French Marriage Annulled for Lack of Virginity

On April 1st 2008, a first instance court of Lille (Northern France) set aside a marriage because the wife had concealed to her husband that she was not a virgin.

The husband found out on July 8th, 2006, that is the night of the wedding. Contrary to what she had told him, the wife was not a virgin. That was not only a problem for him, but for the whole family, so much so that his parents had been waiting outside seeping mint tea so that, at some point, they could hear the good news, if not see the bedsheets with blood on them. At 4 am, he went to see them, but only to say that there was no blood. She may have recognized then that she had lied, or did shortly after. The groom's father brought her back to her parents, saying that his family was now dishonored. Two weeks later, the husband initiated proceedings to set aside the marriage.

What does this judgment have to do with conflicts? Arguably nothing, as the newly wed were both French nationals and the wedding had taken place in Roubaix, France. But the reason why the virginity of the wife was a big deal to both her husband and his family was because they were all muslims, and French muslims are overwhelmingly of Algerian or Morrocan origin (by far the biggest groups of immigrants in France). Origin of people is taboo in France, so it is not known whether this couple is indeed third generation immigrants from North Africa. But chances that they are are very high. Indeed, it is customary for the family to wait to see the blood on the sheets during the night in North African weddings. (Update: it has now been reported by several sources that the spouses were of Morrocan origin)

So after all, this case is not completely unrelated to conflicts. The demand for virginity was the result of a social norm governing a group of people. These people may be French nationals leaving in France, and thus entirely subject to French law, but the norm governing their community is of foreign origin. A not so uncommon case of legal pluralism.

Now, the interesting question was: how do you enforce this social norm? And that

where the case gets interesting: by finding an equivalent French legal norm and, most importantly, a remedy attached to that French norm.

Under French law, marriages can be set aside when there has been a "*mistake on a material quality of the person*" (French Civil Code, art. 180). The doctrine was famously applied in cases where the spouse had served jail time, or where he could not/would not have sexual relationships. Here, the court of Lille held that the mistake was that the bride was not a virgin, and annulled the marriage, noting that the wife was in agreement with the decision.

Here is an excerpt of the judgment in French:

> *[…] Attendu qu'il importe de rappeler que l'erreur sur les qualités essentielles du conjoint suppose non seulement de démontrer que le demandeur a conclu le mariage sous l'empire d'une erreur objective, mais également que cette erreur était déterminante de son consentement.*
>
> *Attendu qu'en l'occurence, Y acquiesçant à la demande de nullité fondée sur un mensonge relatif à sa virginité, il s'en déduit que cette qualité avait bien été perçue par elle comme une qualité essentielle déterminante du consentement de X au mariage projeté; que dans ces conditions, il convient de faire droit à la demande de nullité du mariage pour erreur sur les qualités essentielles du conjoint.*
>
> *Par ces motifs, prononce l'annulation du mariage.*

The vast majority of French politicians and intellectuals have severely criticized the judgment.

UPDATE: the French government has decided to lodge an appeal against the decision of the Lille court.

New York Agencies to Recognize Same Sex Unions

The New York Times reports that the Governor of the State of New York has directed all New York state agencies to revise all statutes and regulations of the State so that same sex unions or marriages can be recognized in New York "as any other legally performed union".

The NY Times further reports that, interestingly enough, the State of New York does not itself allow gay marriage, but will nevertheless fully recognize unions entered into elsewhere.

BIICL event: Group Actions, including Class Actions: Cross-border Aspects

As part of the BIICL's 2007-2008 Seminar Series on Private International Law the BIICL organizes on Monday 23 June 2008 17:30 to 19:30 (British Institute of International and Comparative Law, Charles Clore House, 17 Russell Square, London, WC1B 5JP) a seminar titled "Group Actions, including Class Actions: Cross-border Aspects". The BIICL website informs:

This seminar focuses on particular issues involved in the commencement, conduct and effect of cross-border group actions, including: (1) Standing and Certification; (2) Jurisdiction; (3) Notification; (4) Applicable Law; (5) Evidence; (6) Case management; (7) Transnational Cooperation; (8) Costs/Lawyers Fees; and (9) Res Judicata Effect and Recognition of Foreign Judgments.

