Brussels II bis: Its Impact and Application in the Member States

The newly-published 14th book in the European Family Law Series from Intersentia is "**Brussels II bis: Its Impact and Application in the Member States**" by K. Boele-Woelki and C Gonzalez Beilfuss. Here's the book blurb:

> *The Brussels II bis Regulation which contains uniform rules for jurisdiction, recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility became effective as of 1st March 2005 for 24 Member States of the European Union. This book addresses the impact and application of the new rules in the form of national reports. The authors provide answers to questions such as: What is the impact of the Regulation on national private international law on the one side, and on substantive law, on the other? Does the Regulation mean that changes have to be made in the national systems? Are there any difficulties as regards the consistency of the private international law system? In how far does the Regulation match the substantive law both as regards divorce and parental responsibility? Are there any difficulties as regards the implementation of the Regulation in the national systems? Have any implementing measures been taken?*
>
> *A comparative synthesis of the impact and application of the Brussels II bis Regulation within the European Union and a general introduction into the Europeanisation of private international law in family matters complement the book. As a result it contains the latest update of international family law in Europe.*

Purchase details for Intersentia customers can be found here. If you are a UK customer, you can order the book from Hart Publishing for £60. ISBN: 90-5095-644-0.

Second Issue of 2007's Revue Critique de Droit International Privé

The second issue of 2007's *Revue Critique de Droit International Privé* has been released. In addition to ten case notes, it contains two articles on conflict issues.

The first is authored by Professor Sylvain Bollée, of Reims University, and deals with the extension of the scope of the method of unilateral recognition (*L'extension du domaine de la méthode de reconnaissance unilatérale*). The English abstract reads:

> *While the method of unilateral recognition is traditionally considered to apply only to foreign judgements or decisions, one can observe that it is now taking on a more extensive form, in particular insofar as it covers the effect of non-decisional foreign public acts. In such cases, closer analysis reveals that recognition does not actually apply to the public act itself, but to the rules by virtue of which such an act produces legal effects within the foreign legal system. These rules are therefore given effect independantly of any designation by a bilateral conflict of laws rule of the legal system to which the acting authority belongs. This is a discrete and perfectly legitimate expression of unilateralism, of which the precise conditions need to be determined. In this respect, it is submitted that rules governing the recognition of foreign judgements could be applied here, except for discrete adjustments and the exclusion of any enforcement procedure such as exequatur.*

The second article is authored by Professor Ana Quinones Escámez, of Pompeu Fabra University (Barcelona). The article offers a proposition for the creation, the recognition and the effect of marriages and like unions (*Proposition pour la formation, la reconnaissance et l'efficacité internationale des unions conjugales ou de couple*). The English abstract reads:

> *Linked to the proliferation of new forms of marriage or quasi-marriage, the latest methodological effort required of Private international law is to apply the development of a real lex matrimonii in which the law of the place of*

registration coincides with the lex fori, sometimes hidden under the mantle of public policy. Analysis of situations born of a public act reveals the lex matrimonii as the product of the maxim auctor regit actum and the unilateralist problematic of conflict of public authorities. It leads to proposing solutions which as far as the formation of marriage is concerned, subordinate the issue of choice of applicable law in order to concentrate on issues of jurisdiction and which, at the level of international movement of the new status, make recognition depend on a proximistic-type of assessment of the jurisdiction of the foreign authority and the substantive conformity of the foreign institution to the requirements of forum public policy. For situations resulting from common law or other non formalised marriages the bilateral application of the law of the common habitual residence is recommended.

The article of Professor Quinones Escámez builds on her recent book on *Uniones conyugales o de pareja : formación, reconocimiento y eficacia internacional (actos públicos y hechos o actos jurídicos en el derecho internacional privado)*, Barcelona, 2007.

Articles of the *Revue Critique* cannot be downloaded.

