

# ALI principles published

Members of the American Law Institute (ALI) approved on their annual meeting on May 15, 2007 principles on jurisdiction, recognition of judgments, and applicable law in transnational intellectual property civil disputes (a legal area believed to need reform). The project is the result of several years of intense cooperation, examination and analysis between a broad council, reporters, advisers, liaisons and consultants under the support of ALI. This highly competent group scholarship is made available here. **Highly recommendable!**

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## Recent Articles on Recognition and Enforcement in Canada

Readers of this site might be interesting in the following two articles:

Antonin I. Pribetic, "Thinking Globally, Acting Locally: Recent Trends in the Recognition and Enforcement of Foreign Judgments in Canada" in *Annual Review of Civil Litigation 2006*, T. Archibald and R. Echlin, eds (Toronto: Thomson-Carswell, 2007) at 141-199 (available on SSRN [here](#)).

Antonin I. Pribetic, "Enforcing Foreign Summary/Default Judgments: The Damoclean Sword Hanging Over Pro Se Canadian Corporate Defendants? *The United States of America v. Shield Development Co.*" (2007) 7(1) *Canadian International Lawyer* 8-23, 2007 (available on SSRN [here](#)).

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# Articles for October

There are a few private international law pieces forthcoming in English journals over the next month or so (encompassing articles, case-notes and book reviews.) In no particular order, they are:

1. **Review: “Dicey, Morris and Collins on The Conflict of Laws”**, reviewed by Lorna Gillies, *Civil Justice Quarterly* 2007, 26(Oct), 524-526.

2. **“Sale of goods and the relentless march of the Brussels I regulation”**, Jonathan Harris, *Law Quarterly Review* 2007, 123(Oct), 522-528.

*Comments on the European Court of Justice ruling in Color Drack GmbH v Lexx International Vertriebs GmbH (C-386/05) on whether a court had jurisdiction to hear a dispute under Council Regulation 44/2001 Art.5(1)(b) where there were several places of delivery within one Member State under a contract for the sale of goods.*

3. **“German Supreme Court refers another question to the ECJ”**, Bob Wessels, *Insolvency International* 2007, 20(8), 127

*Notes the decision of the German Federal Supreme Court in Bundesgerichtshof (IX ZR 39/06) to refer to the European Court of Justice the question of whether the courts of the country in which the main insolvency proceedings against a debtor are underway, have international jurisdiction under Council Regulation 44/2001 (the Brussels Regulation) in an avoidance action against a third party with its statutory seat in another country.*

4. **“The enforceability in Spain of a choice of foreign law clause”**, Carlos Valls, *International Company and Commercial Law Review* 2007, 18(9), 328-330.

*Comments on the Spanish Supreme Court ruling in Deutsche Seereederei GmbH v Martico S.L, which concerned a dispute arising from a Maritime Agency Contract which the parties had agreed would be governed by German law. Considers whether the Supreme Court could hear an appeal based on the correct application of German law and, if so, whether the Supreme Court’s ruling would create a precedent for the interpretation of German law.*

5. **“The Hague Convention, the civil law and the Italian experience”**, Maurizio Lupoi, *Trust Law International* 2007, 21(2), 80-89.

*Discusses how domestic trusts operate in Italy under civil law, and criticises the provisions on the legal nature of a trust in the Hague Convention on the Law Applicable to Trusts and on their Recognition 1985. Explains Italian practice for drafting trust deeds and the courts' approach to trusts. Examines how an amendment to the Italian Civil Code imposing limitations on dealings with assets will affect trust law.*

6. **“The Fifth Element”** Marcel Lipelt, *Law Society's Gazette* L.S.G. (2007) Vol.104 No.34 Page 34.

*Highlights changes to EC law, by reason of the transposition of European Parliament and Council Directive 2005/14 into the national law of all member states, which make it easier for residents of a member state who are involved in road traffic accidents in other member state to pursue a claim for damages against the foreign third party insurer, including allowing proceedings to be issued in the courts of the member state in which the claimant is domiciled. Considers which laws the English courts will apply when dealing with such claims, in particular when assessing damages.*

(This isn't, by any means, meant to be a definitive list – if anyone knows of any other PIL-related articles about to be published, please do send me an email.)

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## **Revocation of Wills in South African Private International Law**

The July 2007 ICLQ contains an article by Prof Jan Neels on the revocation of wills in South African private international law with reference to other Commonwealth jurisdictions and the provisions of the Hague Convention on the Conflict of Laws Relating to the Form of Testamentary Dispositions (1961). Specific reference is

made to section 3bis (1) (d) of the South African Wills Act 7 of 1953, which is partially based on article 2 of the Convention, and to revocation of wills by marriage and divorce.

