

Publication: “Studi in onore di Vincenzo Starace”

✖ The Italian publisher *Editoriale Scientifica* (Naples) has recently published a very rich collection of essays in honor of *Vincenzo Starace*, late Professor in the University of Bari, one of Italian leading academics in the field of Public International Law and Private International Law, who passed away in 2006. The collection, **Studi in onore di Vincenzo Starace**, is divided in three volumes, devoted respectively to Public International Law (I), EU Law and Private International Law (II), and a miscellany of essays on different subjects (III).

The second volume includes the following contributions in the field of conflict of laws and jurisdictions:

- *Tito Ballarino*, Eutanasia e testamento biologico nel conflitto di leggi;
- *Stefania Bariatti* and *Ilaria Viarengo*, I rapporti patrimoniali tra coniugi nel diritto internazionale privato comunitario;
- *Andrea Bonomi*, Sull’opportunità e le possibili modalità di una regolamentazione comunitaria della competenza giurisdizionale applicabile *erga omnes*;
- *Ruggiero Cafari Panico*, Il riconoscimento e l’esecuzione delle decisioni in materia matrimoniale nel nuovo regolamento Bruxelles II bis;
- *Gabriella Carella*, Il titolo esecutivo europeo per i crediti non contestati;
- *Giorgio Conetti*, Giudizi di costituzionalità e successione di norme di conflitto;
- *Giuseppe Coscia*, Legge regolatrice del contratto e norme sulla qualità;
- *Domenico Damascelli*, Il patto di famiglia nel diritto internazionale privato;
- *Luigi Fumagalli*, L’esecuzione in Italia degli atti pubblici stranieri;
- *Luciano Garofalo*, Le nuove tecniche interpretative ed il concorso ‘atipico’ di valori giuridici provenienti da ordinamenti diversi;
- *Antonio Leandro*, La giurisdizione sulla procedura principale di insolvenza di società controllata e il regolamento (CE) n. 1346/2000;
- *Franco Mosconi*, La difesa dell’armonia interna dell’ordinamento del foro tra legge italiana, convenzioni internazionali e regolamenti comunitari;
- *Bruno Nascimbene*, Il matrimonio del cittadino italiano all’estero e dello

straniero in Italia. Gli articoli 115 e 116 cod. civ., le norme di diritto internazionale privato e dell'ordinamento dello stato civile;

- *Ferdinando Parente*, I rapporti patrimoniali tra i coniugi e il regime normativo dell'accordo di 'scelta' della legge applicabile;
- *Giuseppina Pizzolante*, La kafala islamica e il suo riconoscimento nell'ordinamento italiano;
- *Francesco Seatzu*, Il procedimento europeo d'ingiunzione di pagamento nel regolamento comunitario n. 1896/2006.

The complete table of contents of the three volumes can be found [here](#).

Title: **Studi in onore di Vincenzo Starace**. 2008 (L-2229 pages).

ISBN: 978-88-6342-019-7. Price: EUR 250,00. Available from Editoriale Scientifica (Naples).

(Many thanks to Antonio Leandro, University of Bari)

Abbott v. Abbott: An Update

As previously mentioned on this site, the case of *Abbott v. Abbott* continues to look like the U.S. Supreme Court's first attempt to clarify the operation of the Hague Abduction Convention. Last week, the Court invited the views of the new Solicitor General on whether the case should be accepted. While there is no way to tell whether the SG will urge granting the Petition, or whether the Court will follow that advice, this at least seems to mean that someone at One First Street wants to take a closer look at the Convention.

The briefs in that case, including an amicus brief by the Permanent Bureau urging a grant of the petition, is available at the [SCOTUSBlog](#).

ERA Conference: Complete agenda spring and summer 2009

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In our previous posts we have informed about the ERA conferences for the spring 2009 titled "Annual Conference on European Insurance Law 2009" and "Cross-Border insolvency proceedings". Here are the rest of the conferences for the spring and summer 2009:

Successions and Wills in a European context, Prague, 20-21 Apr 2009

From the conference website: The Czech Ministry of Justice in the framework of the Czech Presidency of the Council of the EU organizes in cooperation with ERA (Dr Angelika Fuchs) a conference titled "Successions and Wills in a European context".