French Translation of the CLIP Comment

Professor Jean-Christophe Galloux, one of the CLIP members, made sure that the Group' message is effectively conveyed to the French-speaking addressees as well. Previously reported text (see here and here) has been translated and published in the *Propriété intellectuelle*, No. 24 of July 2007, pp. 291-299. The French introduction to the "*Les relations conflictuelles de la propriété intellectuelle et la réforme du droit international privé en Europe*" reads:

> *Les décisions rendues par la Cour de justice des communautés européennes le 13 juillet 2006, sonnent le glas d'un certain nombre*

d'espoirs qui avaient été placés dans la Convention de Bruxelles puis dans le règlement 44/2001 du 22 décembre 2000 pour fluidifier le contentieux de la propriété intellectuelle en général et du brevet en particulier au sein de l'espace communautaire. Ces espoirs s'appuyaient sur la volonté politique de créer un espace judiciaire unifié, réaffirmée par les textes fondateurs, des jurisprudences nationales audacieuses et une vraie nécessité de fournir des instruments procéduraux rendant efficace la lutte contre la contrefaçon transfrontalière. La révision du règlement de 2001, la mise en chantier d'un règlement sur les obligations contractuelles (Rome I) et les travaux menés ces dernières années à l'OMPI et à la Conférence de La Haye permettent de repenser le droit international privé communautaire applicable à la propriété intellectuelle dans des termes enfin moins conflictuels en vue de réaliser les buts que nous venons d'énoncer.

South African Conflict of Law Rule for Validity of Marriage: Law of the Place of Conclusion of Marriage

In the case *Phelan v Phelan* 2007 (1) SA 483 (C) (judgment date 27 July 2006), the High Court of South Africa (Cape Provincial Division) confirmed the conflict of law rule that the place of marriage celebration determines the validity of the marriage. That law applies not only to formal validity, but also to substantial validity, eg whether the parties had the capacity to conclude a valid marriage etc. In this case, the validity of a marriage concluded in New South Wales, Australia was questioned. The parties were ordinarily resident in Ireland at the time of the marriage. One of the spouses had prior to the marriage obtained a divorce order in the Dominican Republic, while neither he nor his ex-spouse had any connection with that country (no domicile, residence, nationality). (It was impossible to divorce in Ireland at the time.) There was no reciprocity regarding the recognition of decrees between the Dominican Republic and Australia. The High Court came

to the conclusion that the divorce could therefore not be recognised in Australia and that no valid marriage had come into existence.

The use of the law of the place of marriage celebration to determine validity has the advantage of applying one set of legal rules to both formal and substantive validity. It also reduces the risk of limping marriage, ie the situation where people are married in one country, but divorced in another.

Entry into Force of Parts of the Children's Act in South Africa

1) Age of majority now 18 in South African law

The entry into force of certain sections of the Children's Act No 38 of 2005 on 1 July 2007 has changed the age of majority in South African law. It is now 18, while it was 21 before (Sec 17 of the Act). This is relevant for the many young South Africans living abroad, but still domiciled in South Africa or still South African citizens. If the conflict of law rule of the country in which they live points to domicile or nationality for the determination of personal status, these people above 18 will now have full contractual capacity in accordance with South African law.

2) Standard for "best interests of a child"

The Children's Act also contains a (lengthy) provision on the standard for "best interests of the child", a concept frequently used in international protection of children, specifically adoption. Such definition is of particular importance in a region which has a growing number of Aids orphans, and where international adoption might increase in future.

Section 7 of the Act states:

> *(1) Whenever a provision of this Act requires the best interests of the child standard to be applied, the following factors must be taken into consideration*

where relevant, namely-
(a) the nature of the personal relationship between-
(i) the child and the parents, or any specific parent; and
(ii) the child and any other care-giver or person relevant in those circumstances;
(b) the attitude of the parents, or any specific parent, towards-
(i) the child; and
(ii) the exercise of parental responsibilities and rights in respect of the child;
(c) the capacity of the parents, or any specific parent, or of any other care-giver or person, to provide for the needs of the child, including emotional and intellectual needs;
(d) the likely effect on the child of any change in the child's circumstances, including the likely effect on the child of any separation from-
(i) both or either of the parents; or
(ii) any brother or sister or other child, or any other care-giver or person, with whom the child has been living;
(e) the practical difficulty and expense of a child having contact with the parents, or any specific parent, and whether that difficulty or expense will substantially affect the child's right to maintain personal relations and direct contact with the parents, or any specific parent, on a regular basis;
(f) the need for the child-
(i) to remain in the care of his or her parent, family and extended family; and
(ii) to maintain a connection with his or her family, extended family, culture or tradition;
(g) the child's-
(i) age, maturity and stage of development;
(ii) gender;
(iii) background; and
(iv) any other relevant characteristics of the child;
(h) the child's physical and emotional security and his or her intellectual, emotional, social and cultural development;
(i) any disability that a child may have;
(j) any chronic illness from which a child may suffer;
(k) the need for a child to be brought up within a stable family environment and, where this is not possible, in an environment resembling as closely as possible a caring family environment;
(l) the need to protect the child from any physical or psychological harm that

