German Federal Supreme Court: Jurisdiction over Applications for an Injunction due to Nuisance

The German Federal Supreme Court assumed international jurisdiction of German courts according to Art. 5 Nr.3 Brussels I Regulation in a case of an application for an injunction due to nuisance according to § 1004 German Civil Code (judgment of 24.10.2005 – II ZR 329/03).

See for an annotation: Erik Jayme, IPRax 2006, 502.

German Publication: The Adoptive Child´s Right to Succeed in Private International Law

A new dissertation on private international law of family law has been published: *Inke Dietz*, Das Erbrecht des Adoptivkindes im Internationalen Privatrecht.

The publisher´s information reads as follows:

"Social developments have lead to an increasing significance of international adoptions in recent years. Starting from this finding, the thesis gives an overview of the developments of the German law on adoption including the adoption´s effects on the right to succeed (...) before examining German choice of law rules on adoption and the choice of law rules concerning the adoptive child´s right to succeed as well as the intertwining of the lex successionis on the one side and the applicable law on adoption on the other side. Further, the recognition of adoptions according to the Hague Convention on protection of children and co-operation in respect of intercountry adoption of 1993 is considered as well as the

option to transform weak adoptions according to the *Adoptionswirkungsgesetz (law on the effects of adoptions according to foreign law).*"

German/English Publication: Denationalization of Private Law?

Speeches which have been held to celebrate the 70th birthday of *Karl Kreuzer* have been published in the following volume: *Eva-Maria Kieninger* (ed.), Denationalisierung des Privatrechts? Symposium anlässlich des 70. Geburtstages von Karl Kreuzer.

Here is the content:

- *Klaus Laubenthal* (Würzburg), Begrüßung (Greeting)
- *Eva-Maria Kieninger* (Würzburg), Einführung in das Thema (Introduction)
- *Paul Lagarde* (Paris), Internationales Privatrecht und Europarecht (Private International Law and European Law)
- *Roy Goode* (Oxford), The harmonization of dispositive contract and commercial law – should the European Community be involved?
- *Hans van Loon* (The Hague), Unification of private international law in a multi-forum context
- *Herbert Kronke* (Rome/Heidelberg), Herausforderungen internationaler Privatrechtsmodernisierung (Challenges of the international harmonisation of private law)
- *Karl Kreuzer* (Würzburg), Schlussworte (Closing words)

Settled Expectations in a World of Unsettled Law: Choice of Law after the Class Action Fairness Act

Samuel Issacharoff (*New York University School of Law*) has made his forthcoming article in the *Columbia Law Review*, **"Settled Expectations in a World of Unsettled Law: Choice of Law After the Class Action Fairness Act"**, available for download on SSRN. The abstract reads as follows:

> *This Essay examines the pressure placed upon choice of law doctrine by the newly enacted Class Action Fairness Act ("CAFA"). The core argument is that current choice of law doctrine, which assumes fidelity to the forum state choice of law rules as its basic premise, corresponds poorly to the national scope of economic activity in cases brought into federal court under CAFA. The Essay argues that there needs to be some conformity between the national scale of contemporary economic activity and the state-by-state presumption of inherited conflict of laws doctrine in order to provide some sensible legal oversight of national market conduct. Because of the multiplicity of potential forums for litigation of national market activity, the inherited doctrines of Klaxon Co. v. Stentor Electric Manufacturing Co. and Erie Railroad Co. v. Tompkins do little to provide settled expectations about the substantive laws governing broad-scale economic conduct.*
>
> *The Essay offers an approach that should guide choice of law rules in the context of national market cases based on the need to facilitate common legal oversight of undifferentiated national market activity. The claim here is that conduct that arises from mass-produced goods entering the stream of commerce with no preset purchaser or destination should be treated as just that: goods in the national market. In the absence of national choice of law rules, this Essay suggests that courts should, as a default rule, apply the laws of the home state of the defendant to all standardized claims, regardless of the situs of the final injury. The upshot of this approach is to suggest a path for future development of national market cases that have been brought into the federal courts as a result of CAFA.*

The full article can be downloaded from here.

German Courts: Art. 34 Nr. 2 Brussels I Regulation

The Court of Appeal (OLG) Zweibrücken held in a recent decision (10.5.2005 – 3 W 165/04) that a foreign judgment cannot be recognized if the defendant was not served with the document which instituted the proceedings (here: "dagvaarding" of a Belgium court) according to Art. 34 Nr. 2 Brussels I.

