Conference: The European Traffic Law Days

From the conference website: The European Traffic Law Days have established themselves as a forum for professional training and the exchange of experience between traffic law experts. The congress will provide experts in liability and insurance law with an opportunity to obtain a comprehensive overview of current developments in European traffic law relevant to daily practice.

The main emphasis of this year's event will be on the development of case law in the European Union on punitive damages. A working group will be set up, initially to determin the status quo, on the basis of which the fundamental problems involved in punitive damages will be discussed. Further topics are: Experience of the implementation of the fifth Directive; Elements of a sixth Directive (discussion on the progress achieved with the suggestions made during Trier VII); Minor accidents (improved enforcement of low-value claims involving traffic accidents abroad); The statute of limitations (European Parliament initiative); Rome II, the Regulation that governs the law applicable to traffic accidents abroad; The introduction of the recording of accident data Europe-wide; Simpler registration of motor vehicles abroad. Finally, current developments in European law and initiatives and developments in the harmonisation of European civil law will be discussed.

Target audience: All persons professionally involved in traffic law.

This conference to be held in Trier, 17-19 October 2007, is organised by ERA in cooperation with the Institute for European Traffic Law. This event will take place for the eighth time and will continue to be organised on an annual basis. The conference programme can be downloaded from the conference website.

Conference on Current Developments in European Family Law and Law of Succession

From the conference website: Lawyers are required to deal ever more with legal questions arising from cross-border family and parental responsibility cases. The following topics will be discussed:
Parental responsibilities: The application of the Brussels II Regulation in judicial practice in the Member States; Hague Convention on protection of children and Brussels II bis; Family mediation; Opportunities and limitations of cross-border mediation in family matters.
Cross-border supervision: Hague Convention on international protection of adults. **Current developments in the member states:** Divorce and its consequences; Descent and custody; Recognition of formalised same-sex relationships in Europe; Current issues in Europe; New legal framework for marriage issues in the EU; Regulation of matrimonial property regime on the Community level; Developments in European law of succession.

Target audience: Lawyers, especially those specialising in family law and law of succession, notaries, judges, academics.

This conference to be held in Trier, 1-2 October 2007, is organised by ERA. The conference programme can be downloaded from the conference website.

Conference on European Civil Procedure for Civil Law Notaries

From the conference website: The conference will be devoted to the practical analysis of certain Community legislative instruments and initiatives of great importance for notary practice, such as: The “Brussels I” Regulation on the

jurisdiction, recognition and enforcement of judgements in civil and commercial matters; The Regulation creating a European Enforcement Order for Uncontested Claims; The European Judicial Network in Civil and Commercial Matters; The Network of the Notariats of the European Union; The Regulation on the service of documents and the Regulation on the cross-border taking of evidence in Europe; The proposed "Rome I Regulation" on the law applicable to contractual obligations; Mediation in civil and commercial matters and the role of civil law notaries. Target audience: Civil law notaries of all EU Member States.

This conference to be held in Trier, 12-13 November 2007, is organised by ERA in cooperation with in cooperation with the Council of the Notariats of the European Union (CNUE). The conference programme can be downloaded from the conference website.

Workshop on Cross-border Security over Receivables and Comparative and Private International Law Issues

From the conference website: This workshop will provide an in-depth examination of financing based on receivables – both assignments and transfers for security, a subject of increasing importance in Europe and around the world. The case-study method will be used to highlight differences and similarities among more than half a dozen European countries. Leading writers in the field, prominent academics and experienced practitioners will present specific national solutions to domestic and cross-border assignment of receivables encountered in current commercial practice. Important current developments in relevant private international law issues, including the issue of assignment in the context of the future Rome I Regulation, will be discussed. Participants at this interactive workshop from all over Europe will be invited to raise questions, share their

experience and provide information about the law of additional jurisdictions. This programme will assist market participants and their counsel to understand better cross-border security over receivables and relevant private international law rules of their own and other countries and assist those involved in national, EU and global law reform efforts. The cases will be devised especially for this workshop by Eva-Maria Kieninger and Harry C. Sigman.

This conference to be held in Trier, 25-26 October 2007, is organised by ERA in cooperation with Eva-Maria Kieninger, Würzburg and Harry C. Sigman, Los Angeles. The conference programme can be downloaded from the conference website.

Forum Non Conveniens and Jurisdiction Clauses in Ontario

The Court of Appeal for Ontario has released *Red Seal Tours Inc. v. Occidental Hotels Management B.V.* (available here). The decision is of note for three reasons.

- The court reverses the motions judge's decision not to grant a stay of proceedings. When these sort of conflicting decisions happen on the same facts, it can raise concerns about the way these motions prolong preliminary disputes in litigation.
- The court treats a contract that did not contain a jurisdiction clause as "part and parcel" of a series of related contracts that did contain such a clause (in favour of Aruba). The motions judge gave no effect to the clause, but the appeal court gives it central and crucial weight.
- The court's order is to "permanently stay" the proceedings. For more on this language see C. Dusten and S.G.A. Pitel, "The Right Answer to Ontario's Jurisdictional Questions: Dismiss, Stay or Set Service Aside" (2005) 30 Advocates' Quarterly 297 at 308. I have troubles with the concept of a permanent stay, since by its nature a stay has a temporary

quality (unlike a dismissal). I wonder if a "permanent stay" here could be seen to signal a move towards the notion of dismissing cases on the basis of forum non conveniens recently seen in the United States Supreme Court in *Sinochem*.