may be caused by-
(i) subjecting the child to maltreatment, abuse, neglect, exploitation or degradation or exposing the child to violence or exploitation or other harmful behaviour; or
(ii) exposing the child to maltreatment, abuse, degradation, ill-treatment, violence or harmful behaviour towards another person;
(m) any family violence involving the child or a family member of the child; and
(n) which action or decision would avoid or minimise further legal or administrative proceedings in relation to the child.
(2) In this section 'parent' includes any person who has parental responsibilities and rights in respect of a child.

EU Draft Reform Treaty: Changes to the Provisions on Judicial Cooperation in Civil Matters

As it is widely known, the European Council of 21/22 June decided to move on after two years of uncertainty due to the difficult ratification process of the Treaty establishing a Constitution for Europe, signed by the Member States in October 2004. It agreed to convene an **Intergovernmental Conference (IGC)**, pursuant to Art. 48 of the TEU, **to draw up a Treaty amending the existing Treaties, in order to introduce into them**, which remain in force, **the most part of the innovations resulting from the 2004 Constitutional Treaty**. As a first, noteworthy change, **the EC Treaty (TEC) should change its name to *Treaty on the Functioning of the European Union***, while the EU Treaty should keep its present name.

The IGC was convened on 23 July 2007 by the Portuguese Presidency, and a **Draft Reform Treaty** was circulated, drawn up in accordance with the mandate agreed upon by the Member States in the European Council of June. The IGC

should complete its work as quickly as possible, and in any case before the end of 2007, so as to allow for sufficient time to ratify the resulting Treaty before the European Parliament elections in June 2009. The Portuguese Presidency aims to reach agreement on a text at the informal European Council in Lisbon on 18 October, and sign it off formally at the final European Council of its term, in next December (see an indicative timetable of the Working Party of Legal Experts, set up by the Presidency).

The new Treaty on the Functioning of the European Union (TFEU) will bring a number of modifications to the current Title IV ("Visas, Asylum, Immigration and Other Policies Related to Free Movement of Persons"), Part III ("Community Policies"), of the TEC, which provides the legal basis for measures in the field of judicial cooperation in civil matters (see Art. 61(c), Art. 65 and Art. 67(5) of the TEC, as amended by the Treaty of Nice).

As provided by Art. 2, point 60, of the Draft Reform Treaty, **the new Title IV of the TFEU** (included in the Part Three of the Treaty, "Community Policies and Internal Actions"), **with the heading "Area of Freedom, Security and Justice", should keep the structure of the corresponding part of the Constitutional Treaty** (Articles III-257 to III-277), and be divided in five chapters:

- Chapter 1: General provisions
- Chapter 2: Policies on border checks, asylum and immigration
- Chapter 3: Judicial cooperation in civil matters
- Chapter 4: Judicial cooperation in criminal matters
- Chapter 5: Police cooperation

Chapter 3, which deals with judicial cooperation in civil matters, should consist of a single provision, Art. 69d, reading:

> ***CHAPTER 3 – JUDICIAL COOPERATION IN CIVIL MATTERS***
>
> ***Article 69d***
>
> *1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member*

States.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:
(a) the mutual recognition and enforcement between Member States of judgments and decisions in extrajudicial cases;
(b) the cross-border service of judicial and extrajudicial documents;
(c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
(d) cooperation in the taking of evidence;
(e) effective access to justice;
(f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
(g) the development of alternative methods of dispute settlement;
(h) support for the training of the judiciary and judicial staff.

3. Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.