The conference will provide an in-depth discussion of the most topical issues regarding succession and wills in a European context. The draft Regulation on Succession and Wills, expected to be issued soon, will serve as the basis of the discussion. A case-study will be presented. The conference will then address the following highly current issues:

- Scope of the instrument: The Regulation will cover jurisdiction, recognition and choice of law. To what extent should property rights be covered? Will foreign property rights unknown to a legal system (e.g. trust) have to be recognised?
- Choice of law: Will the testator be free to choose the governing law? If yes, will there be restrictions to the freedom to choose? What will be the relationship to the rules of compulsory heirship of the legal system otherwise applicable?
- Choice-of-law rule for succession to movable and immovable property: What is the appropriate connecting factor? Will there be one rule for movables and immovables? Will there be exceptions to that rule? How will the habitual residence test be defined?

- Relationship to dispositions inter vivos: If, and to what extent, will the Regulation affect the validity of dispositions disposed of inter vivos?
- Registration of wills and European Certificate of Inheritance: Will there be a compulsory or an optional system of registration of wills? What will be the scope of a European Certificate of Inheritance?

Practical Issues of Cross-Border Mediation and Mediation Techniques, Trier, 14-15 May 2009

From the conference website: Dr Angelika Fuchs (ERA) organizes in cooperation with the European Judicial Training Network (EJTN), the Council of the Bars and Law Societies of the European Union (CCBE) and the Council of the Notariats of the European Union (CNUE) a conference titled " Practical Issues of Cross-Border Mediation and Mediation Techniques".

This conference will concentrate on practical issues of cross-border mediation:

- Interaction between mediation and civil proceedings, especially the impact of the Directive on certain aspects of mediation in civil and commercial matters in the Member States. Topics include the Directive's scope; cross-border disputes: the inter-State requirement; voluntary or compulsory nature of mediation; mediation's effect on limitation and prescription periods, and recognition and enforcement of mediation agreements.
- Encouraging mediation. The role of the legal professions, especially the cooperation between lawyers, notaries and judges.
- Quality of mediation services. A practical and continuing training of mediators is required: life-long learning is essential. In cross-border situations, co-mediation is particularly important. Quality control mechanisms and the added value of the (voluntary) European Code of Conduct for Mediators will be discussed.
- Mediation procedure. The conference will further concentrate on fundamental minimum procedural guarantees for a fair mediation procedure. The European Code of Conduct for Mediators will be looked at in detail.

The conference will include workshops which will address specific areas such as family mediation and consumer mediation.

Summer Course on European Private Law, Trier, 29 Jun-3 Jul 2009

From the conference website: Dr Angelika Fuchs organizes a Summer Course on European Private Law.

Participants will gain an introduction to the following topics:

- European civil procedure: The summer course will present the status quo of civil procedural law on a European level, including the most recent developments. Special attention will be paid to EC legislation and the case law of the European Court of Justice.
- Private international law, especially the new Rome I & Rome II Regulations on the applicable law in contractual and non-contractual obligations.
- Consumer protection, concerning e.g. unfair commercial practices, e-commerce, consumer rights, product safety, product liability.

This course should prove of particular interest to lawyers who wish to specialise in or acquire an in-depth knowledge of European private law. A general knowledge of EU law is suitable but no previous knowledge or experience of European private law is required to attend the course.

Participants will have the opportunity to prepare in advance through an e-learning course via the ERA website, and to deepen their knowledge through case-studies and workshops during the summer course.

A visit to the European Court of Justice in Luxembourg with the opportunity to attend a hearing is an integral part of the programme.

PIL conference in Johannesburg

Please find a call for papers for the third quadrennial international conference on comparative private international law to be held at the University of Johannesburg in South Africa (9-11 September 2009) on www.uj.ac.za/law. Confirmed speakers include Prof C F Forsyth (University of Cambridge) and Prof M M Martinek (University of Saarland).

United States Signs Hague Convention on Choice of Court Agreements

On 19th January, the outgoing State Department Legal Advisor, John Bellinger, signed the Hague Convention (of 30 June 2005) on Choice of Court Agreements on behalf of the United States of America. The USA is the first country to sign the Convention, with Mexico also a party to the Convention through accession. The status table of the Convention can be found on the HCCH website, as well as the preliminary documents, and the explanatory report prepared by Hartley and Dogauchi.

