* Courts in National Courts: Emerging Jurisprudence and Challenges Ahead

11.15 -11.45 Coffee break

11.45 – 13.15 Plenary session II CONTRACTS & TORTS

Chair: Pedro A. De Miguel Asensio

LEIN, Eva	Extending Jurisdiction under Art 5(3) Brussels I Regulation to Accomplices?

DANOV, Mihail	Private Antitrust Litigation and Private International Law in a Global Context
TERAMOTO, Shinto & Jur?ys Paulius	IP Intermediaries In Conflict Of Laws: A Social Network Perspective
ALBORNOZ, Mª Mercedes	The internet and private international law of contracts
OREJUDO PRIETO DE LOS MOZOS, Patricia	PIL matters relating to crowdfunding
MÄSCH	Agency and conflict of laws

13.30 – 15.00 Lunch

15.00 -16.30 Plenary session III GLOBAL LITIGATION

Chair: Paul Beaumont

PERTEGÁS, Marta & Teitz, L.E.	The benefits of regional and global litigation instruments for foreign trade and investment
CHILDRESS, Donald Earl	Transnational litigation and PIL
GROSSE RUSE-KHAN, Henning	A conflict of laws approach to competing rationalities in international law. The Case of Plain Packaging between IP, Trade, Investment and Health
UBERTAZZI, Benedetta	Private International Law before the International Court of Justice
MAHER, Gerard & RODGER, Barry	Countries, States, and Legal Systems: An International Private Law Perspective
TANG, Zheng Sophia	Corruption in International Commercial Arbitration—Special Conflict of Laws Challenges

16.30 -17.00 Coffee Break

17.00 -18.00 Conference by A.G. Pedro Cruz Villalón

18.00 – 18.30 Concluding remarks and closing words by P. Beaumont