4. The Council, on a proposal from the Commission, may adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.
This proposal shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision shall not be adopted. In the absence of opposition, the Council may adopt the decision.

The provision is **almost identical to Art. III-269 of the Constitutional Treaty**, with some minor adjustments and a major change: as regards the former, Art. 69d of the TFEU refers to “measures” adopted by the European Parliament and the Council, “acting in accordance with the ordinary legislative procedure” (the

codecision procedure set out in Art. 251, as amended by Art. 2, point 242, of the Draft Reform Treaty), while in Art. III-269 reference was made to "European laws" and "Framework laws", the legislative acts replacing regulations and directives in the Constitutional Treaty (see Art. I-33 ff.).

A major innovation is the **power of veto granted to national Parliaments**, pursuant to the second part of Art. 69d(4), **as to the activation of the "passerelle" clause in respect of aspects of family law** which may be subject of acts adopted by the ordinary legislative procedure, following a decision by the Council on a proposal from the Commission: in this respect, each national Parliament can make known its opposition to the "passerelle". The provision should be read in conjunction with new Protocol n. 1 to the TFEU and TEU, on the role of national Parliaments in the European Union, which aims at a greater involvement of these institutions of the Member States in the activities of the EU.

A significant difference between the current text of Art. 65 TEC and the draft Art. 69d of the TFEU can be found in the link of the measures to be taken in the field of judicial cooperation in civil matters with the "proper functioning of the internal market": while these measures, according to Art. 65 TEC, can be taken only "in so far as necessary for the proper functioning of the internal market", Art. 69d TFEU (along with Art. III-269 of the Constitutional Treaty) is far less stringent in respect of this requirement, stating that they can be adopted **"particularly when necessary for the proper functioning of the internal market"**. On the issue, see a short article (in Spanish) by *Prof. J.D. González Campos* (Universidad Autónoma de Madrid), commenting Art. III-269 of the Constitutional Treaty, published in the Spanish electronic journal *REEI – Revista Electrónica De Estudios Internacionales* (n. 9/2005): "La Constitución Europea y el Derecho internacional privado comunitario: ¿un espacio europeo de justicia en materia civil complementario del mercado interior?".

As regards the territorial scope of application of Title IV of the TFEU, there's **no substantial change to the opting-in system currently in force for UK and Ireland**, pursuant to Protocol n. 4 to the TEC on the position of these States in respect of the area of freedom, security and justice: see point n. 19 of the sole article of Protocol n. 11 to the Draft Reform Treaty, amending various protocols to the TEC and the TEU.

The special regime set out by Protocol n. 5 to the TEC on the **position of**

Denmark is also maintained, but it can be changed at any time, upon notification by Denmark to the other Member States, with a more flexible one, similar to UK and Ireland (see the new Annex to Protocol n. 5, added by point n. 20 of the sole article of Protocol n. 11 to the Draft Reform Treaty, referred to above). As a result, **Denmark could have as well the possibility of opting-in to each specific measure** adopted pursuant to Title IV, on a case-by-case basis.

As a last remark, it must be pointed out that the special conditions provided by current Art. 68 TEC as regards the **jurisdiction of the European Court of Justice on Title IV** and acts of the institutions based on it should be set aside by the Draft Reform Treaty: accordingly, **the ordinary regime of Art. 234 TEC will apply**.

The text of the new TFEU can be read in its entirety, as resulting from the amendments provided by the Draft Reform Treaty, in a French version edited by *Marianne Dony* (Université Libre de Bruxelles).

All the documents relating to the Intergovernmental Conference are available in a special section of the Council's website.