The identified issues will be discussed in light of the work of the ILA Committee on International Civil Litigation and The Interests of the Public, chaired by Prof

Catherine Kessedjian, which has prepared a report and resolution on transnational group actions. This work of the committee will be presented at the upcoming ILA Biennial Conference in Rio De Janeiro, 17-21 August this year.

The expression “transnational group actions” encompasses US-style “class actions”, but is more inclusive, extending also to procedures involving groups in countries that have not enacted formal class action legislation on the United States model but nevertheless recognize in certain circumstances the rights of groups of individuals or bodies to bring collective claims.
The main objective of the ILA Committee was to identify general principles and common themes or approaches across the various models of group action currently employed in the world. At times, however, it must be admitted that uniformity does not exist, even between countries which have adopted the same generic model (e.g., the US class action procedure).

Moreover, the committee set out to consider some of the uniquely cross-border and transnational aspects of group actions. While the transnational context is relevant to all aspects of group actions covered in this report, an examination of the topics of jurisdiction, applicable law and recognition and enforcement of foreign judgments will be made with a focus on whether the principles applied to ordinary suits need modification in the context of group actions.

The BIICL has invited Prof Kessedjian, as well as the rapporteurs and members of her committee, for a preliminary public discussion of the committee’s draft resolution. During the seminar, the findings of the committee and the preliminary conclusions of its report will be presented and discussed by a panel of experts in the area of class actions and cross-border litigation.

For more information about the seminar, its Chair, speakers and sponsor, have a look at the website.

BIICL event: Rome I Regulation: The UK Set to Opt-in

As part of the BIICL's 2007-2008 Seminar Series on Private International Law the BIICL organizes on Wednesday 18 June 2008 17:30 to 19:30 (British Institute of International and Comparative Law, Council Chamber, Charles Clore House, 17 Russell Square, London, WC1B 5JP) a seminar titled "Rome I Regulation: The UK Set to Opt-in". The aim of the seminar is to provide one of the final opportunities for a discussion of the merit and implications of opting into the Rome I Regulation, and moreover to consider the questions which are raised by the Ministry of Justice in its consultation. Also, the changes to be expected for the legal practice in England & Wales upon entry into force of the Regulation will be addressed. The seminar will feature several presentations from expert academics and practitioners, while leaving ample space for discussion. For more information about the seminar, its Chair, speakers and sponsor, have a look at the website.

BIICL event: Matrimonial Property Regimes in the Conflict of Laws: A European Regime?

As part of the BIICL's 2007-2008 Seminar Series on Private International Law the BIICL organizes on Monday 16 June 2008 17:30 to 19:30 (at British Institute of International and Comparative Law, Council Chamber, Charles Clore House, 17 Russell Square, London, WC1B 5JP) a seminar titled "Matrimonial Property Regimes in the Conflict of Laws: A European Regime?" The aim of the seminar is to bring together the leading academics and practitioners in this area is to stimulate further discussion of the European Commission's consultation on the conflict of laws in matters concerning matrimonial property regimes in England & Wales. It brings together a group of experts and will provide a useful and timely

domestic platform for the legal practice and academia to address two questions: (1) what are good reasons to establish a single, comprehensive legal instrument on matrimonial property regimes for at the European level, and (2) how can the interests of the practice in England & Wales, and of predominant importance, the interests of clients, be guaranteed optimally in this process? For more information about the seminar, its Chair, speakers and sponsor, have a look at the website.