Those with online access to the ICLQ can download the article.

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## **Hague Conference on PIL signs agreement with UJ**

A cooperation agreement between the Hague Conference on Private International Law and the Institute for Private International Law in Africa, Faculty of Law, University of Johannesburg, came into effect on 28 August 2007. In terms of the agreement the Johannesburg Institute will act as information centre for the Hague Conference and promote the work of the Conference on the African continent. The Conference will provide all their forthcoming publications, as well as all past publications since 1955, to UJ's law library in order to assist the Institute with the task.

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## **ROME I & ROME II Conference**

The conference website informs: This conference to be held in Lisbon, 12-13 November 2007, is organised by the Portuguese Presidency of the EU, in conjunction with the preceding German and the subsequent Slovenian Presidencies, and ERA. The conference will provide participants with an in-depth analysis of the future Rome I Regulation and the Rome II Regulation. The objective of the seminar is to promote a far-reaching and thorough debate concerning the most important or complex issues inherent to the regulations regarding law applicable to contractual and non-contractual obligations.

Concerning Rome I, the seminar will highlight in particular: (a) scope of application, (b) choice of law and applicable law in the absence of choice, (c) consumer contracts, (d) employment contracts, and (e) assignment. In case the legislation process in view of the Rome I Regulation will not be completed by 2007, the following Slovenian Presidency will be able to use the conclusions of this conference in the further adoption procedure.

Furthermore, the Rome II Regulation (OJ L 199/40 of 31 July 2007) will be presented. It shall apply from 11 January 2009. The discussion will concentrate on the following topics: (a) general rules, (b) product liability, (c) the violation of the environment, (d) unfair competition, and (e) infringement of intellectual property rights.

The seminar will provide a forum for debate between legal practitioners, namely judges and lawyers, experts in member states' ministries and EU legislators on the practical implementation of these two instruments of European private international law.

The conference programme can be downloaded from the conference website.

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# Conflict of Laws in a Globalized World

Cambridge University Press have published a new book on **Conflict of Laws in a Globalized World**, edited by Eckart Gottschalk (Harvard), Ralf Michaels (Duke), Giesela Rühl (Max Planck, Hamburg) and Jan von Hein (Max Planck, Hamburg). The book is a tribute to the late Arthur von Mehren; the contributors (see below for a full list) are all former Joseph Story Fellows, who worked with von Mehren during their year at Harvard. Here is the publisher's blurb:

*This book contains ten contributions that examine current topics in the evolving transatlantic dialogue on the conflict of laws. The first five contributions deal*

*with the design of judgments conventions in general, the recently adopted Hague Convention on Choice of Court Agreements, problems involving negative declaratory actions in international disputes, and recent transatlantic developments relating to service of process and collective proceedings. The remaining five contributions focus on comparative and economic dimensions of party autonomy, choice of law relating to intellectual property rights, the applicable law in antitrust law litigation, international arbitration, and actions for punitive damages.*

The contents:

Editor's preface; Bibliographical note; Part I. **Remembering Arthur T. von Mehren**: 1. *The last Euro-American legal scholar? Arthur Taylor von Mehren (1922 - 2006)* Jürgen Basedow; 2. *Arthur Taylor von Mehren and the Joseph Story Research Fellowship* Peter L. Murray; 3. *Building bridges between legal systems - the life and work of Arthur T. von Mehren* Michael von Hinden; Part II. **Transatlantic Litigation and Judicial Cooperation in Civil and Commercial Matters**: 4. *Some fundamental jurisdictional conceptions as applied in judgement conventions* Ralf Michaels; 5. *The Hague Convention on Choice-of-Court Agreements - was it worth the effort?* Christian Thiele; 6. *Lis Pendens, negative declaratory-judgement actions and the first-in-time principle* Martin Gebauer; 7. *Recent German jurisprudence on cooperation with the US in civil and commercial matters: a defense of sovereignty or judicial protectionism?* Jan von Hein; 8. *Collective litigation German style - the act on model proceedings in capital market disputes* Moritz Balz and Feliz Blobel; Part III. **Choice of Law in Transatlantic Relationships**: 9. *Party autonomy in the private international law of contracts: transatlantic convergence and economic efficiency* Gisela Ruhl; 10. *The law applicable to intellectual property rights: is the Lex Loci Protectionis a pertinent choice of law approach?* Eckart Gottschalk; 11. *The extraterritorial reach of antitrust law between legal imperialism and harmonious co-existence: the empagran judgement of the US Supreme Court from a European perspective* Dietmar Baetge; 12. *Mandatory elements of the Choice-of-Law Process in international arbitration - some reflections on Teubnerian and Kelsenian legal theory* Matthias Weller; 13. *Application of foreign law to determine punitive damages- a recent US Court contribution to Choice-of-Law evolution* Oliver Furtak.