(Thanks to Jean Quatremer, Coulisses de Bruxelles blog, for providing the link to the French consolidated text of the TFEU)

The Grant of an Anti-Suit Injunction in Connection with a Contract Governed by English Law

NIGEL PETER ALBON (T/A N A CARRIAGE CO) v (1) NAZA MOTOR TRADING SDN BHD (A company incorporated with limited liability in Malaysia) (2) TAN SRI DATO NASIMUDDIN AMIN [2007] EWHC 1879 (Ch). *The Lawtel summary*:

The applicant (Y) applied for an injunction restraining the respondent Malaysian company (N) from pursuing arbitration proceedings in Malaysia. Y alleged that the underlying agreement between the parties was an oral agreement made in England subject to English law. N alleged that there was a joint venture agreement signed by the parties in Malaysia governed by Malaysian law and containing a provision for arbitration in Malaysia. N denied concluding the English agreement as alleged by Y. Y contended that his signature on the joint venture agreement had been forged. Y had obtained permission to serve the proceedings out of the jurisdiction and an order for alternative service. N had applied unsuccessfully for a stay of proceedings in favour of arbitration proceedings in Malaysia, the court holding that the issue of the authenticity of the joint venture agreement should be determined by the English court rather than in the arbitration proceedings. Y had obtained on an application without notice an order restraining N from pursuing the arbitration proceedings in Malaysia but that injunction had been discharged as the sanction for failure by Y to comply with a court order. Y then made a further application for an injunction. Y contended that the court had jurisdiction to grant an anti-suit injunction and should grant an injunction barring N from taking any further steps in the arbitration proceedings pending the outcome of the English proceedings. N contended that the relief should be limited to barring N from inviting the arbitrators to rule on the authenticity of the joint venture agreement but should leave it to the arbitrators to decide whether to proceed with the arbitration in the interim without prejudice and subject to any determination by the English court on the issue of authenticity and accordingly of the arbitrators' jurisdiction.

Lightman J. held that the grant of an anti-suit injunction in connection with a contract governed by English law was a claim made in respect of the latter contract within CPR r.6.20(5)(c), *Youell v Kara Mara Shipping Co Ltd* (2000) 2 Lloyd's Rep 102 applied. If that was wrong, the court had jurisdiction to grant an anti-suit injunction on the basis of N's application for a stay, *Glencore International AG v Metro Trading International Inc* (No3) (2002) EWCA Civ 528, (2002) 2 All ER (Comm) 1 considered. N was a foreign party brought into the jurisdiction by answering a claim within CPR r.6.20: it had not willingly submitted to the jurisdiction without reservation and it had not brought a counterclaim. But it had applied for a stay, and that application was ongoing and required the court to adjudicate on the authenticity of the joint venture agreement.

In those circumstances, the court had power to protect its processes in the course of and for the purposes of determining the claim to the stay, and that included where necessary the power to grant an injunction restraining N from taking steps within or outside the jurisdiction which were unconscionable and which might imperil the just and effective determination of the claim to the stay, *Grupo Torras SA v Al-Sabah (No1)* (1995) 1 Lloyd's Rep 374 considered. The pleaded claim to an injunction fell within the gateway relied on and the necessary permission was granted to serve the amended claim form and amended particulars of claim in Malaysia. (2) The injunction sought was necessary to protect the interests of Y in the instant proceedings. For N to prosecute the arbitration proceedings or to allow the arbitrators to proceed with them pending determination whether N had forged Y's signature on the joint venture agreement was to duplicate the instant proceedings. That was oppressive and unconscionable, *Tonicstar Ltd (t/a Lloyds Syndicate 1861) v American Home Assurance Co* (2004) EWHC 1234 (Comm), (2005) Lloyd's Rep IR 32 considered. Both sets of proceedings would be concerned with exactly the same subject-matter, *Elektrim SA v Vivendi Universal SA* (2007) EWHC 571 (Comm), (2007) 2 Lloyd's Rep 8 considered. The court declined to frame the injunction so as to leave it open to N to proceed with the arbitration inviting the arbitrators to determine what, if any, steps to take in the interim and without prejudice to the determination of authenticity by the English court.

View the full judgment on BAILII. *Source: Lawtel*.

Another article on Spider-in-the-Web doctrine after Roche ruling

Matthias Rößler's article "The Court of Jurisdiction for Joint Parties in International Patent Disputes" published in the *International Review of Industrial Property and Copyright Law (IIC)* Number 4, 2007, pp. 380-400, discusses a recently much debated issue related to the enforcement of international patent disputes against multiple defendants. The abstract of the article states:

> The paper discusses the development – and decline? – of the so-called "Spider-in-the-Web" rulings relating to the simplified filing of lawsuits against several cooperating companies in proceedings for the infringement of respective national patents in Europe. It shows the efforts and arguments that have been used in order to be able to apply Art. 6(1) of Council Regulation No. 44/2001 in cross-border patent disputes, and explains how the much-awaited *Roche* decision of the European Court of Justice brought clarity to the issue, yet not a globally viable solution.