High Court of Australia grants special leave in Puttick v Fletcher Challenge Forests

The High Court of Australia has just granted special leave to appeal in Puttick v Fletcher Challenge Forests Pty Ltd, an interesting case about jurisdiction and choice of law arising out of a negligent omission. The decision of the Victorian Court of Appeal can be seen here. Perry Herzfeld's earlier post on that decision is here.

First Reference for a Preliminary Ruling on the Rome Convention

On 28 March 2008, in case *Intercontainer Interfrigo (ICF) S.C./M.I.C. Operations B.V. and another* (Nr. C06/318HR – LJN BC2726), **the Dutch Supreme Court (*Hoge Raad*) made a preliminary reference to the ECJ, with regard to the interpretation of Art. 4 of the 1980 Rome Convention on the law applicable to contractual obligations**.

The preliminary reference is **the first to be made pursuant to the two Protocols on the interpretation of the Convention** by the Court of Justice, that were signed by the Member States in 1988: as it is widely known, the Protocols entered into force on 1st August 2004, following the ratification by Belgium.

Unfortunately, the case has not yet been published on the ECJ website, and there is no English version available of the referred questions: as far as we could get from a very rough translation, the *Hoge Raad*, following the opinion delivered by Advocate General Strikwerda, asked the ECJ whether **Art. 4(4) of the Convention**, on contracts for the carriage of goods, or **Art. 4(2)** (the "general" presumption pointing to the law of "the country where the party who is to effect the performance which is characteristic of the contract has […] his habitual residence") should apply to a contract concluded (not in writing) by the parties (a Belgian firm and two Dutch firms) for a service of carriage by rail from Amsterdam to Frankfurt. Additionally, the Dutch Supreme Court asked the ECJ to clarify the **conditions set out by Art. 4(5) in order to activate the escape clause**.

Further details and the English text of the referred questions will be provided as soon as they are available. The referring decision, and the opinion of Advocate General Strikwerda can be found on the Hoge Raad website.

Comments (viz, corrections and explanations) are warmly welcome.

2007's Yearbook of Private International Law

The Yearbook of Private International Law for 2007 will soon be out. Its main focus is on the Rome II Regulation, with the following articles:

Gerhard Hohloch:
Place of Injury, Habitual Residence, Closer Connections and Substantive Scope –

the Basic Principles

Th.M. De Boer:
Party Autonomy and its Limitations in the Rome II Regulation

Peter Huber / Martin Illmer:
International Product Liability. A Commentary on Article 5 of the Rome II Regulation

Michael Hellner:
Unfair Competition and Acts Restricting Free Competition. A Commentary on Article 6 of the Rome II Regulation

Thomas Kadner Graziano:
The Law Applicable to Cross-Border Damage to the Environment. A Commentary on Article 7 of the Rome II Regulation

Nerina Boschiero:
Infringement of Intellectual Property Rights. A Commentary on Article 8 of the Rome II Regulation

Guillermo Palao Moreno:
The Law Applicable to a Non-Contractual Obligation with Respect to an Industrial Action. A Commentary on Article 9 of the Rome II Regulation

Bart Volders:
Culpa in Contrahendo in the Conflict of Laws. A Commentary on Article 12 of the Rome II Regulation

Georgina Garriga:
Relationship between Rome II and Other International Instruments. A Commentary on Article 28 of the Rome II Regulation

Symeon C. Symeonides:
Rome II: A Centrist Critique

Yuko Nishitani:
The Rome II Regulation from a Japanese Point of View

Cecilia Fresnedo de Aguirre / Diego P. Fernandez Arroyo:

A Quick Latin American Look at the Rome II Regulation

Reid Mortensen:
A Common Law Cocoon: Australia and the Rome II Regulation

The *Yearbook* also includes national reports and case notes. The full table of contents can be found here.

Second Issue of 2008's Journal du Droit International

The second issue of French *Journal du Droit International* (also known as *Clunet*) will be released shortly. It does not contain articles which directly deal with conflict issues. Yet, three of them might be of interest for readers of this blog.