The contributors:



- Jürgen Basedow
- Peter L. Murray
- Micahel von Hinden
- Ralf Michaels
- Christian Thiele
- Martin Gebauer
- Jan von Hein
- Moritz Bälz
- Feliz Blobel
- Gisela Rühl
- Eckart Gottschalk
- Dietmar Baetge
- Matthias Weller
- Oliver Furtak

The book can be purchased from CUP (on either their main site, or the US variant.) It is priced at £45.00 (or \$85.00) and will be available from October 2007. ISBN: 9780521871303.

*Many thanks to Ralf Michaels for the tip-off.*

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# European and International Uniform Law Conference

**European and International Uniform Law: How to Achieve a Uniform Legal Practice of the Rules of Uniform Law**

26/27 October 2007 at the European University Institute, Florence. The programme:

*The State of Development of Uniform Law in the Fields of*

1. European and international civil and commercial law (Mattias Lehmann, University of Bayreuth)
2. European and intellectual property law (Annette Kur, University of Stockholm/Max Planck Institute for IP, Munich)
3. European and international family and child law (Andrea Schulz, Federal Office of Justice, Bonn)
4. From international conventions to the treaty of Amsterdam and beyond: what has changed in judicial cooperation in civil matters? (Ansgar Staudinger, University of Bielefeld)

#### *How Uniform is Uniform Law?*

1. The practitioners' view: the "arts of forum shopping" in a changing world of uniform law (Thomas Simons, Simons Rechtsanwälte)
2. English law and the continental concepts in European law (Jonathan Harris, University of Birmingham)
3. Tearing down barriers - the development of the public policy barrier in Europe (Peter Hay, Emory University Atlanta)

#### *Techniques of international legal information*

1. Pleading and proof of foreign law in domestic proceedings (Rainer Hausmann, University of Konstanz)
2. Dynamic legal research: the PIL e-project of the Swiss Institute of Comparative Law (Eva Lein, Swiss Institute, Lausanne)
3. Developing international legal information: Aspects of information technique (Daniela Tiscornia, Istituto di Teoria e Tecniche dell'Informazione Giuridica, Florence)

There's also a discussion of the Unalex and European Commentary project, a talk by Peter Schlosser, University of Munich on *How to apply the uniform legal rules*, and finally a panel discussion on just *How uniform is the European jurisprudence in the field of uniform law*, with Gunter Hirsch, President of the German Federal Court, chairing.

There doesn't seem to be a website for the conference, but interested parties can contact Sibylle Calabresi-Scholz (email) for further information and booking.



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# Specific Jurisdiction on Appeal: Does a Recent Decision from the Third Circuit Beg Further Review?

A recent decision by the United States Court of Appeals for the Third Circuit raises a very simple, but still very fragmented, issue regarding U.S. jurisdictional doctrine: When does a claim “arise out of” a foreign defendant’s contacts with the forum so as to justify the assertion of specific jurisdiction over him. In *O’Connor v. Sandy Lane Hotel, Inc.*, a Pennsylvania resident sued a Barbados resort in federal district court in Philadelphia, Pennsylvania, for a slip-and-fall accident that occurred in its spa. Plaintiff sought to pin personal jurisdiction over the defendant based on the advertisements and promotional mailings that defendant sent, and plaintiff received, in that state. The District Court found no specific jurisdiction and dismissed the case.

The Third Circuit reversed. In a studious opinion by Judge Chagares, the panel began by recognizing the yet-unsettled nature of the specific jurisdiction doctrine. It noted that the Supreme Court granted certiorari over this very question in 1991, but decided that case – *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991) — on other grounds. It then went on to discuss the three-way split among at least five circuits on the required degree of connectedness between purposeful forum contacts and the plaintiff’s claims to justify specific jurisdiction. On the one end of the continuum, the First Circuit uses a narrow “proximate causation” test, and asserts specific jurisdiction only when the forum contact is the proximate cause of the harm and the claim. On the other end, the Ninth Circuit uses an expansive “but-for” test, and asserts specific jurisdiction simply if the harm would not have occurred without the forum contact. The Second and D.C. Circuits apply a fluid “substantial connection” test that falls somewhere in the middle, and pins specific jurisdiction on the “totality of the circumstances.” Judge Chagares purported to take the middle road – requiring more than a ‘but-for’ link and shy of proximate causation. The Third Circuit now seems committed to specific jurisdiction so long as the defendant’s forum contacts were “meaningfully

link[ed]" to the "substance of plaintiff's claims." Apparently, soliciting a "contract for spa services" via out-of-forum mailings is "meaningfully link[ed]" to a later action sounding in tort.