The article is accessible on-line via the Beck-Online site.

Here are some of the previous references to the related issues posted here previously: Court Limits Extraterritoriality of Federal Patent Law, U.S. Federal Courts and Foreign Patents: Recent Decisions Affecting the Global Harmonization of Patent Law, CLIP papers on Intellectual Property in Brussels I and Rome I Regulations, Last Issue of Revue Critique de Droit International Privé, Patent Litigation in the EU – German Case Note on "GAT" and "Roche", Is Cross-Border Relief in European Patent Litigation at an End?, Jurisdiction over Defences and Connected Claims, Jurisdiction over European Patent Disputes, and the European Payment Procedure Order.

American and European Approaches to Personal Jurisdiction Based Upon Internet Activity

Richard D. Freer has posted "**American and European Approaches to Personal Jurisdiction Based Upon Internet Activity"** on SSRN. The abstract reads:

> *The law of personal jurisdiction determines what states or countries may enter a binding judgment against a civil defendant. Without personal jurisdiction over*

the defendant, a court is powerless to act.

While principles of personal jurisdiction are well established in the United States and the European Union (EU), these principles were developed before the widespread use of the Internet, and neither the Supreme Court nor the European Court of Justice has spoken on how the established principles apply in the context of the Internet.

American law requires that a defendant engage in purposeful availment of the forum where she is sued, so a defendant is subject to suit only in a forum with which she has established purposeful ties. In contrast, the EU grants personal jurisdiction where the injury occurred, regardless of whether the defendant purposefully availed itself of that place.

The difference in approach will prove to be most important in cases involving relatively passive Web site use. So if a defendant posts something on a Web site in State A, which is accessible around the world, and a plaintiff is hurt in some way by that posting in State B, may the plaintiff sue the defendant in State B? EU law should provide a positive answer, because their focus is on accessibility and where the harm occurs. In the United States, lower courts have reached inconsistent results, mainly because of the Supreme Court's failure to resolve an important jurisdiction question in a 1987 case involving the "stream of commerce." The Web site case is the modern technological iteration of the stream of commerce which the Court failed to resolve in 1987.

The article is available to download, for free, from **here**.

Shielding Local Law and Those it Protects from Adhesive Choice of

Law Clauses

William J. Woodward Jr has posted "**Constraining Opt-Outs: Shielding Local Law and Those it Protects from Adhesive Choice of Law Clauses**" on SSRN (originally published in the *Loyola of Los Angeles Law Review, Vol. 40, No. 1, 2006*). Here's the abstract:

Fifty years ago, the idea that parties could "choose" the law governing their contract was alien to the way most courts viewed their roles. Applicable law depended on complicated conflict of laws rules, administered by judges who would apply the law, not on party choice. Contemporary contracts, by contrast, nearly always specify the law that will govern them. Choice of law clauses reduce uncertainty, contribute to economic welfare and, in most instances, are no longer controversial. But when we move from negotiated contracts to adhesion and mass market contracts, choice of law clauses can become less than benign. A drafter will, of course, choose law that best suits its needs. But the law that best suits the drafter may well be less than ideal for the customer. Not surprisingly, recent cases reveal that mass market drafters often choose the law of a state that offers very limited protection for customers in their dealings with the drafter. Cases show, for example, that drafters choose the law of a state that recognizes adhesive class action waivers over the law of a state that does not. If such a choice of law provision is effective against customers whose law ordinarily protects them from such waivers, the drafter has effectively replaced the law their state crafted to protect its residents with the less-beneficial law the drafter chose. This, of course, raises policy questions and both courts and state legislatures have begun to address them. How can a state "protect" the law it has developed to benefit its residents without jeopardizing the commercial certainty that choice of law provisions provide? After providing an analytic framework for considering the complex issues raised by this amalgam of conflicts and contract law, we proceed to consider solutions both at the state and federal level.

Download the full article from **here**.