This first is authored by Tunisian professor Lofti Chedly and discusses 14 years of application of the Tunisian law on international arbitration (*L'arbitrage international en droit tunisien. 14 ans après le code*). The English abstract reads as follows:

> *On April 26th, 1993 the Code of Arbitration was promulgated in Tunisia, a Code which devotes its third chapter to international arbitration. Fourteen years later, a reflection and an assessment of the contribution of the Code seem obvious and necessary. The adoption of this text, yet strongly inspired by the UNCITRAL type law of 1985 is a significant achievement, following its modernism and its liberalism, does not mean that there are no shortcomings, gaps and even inconsistencies in the current text… In order to allow Tunisia to find a place in international arbitration, certain prospects of the evolution of the code appear essential. An interpretation of these prospects is proposed and focuses in particular on the necessary " re-conceptualization " of the internationality of arbitration, which actually conditions all the system of international arbitration which also deserves a reform in order to clarify the*

access to this dispute resolution method and to support the autonomy of the arbitration procedure…

The second article discusses the responsability of multinationals operating in the energy sector as far as local development is concerned (*La responsabilité sociale des multinationales spécialisées dans l'extraction des minerais et hydrocarbures*). The author is Cécile Rénouard, a scholar at ESSEC Business school, who published a book on the topic last year. The English abstract reads as follows:

What about the voluntary agreements (Memorandum of Understanding or MoU) signed by extractive industries with local communities close to their production sites ? Are they just a mean to get their social licence to operate or do they express a responsible commitment toward local development ? Ethics is needed as a critical tool to assess the activity of multinationals and not only as an instrument in order to make profit (« Ethics pays »). The MoU signed by Total in Nigeria show a paradigm shift in the way the corporation understands its contribution to the areas where it operates and its implementation of ethical principles. This analysis raises the question of the necessary means to consolidate these voluntary commitments, and perhaps to transform them into a compulsory approach.

The author of the third article is Beat Hess, the General Counsel of Royal Dutch Shell PLC. The piece discusses the legal perspectives of the energy industry (*Faire face aux défis juridiques dans l'industrie de l'énergie*). The abstract reads:

Given the " hard truths " of the global energy outlook – accelerating demand, more challenging exploration and production environments, and increasing pressure to deal with carbon dioxide emissions – energy companies have a central role to play in diversifying their portfolios and enhancing energy efficiency. Beat Hess gives a legal perspective on global energy scenarios and offers a choice of requirements that, in his view, lawyers involved in the sector will need to meet.

Symeonides: Result-Selectivism in Private International Law

Symeon C. Symeonides (Dean, College of Law – Willamette University) has posted **Result-Selectivism in Private International Law** (forthcoming on the Roman. Priv. Int'l L.& Comp.Priv. L. Rev., 2008) on SSRN. Here is the abstract:

One of the basic dilemmas of conflicts law, or private international law (PIL), is whether, in choosing the law applicable to cases involving conflicts of laws, one should aim for: (1) the law of the proper state without concern for the "justness" of the particular result ("conflict justice"); or (2) for the same quality of substantive results as in non-conflicts cases ("material justice").

For centuries, the "conflicts justice" view has been dominant in all countries. The "material justice" view has had some recent following in the United States, but in the rest of the world it has had only marginal influence. In recent years, however, this view has gained significant ground, even in codified PIL systems. Without endorsing this view, this essay examines several recent PIL codifications and identifies a surprisingly high number of result-selective rules, namely choice-of-law rules that are specifically designed to accomplish a particular substantive result.

The fact that these rules are far more numerous now than in the past suggests that the above dilemma is no longer an all-or-nothing proposition. Material-justice considerations are gaining increasing acceptance as one of the factors that should guide the pursuit of conflicts justice. The difficult question is not whether but rather when these considerations should receive preference in uncodified systems in which the choice of law is made by judges rather than legislators.

The complete list of Prof. Symeonides' works available on SSRN can be found on the author page.