The decision has been published in IPRax 2006, 487. See for an annotation: *Herbert Roth*, IPRax 2006, 466, who stresses the significance of Artt. 32 et seq. Brussels I and criticises therefore the plans to abolish the enforcement proceedings and the public policy clause de lege ferenda.

Seminar: The Future of Private International Law in England and Wales

The Future of Private International Law in England and Wales – Seminar at the British Institute of International & Comparative Law

Tuesday 24 October 2006 17:00 to 19:00
Location: Charles Clore House, 17 Russell Square, London WC1B 5JP

Participants

- **Lord Mance**
- **Professor Jonathan Harris, Birmingham University and Brick Court Chambers**
- **Adeline Chong, Nottingham University**
- **Adam Johnson, Herbert Smith**

This seminar is part of the British Institute's Evening Seminar Series on Private International Law which will run throughout the Autumn of 2006 and well into 2007 titled **'Private International Law in the UK: Current Topics and Changing Landscapes'**.

The series explores issues which are of topical importance for current legal practice and study in the field of Private International Law. Led by leading experts in the field, they will evaluate, in particular, the growing impact of the establishment of a European Civil Justice Area on the future of Private International Law in the UK.

Other Featured Events:

2006

1. 21 November: Substance and Procedure in the Law Applicable to Torts: Harding v Wealands
2. 18 December: Civil Remedies for Torture in the UK Courts: Jones v Saudi Arabia

2007

1. January: Non-justiciability: Reappraisal of Buttes Gas in the light of recent Decisions
2. 22 January: Intellectual Property Problems: Jurisdiction in IP Disputes
3. 22 January: The Future of International Patent Litigation in Europe
4. February: Resolving Family Conflicts in the EU: The Changing Landscape
5. March: The Road to Rome: An Update on the Law Applicable to Contractual Obligations

The British Institute's Series on Private International Law is kindly sponsored by Herbert Smith.

For more information, please log on to the BIICL website.

German Publication: On the way to a European Law Applicable to Divorce

A dissertation has been published which is of particular interest with regard to the recently published proposal of the European Commission for a Council Regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters: *Sinja Rüberg*, Auf dem Weg zu einem europäischen Scheidungskollisionsrecht

Here is a short summary:

> *With the ever-increasing migration of European Union citizens, more and more people are entering into cross-boarder matrimony; a freedom guaranteed by Art. 6 GG. This brings with it a rise in the number of international family relations and, in parallel, divorce procedures. At the moment in the area of divorce law, the courts in Europe use various choice of law rules and substantive laws for one and the same circumstance. This legal position enables the divorce-seeking applicant to choose the best terms for his purpose. This "forum shopping" conflict can, under exemption of a presently available possibility for harmonisation of the substantive divorce law besides already existing unified rules on jurisdiction and a European accreditation system for family law, only be solved by a unified choice of law rules. The necessity and the possibility of reaching this goal become clear considering the historical development in the area of family law on a European level as well as the deficits in the Brussels II Regulation.*
> *In order to point out how diverse the consequences of a divorce case with international bearing can be, the reader is first provided with a legislative-comparative overview of the various larger Central and Western European EU member state's substantive and international divorce laws regulations. Furthermore, it is demonstrated that the problem has been recognised and taken seriously by the European legislator and that "Rome III" is not just a*

long-fallen star on the European agenda. Subsequent to this, the disputed question concerning the scope of competence of the European legislator in passing a European Law Applicable to Divorce is discussed.
Under consideration of the aforementioned European aspects, this work draws up a concept for a unified choice of law rules, an assignment already commenced by the European Commission under Regulation "Rome III". The goal must be to localise the legal and the spouse relationships as well as possible and to determine the state to which the closest ties are exhibited. This work should contribute to the necessary pan-European discussion on the causes and arguments for the various national civil law regulations. The new law applicable to divorce should meet the needs of the involved parties exactly. All conceivable tie-regulations are correlated in great detail and examined with regard to their suitability for "Rome III". An orientation on both the tie-system of the Brussels II Regulations as well as the autonomous international civil regulations regarding the divorce laws of the member states occurs at this juncture. The rationale on which the ties are based is researched in order to asses their transferability to a regulations system within a European law applicable to divorce. Within these bounds, the principal question of whether either the common nationality of the spouses or their habitual residence should have priority in European law applicable to divorce is addressed in detail. The author deals in depth with the adoption of an evasion as well as an absorption clause and discusses the pros and cons of a party autonomy authorisation in law applicable to divorce.
The results of these considerations consolidate into a European legal instrument on the law applicable to divorce – "Rome III", such that the author would recommend this work to the European legislator.