Economics of Conflict of Laws

Edward Elgar Publishing has published an edited collection of works on "**Economics of Conflict of Laws**", edited by Erin A. O'Hara (Vanderbilt). Here's the blurb:

> *For this important collection, Professor O'Hara has selected some cutting-edge previously-published work on the application of economic analysis to the conflict of laws. This authoritative two-volume set offers theoretical and empirical insights into existing approaches to choice of law and the effects of conflicting choice-of-law approaches on judicial decision-making. It investigates several competing proposals for more efficient choice-of-law systems, including a special section on torts. Further topics include evaluations of contract clauses (including choice-of-law and choice-of-forum provisions), and the effects of party choice on jurisdictional competition by states to provide more desirable laws, with examples relating to securities regulation, bankruptcy rules, law firm rules of ethics, same-sex marriage laws and asset protection trust law. A game theoretic analysis of interstate judgment recognition is also included.*

The work includes 25 articles, dating from 1963 to 2003. Contributors include: W. Baxter, A. Guzman, B. Hay, L. Kramer, R. Rasmussen, L.E. Ribstein, R. Romano, P. Stephan, S.E. Sterk and M. Whinco.

ISBN: 978 1 84720 076. Price: £275.00, but you can purchase it from the Edward Elgar website for the discounted price of £247.50.

Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts" – Annotation on "Color Drack"

Recently, the latest issue of the German legal journal *Praxis des Internationalen Privat- und Verfahrensrecht* ("IPRax") has been published.

I.) Annotation on *Color Drack*

The issue contains *inter alia* an annotation by *Peter Mankowski* (Hamburg) on the ECJ's judgment in *Color Drack GmbH./.Lexx International Vertriebs GmbH* of 3 May 2007 where the Court had to deal with the question of jurisdiction in cases where there are several places of delivery within a single Member State.

Mankowski outlines in his annotation six potential solutions, pointing out, however, that none of them is – due to the complexity of the issue – completely convincing. This is, according to *Mankowski*, also true with regard to the approach adopted by the ECJ, which has developed a two-stage solution for identifying the competent court in cases where there are several places of delivery within a single Member State: According to the ECJ, "the court having jurisdiction to hear all the claims based on the contract for the sale of goods is that for the principal place of delivery, which must be determined on the basis of economic criteria. In the absence of determining factors for establishing the principal place of delivery, the plaintiff may sue the defendant in the court for the place of delivery of its choice."

Mankowski examines this solution critically and points out that determining the main focus of the deliveries, as advocated by the Court, implied uncertainty which contravened the aims of the Regulation. Also the subsidiary solution of the Court which shall be applied in cases where no main focus can be ascertained, the claimant's choice, is regarded sceptically since the Court's premise, in these

cases all places of (part) deliveries were equivalent, could not be agreed with.

Due to the uncertainties which are attended with determining the main focus, *Mankowski* asks for further concretizing criteria and suggests to proceed – following choice of law rules which try to designate the law with the closest link to the case – from the assumption that it is decisive where the deliverer's place of business which is in charge of the contract is situated. In cases where nothing is delivered at this place, Art. 5 (1) lit. c Brussels I Regulation referred to Art. 5 (1) lit. a Brussels I Regulation and consequently to national law.

See regarding this case also our previous posts on the Advocate General´s opinion, the judgment and further annotations.

II.) Contents

In addition to this annotation the new issue of the "IPRax" contains *inter alia* the following contributions:

- Article by *Axel Halfmeier* (Bremen) on the action raising an objection to the judgment claim ("Die Vollstreckungsgegenklage im Recht der internationalen Zuständigkeit")
- *Wolf-Georg Ringe* (Oxford) examines the impact of the ECJ's jurisprudence regarding companies' freedom of establishment on international civil procedure law ("Überseering im Verfahrensrecht – Zu den Auswirkungen der EuGH-Rechtsprechung zur Niederlassungsfreiheit von Gesellschaften auf das Internationale Zivilprozessrecht")
- Annotation by *Herbert Roth* (Regensburg) on a decision of the Court of Appeal Düsseldorf concerning the question of whether the debtor's identity has to be clarified – in case of uncertainties – already during the proceedings for a declaration of enforceability ("Der Streit um die Schuldneridentität im Verfahren der Vollstreckbarerklärung nach Art. 41, 43 EuGVVO")
- Annotation by *Urs Peter Gruber* (Halle) on a decision of the Court of Appeal Bamberg dealing with the question of whether proccedings for a declaration of enforceablilty according to Artt. 51, 31 et seq. Brussels Convention are suspended in case insolvency proceedings are opened with regard to the respondent's assets *abroad* ("Inländisches Vollstreckbarerklärungsverfahren und Auslandskonkurs")

- Annotion by *Stefan Kröll* (Cologne) on two decisions of the Court of Appeal Karlsruhe regarding the question of whether procedural irregularities which have allegedly occured at the place of arbitration can be raised in the proceedings for a declaration of enforceability ("Die Präklusion von Versagungsgründen bei der Vollstreckbarerklärung ausländischer Schiedssprüche")
- Annotion by *Marcus Mack* (Heidelberg) on the U.S. Supreme Court decision in *Sinochem* ("Forum Non Conveniens – Abweisung ohne Zuständigkeitsprüfung")
- Article by *Stephan Balthasar* (Munich) on the recognition and enforcement of German judgments on the Channel Islands ("Anerkennung und Vollstreckung deutscher Urteile nach *common law* auf den Kanalinseln und Verbürgung der Gegenseitigkeit")

The full contents as well as news in private international law can be found at the journal's website.

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!**

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).

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 Seereenderei 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.)