Is this the first of many? Will other countries follow the USA's lead, and sign up to the Convention? I very much doubt it, but you are welcome to disagree with me in the comments.

In Memoriam: Professor Jan Kropholler

Professor *Jan Kropholler*, one of the most renowned German scholars in private international law, has passed away last week.

Only recently *Professor Kropholler* celebrated his 70th birthday. On this occasion, as we have reported, a Festschrift in his honour was published by Mohr Siebeck titled „Die richtige Ordnung“ (*The Right Order*) and presented to him last October at a ceremony at the Max Planck Institute for Comparative and International Private Law in Hamburg.

As the Max Planck Institute expresses in a statement on the occasion of his birthday last year, “[a]s Senior Research Fellow at the Hamburg Max Planck Institute, Kropholler set new standards for private international law and procedure in terms of content, methodology and pedagogy. His textbook on private international law is of particular renown and saw its 6th edition released in 2006. Among Kropholler’s works on international and European procedural law, his commentary on the Brussels I Regulation – published for the eighth time in 2005 – bears special witness to his scholarly achievements.”

A bibliography of *Professor Kropholler’s* published works, as well as further information on his academic career, can be found at the website of the Max Planck Institute in Hamburg.

Foreign Law before the Spanish Courts: the Need for a Reform

In a previous post (under the title Spanish International Adoption Act, Law 54/2007, of December 28) I stated that, with the exception of the International Adoption Act of 2007, there is no Private International Law Act in Spain. For some

years, under the direction of Professor Julio Gonzalez Campos, Spanish academics (almost all of us: we are still relatively few in this country) have been working on a bill of this nature. Sadly, Professor González Campos passed away in 2007, and his death has also brought an end to this endeavour. However, many of us, if not all, believe that our autonomous PIL needs to be revised both in civil and procedural matters. A decision on some concrete points should be made with the utmost urgency: that's the case of the system of proof of foreign law before our courts.

In recent years the judicial application of foreign law in Spain has been suffering from a confusing and inconsistent practice before the lower Courts; the Supreme Court and the Constitutional Court have been called to clarify the matter, but the fact is, they themselves have not escaped dissension.

The Spanish regulations on the subject is contained in art. 12.6 CC ("Spanish conflict of laws rules will be applied *ex officio*"), supplemented by art. 282 LEC 2000 ("Content and validity of foreign law should be proved", and, though proofs are to be carried at the request of the parties, "the court may use any means of finding it deems necessary for the implementation of foreign Law").

The meaning of these articles is doubtful. The respective role of the parties and the judge in the applicability of foreign law are subject to discussion. Another issue under discussion, with particular acrimony, is the following: if foreign law is to be proved by the parties (completely or only to a certain point), what happens if they fail?.

As for the former doubt, the prevailing view is that foreign law is to be considered as a fact that should be raised and proved by the parties at trial. However, the assimilation of foreign law to a fact is not absolute: it is for the courts to collaborate in its identification. But, what level of proof is required from the parties? In this respect, the Supreme Court sometimes requires strict means of proof and absolute certainty about the content of the law, whilst the Constitutional Court only ask for a "beginning of a proof". Furthermore, how deep should a court be involved in the ascertaining of the foreign law? How is its knowledge to be acquired? could the court's private knowledge of foreign law overcome the passivity of the parties?

There are up to five Supreme Court rulings regarding the second doubt we have pointed out: whether foreign law should be disregarded if the parties fail to comply with their burden of proof. The main thesis supports the application of

Spanish law when foreign law has not been proved. Another view that has also received doctrinal approval is the rejection of the claim (in the merits). The remaining possibilities would be: the rejection of the application (merits would not be considered); the return of the proceedings back to the time when foreign law should have been proved, but wasn't; and an ex officio application of foreign law. None of the solutions are completely satisfactory: in particular, the replacement of foreign law by Spanish law implies breach of the mandatory nature of the conflict of laws rule. As for the rejection of the claim, it is probably contrary to the right to an effective judicial protection: according to the Spanish principles of procedural law, it means that if a party did not allege foreign law, or was unable to prove it, he/she will not be allowed to raise his/her claim again, even alleging and proving foreign law correctly.

In light of the above, our system may surely be said to be of an "open texture"; but, whilst for some Spanish authors this flexibility should be wellcome, for others (ourselves included) it is actually a source of chaos, therefore of legal uncertainty, and it is crying out for an urgent legal reform.