New and Renewed Members at the European Courts

The choice of who gets to stay, and who has to go, has been made at the European Court of Justice and the Court of First Instance; **on 6 October 2006, the mandate of thirteen judges and four Advocates General will expire**.

The Representatives of the Member States whose mandates have been *renewed* until 6 October 2012 are:

- Mr Peter Jann,
- Mr Christiaan Timmermans,
- Sir Konrad Schiemann,
- Mr Jiri Malenovsky,
- Mr Antonio Tizzano,
- Mr Jose? Narciso da Cunha Rodrigues,
- Mr Pranas Kuris,
- Mr George Arestis,
- Mr Anthony Borg Barthet and
- Mr Egils Levits
- Mr Paolo Mengozzi (as Advocate General)

Four *new* Representatives were appointed to the ECJ:

- Ms Pernilla Lindh, from the Court of First Instance (replacing Mr Stig von Bahr),
- Mr Jean-Claude Bonichot (replacing Mr Jean-Pierre Puissochet),
- Mr Thomas von Danwitz (replacing Ms Ninon Colneric),
- Mr Yves Bot, appointed Advocate General (replacing Mr Philippe Le?ger.)

In addition, and applying the system of rotation of Advocates General by alphabetical order of the Member States, Mr Ján Mazàk was appointed in place of Mr Leendert A. Geelhoed and Ms Verica Trstenjak was appointed in place of Ms Christine Stix-Hackl.

At the Court of First Instance, Mr Nils Wahl and Mr Miro Prek were appointed as Judges at the Court of First Instance of the European Communities, replacing Ms

Pernilla Lindh and Ms Verica Trstenjak, respectively.

The successors will be sworn into office on **Friday 6 October 2006 at 17:00 in the main court room.** After the formal sitting, the Judges of the Court of Justice will elect *in camera*, from among their number, their President for a term of three years.

The full press release can be found here.

Update: Following the formal sitting on 6 October 2006, a press release has been issued by the ECJ with brief biographies of the new judges.

On 9 October 2006, following the partial replacement of the members of the Court of Justice, *Mr Vassilios Skouris*, who has been President of the institution since 7 October 2003, was re-elected to perform the duties of President of the Court of Justice of the European Communities for the period from 9 October 2006 to 6 October 2009. A short biography of the President can be found here.

British Columbia Court has Jurisdiction over Claim for Tobacco Damages

The latest decision in the attempt by the government of British Columbia to sue several tobacco companies for damages and health care costs is *British Columbia v Imperial Tobacco Canada Ltd* [2006] BCJ No 2080 (CA) (available here). The decision provides a good review of the enacting of the *Tobacco Damages and Health Care Costs Recovery Act* by the government and the litigation thereunder. The British Columbia Court of Appeal rejects several jurisdictional challenges by the defendants and also rejects a motion for a stay based on *forum non conveniens*.

Court of Appeal for Ontario Refuses to Enforce American Letter of Request

In *Re Presbytarian Church of Sudan*, released September 26, 2006 (available here) the Court of Appeal for Ontario held that a letter of request from the United States District Court could not be enforced in Ontario. Residents and former residents of Sudan sued Talisman Energy Inc, a Canadian company, in the United States for acts of genocide, torture and other human rights violations, relying on the *Alien Tort Claims Act* for jurisdiction. Despite the government of Canada having formally expressed its concerns about the litigation proceeding in the United States, through a diplomatic note, the court held that the letter of request was not contrary to the public policy of Canada. However, the court refused the request on the basis that the evidence in support – an affidavit from New York counsel – was insufficient to establish that the evidence sought was relevant, necessary and not otherwise obtainable. The court described the affidavit as containing only "bald assertions" on these important elements of the test for giving effect to a foreign letter of request.