Beyond the uncertainty of the national rule, there is an immediate practical concern as well. For the time being, in at least the Third and Ninth Circuits, there seems to be emerging a categorical rule that any out-of-jurisdiction services solicited by mail or other communication into the forum will give rise to potential tort suits for negligence if the service would not have been provided without the forum contact. That seems to extend the specific jurisdiction doctrine from its original moorings substantially.

Some other reports on this decision are located [here](#). A link to the decision is provided [here](#).

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# Magnus/Mankowski's European Commentary on Brussels I Regulation

A new commentary on Brussels I Regulation has been recently published by Sellier - European Law Publishers, as the first volume of a new series "European Commentaries on Private International Law". It is edited by *Prof. Peter Mankowski* and *Prof. Ulrich Magnus* (both Hamburg) and has been written by a team of scholars from all over Europe. As the editors write in the preface:

*Legal writing on the Brussels system is thorough and virtually uncountable throughout Europe. Yet no-one has so far taken the effort of completing a truly pan-European commentary mirroring the pan-European nature of its fascinating object. The existing commentaries clearly each stem from certain national perspectives and more or less deliberately reflect certain national traditions. The co-operation across and bridging borders had not truly reached European jurisprudence in this regard. This is why the idea of this commentary* 

*was conceived. This commentary for the first time assembles a team of very prominent and renowned authors from total Europe.*

Here's an excerpt of the blurb from the publisher's website:

*This commentary is the first full scale article-by-article commentary in English ever to address the Brussels I Regulation. It is truly European in nature and style. It provides thorough and succinct indepth analysis of every single article and offers most valuable guidance for lawyers, judges and academics throughout Europe. It is an indispensable working tool for all practitioners involved in this field of law. [...]*

*A true first:*

- The first truly European commentary on the Brussels I Regulation, the fundamental Act for jurisdiction, recognition and enforcement throughout Europe*
- The first commentary on the Brussels I Regulation written by a team from all over Europe*
- The first article-by-article commentary on the Brussels I Regulation in English*

*This new series will comment on the Brussels I Regulation and the Brussels IIbis Regulation and as soon as they are enacted on the Rome I and the Rome II Regulation. For the first time this will be done by a team of leading experts from almost all EU member states. The close cooperation among them will initiate a new specific European style of commenting on European enactments merging the various and thus far nationwide differing methods of Interpretation of legislative acts. It goes without saying that the new commentaries will pay particular tribute to the practice of the European Court of Justice but to relevant judgments of national courts as well. Moreover, the needs of practitioners and the requirements of the practice will receive particular attention.*

*The series is intended to be continued by further volumes on existing and future European enactments in the field of private and procedural law.*

And this is the authors' list:

Introduction: *Ulrich Magnus*; Art. 1: *Pippa Rogerson*; Arts. 2-4: *Paul Vlas*; Art. 5:

*Peter Mankowski; Arts. 6-7: Horatia Muir Watt; Arts. 8-14: Helmut Heiss; Arts. 15-17: Peter Arnt Nielsen; Arts. 18-21: Carlos Esplugues Mota/Guillermo Palao Moreno; Art. 22: Luis de Lima Pinheiro; Art. 23: Ulrich Magnus; Art. 24: Alfonso Luis Calvo Caravaca/Javier Carrascosa González; Arts. 25-26: Ilaria Queirolo; Arts. 27-30: Richard Fentiman; Art. 31: Marta Pertegás Sender; Arts. 32-33: Patrick Wautelet; Art. 34: Stéphanie Francq; Arts. 35-36: Peter Mankowski; Art. 37: Patrick Wautelet; Arts. 38-45: Konstantinos Kerameus; Arts. 46-52: Lennart Pålsson; Arts. 53-58: Lajos Vékás; Arts. 59-60: Paul Vlas; Arts. 61-76: Peter Mankowski.*

A TOC can be downloaded from the publisher's website. It provides a useful list of the principal works on Brussels I Regulation and an additional bibliography. A short extract of the volume is also available for download.

Title: **Brussels I Regulation - European Commentaries on Private International Law** - Edited by *Peter Mankowski, Ulrich Magnus*. July 2007 (XXVIII, 852 pages).

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