ERA Conference: Cross-Border insolvency proceedings

On 26-27 March 2009 a conference on Cross-Border insolvency proceedings will be held at the Academy of European Law in Trier. The abstract reads:

When the assets belonging to an insolvent debtor are situated in different EU Member States, crossborder insolvency will often give rise to conflicts that need to be resolved by applying Regulation (EC) 1346/2000 on Insolvency Proceedings.

The Regulation sets up a legal framework that contributes significantly to the better functioning of the Internal Market. It includes conflict-of-law rules as well as rules on jurisdiction, and provides for uniformity of insolvency proceedings by means of mutual recognition within the EU. The Regulation is one very useful element of facilitating cross-border insolvency cases. By now, national courts

have several years of practical experience with the Regulation. Concerning the interpretation of the Regulation's material provisions, much has been clarified or established through court authorities.

However, much remains unresolved and will be the subject of extensive judicial activity in the future.

The conference will focus on the case law of the Court of Justice of the European Communities, offering an indepth analysis of the recent jurisprudence and discussing cases still pending.

On the second conference day, enterprise groups' insolvencies will be discussed. Finally, the conference will concentrate on recent developments in national insolvency and turnaround laws.

Choice of Law in the American Courts in 2008

Symeon Symeonides has posted the twenty-second instalment of his annual survey on US choice of law decisions on SSRN. Here's the abstract:

This is the Twenty-Second Annual Survey of American Choice-of-Law Cases. It covers cases decided by American state and federal courts from January 1 to December 31, 2008, and reported during the same period. Of the 3,249 conflicts cases meeting both of these parameters, the Survey focuses on those of the 1023 appellate cases that may add something new to the development or understanding of choice of law. The Survey is intended as a service to fellow teachers and students of conflicts law, both within and outside the United States. Its purpose is to inform, rather than to advocate.

The following are among the cases discussed in this Survey: Two U.S. Supreme Court cases and several intermediate court cases delineating the extraterritorial reach of the Constitution and federal statutes, and one Supreme Court case on the domestic effect of a judgment of the International Court of

Justice; A New Jersey Supreme Court case abandoning Currie's interest analysis in tort conflicts in favor of the Restatement (Second), and a New Mexico Supreme Court case abandoning the traditional approach in contract conflicts (but only in class actions) and adopting the "false conflict doctrine" of the Restatement (Second); Several cases applying (and one not applying) the law of the parties' common domicile to torts occurring in another state; Cases involving cross-border torts and applying the law of whichever of the two states (conduct or injury) favors the plaintiff; Product liability cases granting forum non conveniens dismissals in favor of alternative fora in foreign countries and those countries' responses by enacting "blocking" statutes; Cases refusing to enforce clauses precluding class-action or class-arbitration; Cases illustrating the race to the courthouse between insurers and their insureds; Cases recognizing Canadian or Massachusetts same-sex marriages, and a case refusing to recognize a Pakistani talaq (unilateral, non-judicial divorce); and a case refusing to recognize a foreign judgment that conflicted with a previous judgment from another country.

The survey is forthcoming in the *American Journal of Comparative Law* (vol. 57, 2009), but you can also download it for free from SSRN. (Bonus link: *here's our item on last year's survey, and here's the one from 2006.*) As always, highly recommended.

ERA Conference: Annual Conference on European Insurance Law 2009

The ERA website informs: On 23 and 24 March 2009 the Annual Conference on European Insurance Law 2009 will be held in Trier at the Academy of European Law. The objective of this conference is to update practitioners on the most recent developments in the field of insurance law pursuant to legislation and

jurisprudence. The Financial Services Action Plan was implemented with a view to improving the single market in financial services, including the insurance market, by allowing insurers to operate throughout the European Union whilst ensuring a high level of consumer protection. Over recent years, legislative measures have been adopted in order to achieve open and secure retail markets as well as sound supervisory structures. The conference will also focus on other relevant measures concerning insurance undertakings and contract law designed for consumer protection, such as:

- Jurisdiction and applicable law in insurance contracts,
- motor insurance,
- insurance mediation,
- Solvency II, the Commission's proposal for a new directive to be adopted in 2009.

This list of topics may be subject to modifications and additions in the final programme to reflect the latest developments.