German Article on Consumer Contracts in Rome I

An article by *Giesela Rühl* (Hamburg) on the provision concerning **consumer contracts** in the Rome I proposal has been published in the European Community Private Law Review (GPR) 2006, 196 et seq. The English summary reads as follows:

> *In December 2005 the European Commission has released the Proposal for a Regulation on the law applicable to contractual obligations. One of the most important changes relates to the scope of application of Article 5, which is characterized by the introduction of the targeted activity criterion embodied in Article 15 (1) lit. c) of the Brussels I Regulation and a safeguard clause for the protection of professionals. At first blush this combination – that is new to European private international law – seems to make sense. However, a closer examination reveals that the safeguard clause does not have an independent scope of application if it is combined with the targeted activity criterion. Since it merely complicates the provision of Article 5 (2) it should be deleted.*

German Publication: Private International Law

The 6th edition of the German standard work on private international law, "Internationales Privatrecht" by *Jan Kropholler* (Hamburg), has been published.



The main part of the book is dedicated to choice of law. Here *Kropholler* describes in a first chapter the basic ideas of the conflict of laws, such as its history, the structure of choice of law rules, basic concepts as qualification, connecting factor and public policy before attending in the second chapter to the individual fields of private international law such as legal transactions, family law, the law of contract, non-contractual obligations, the law of property and company law. In the last chapter, *Kropholler* addresses the fundamentals of international civil procedure law. While *Kropholler* focuses on German national rules he includes also international conventions as well as European legal instruments.

German Annotation to the ECJ's Opinion 1/03 – Competence of the EC to conclude the new Lugano Convention

An annotation to Opinion 1/03, where the European Court of Justice has held that "the conclusion of the new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (…) falls entirely within the sphere of exclusive competence of the European Community", by *Ulrich G. Schroeter* (Freiburg) has been published in the European Community Private Law Review (GPR) 2006, 203 et seq. The English summary reads as follows:

> *In its recent Opinion 1/03, the European Court of Justice ruled on the question of the competence of the European Community to conclude the new Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and found that the EC possesses an implicit exclusive competence to conclude the new Convention. The present case note criticizes the reasoning of the ECJ and inter alia argues that the Court (1) has failed to demonstrate that the existing Brussels I-Regulation would be affected*

by the new Lugano Convention, (2) should have scrutinized the EC's internal competence to regulate relations with non-member countries, and (3) has in fact misunderstood the legal relevance of "disconnection clauses".

See regarding this question our older post, which can be found here.

Reviewing U.S. Domestic and Global Choice of Forum Doctrine through Piper Aircraft v Reyno

Richard D. Freer (*Emory University*) has posted "**Reviewing Domestic and Global Choice of Forum Doctrine through a Single Case**" on SSRN. Here's the abstract:

Piper Aircraft Co. v. Reyno is the Supreme Court's leading case on forum non conveniens – that is, on when a federal court should dismiss a pending case in favor of litigation in a foreign forum. Every casebook features the case and every civil procedure professor has taught it. The greatest value of Piper, however, is not its discussion of forum non conveniens, but its fact pattern, which provides an unparalleled vehicle for reviewing a startling number of doctrines pertaining to domestic forum selection, including personal jurisdiction under the stream-of-commerce theory, subject matter jurisdiction based upon diversity of citizenship and alienage, venue, transfer of venue, choice-of-law, as well as statutory interpretation. In addition, its treatment of forum non conveniens raises profound questions about the role of American courts in global perspective. Piper thus accomplishes more than any other single case in the civil procedure course, while emphasizing the importance of forum selection; where litigation proceeds is an issue of surpassing importance, on which litigants will expend great resources.

You can download the full article **here**.

No Surprise But Now Substantiated: Foreign Litigants Lose More in US Courts

As recently covered by the Financial Times, and forthcoming in the Journal of Law and Economics, a new study details an unsurprising yet still unsettling fact when it is substantiated: foreign litigants lose more in U.S. Courts. Here is the abstract:

> *Using a comprehensive sample of 2,361 public U.S. corporate defendants and 715 public foreign corporate defendants in U.S. federal courts in the period 1995-2000, we find that the market reaction at the announcement of a U.S. federal lawsuit is less negative for U.S. corporate defendants. We find that this market reaction is rational; U.S. firms are less likely to lose than foreign firms controlling for year, industry, type of litigation, size and profitability. This may still reflect a sample selection bias. We control for this bias, and the results remain. We thus cannot rule out that U.S. firms have a home court advantage in U.S. federal courts.*

Opinio Juris notes that perhaps the most interesting claim is that judges may be more biased than juries are. As this sort of evidence mounts, I assume it will incrementally bolster the legitimacy of supranational and arbitral fora for dispute resolution.

The full study can be found here.

In Memoriam: Professor Kurt Lipstein

Professor **Kurt Lipstein**, one of the greatest comparative lawyers of the twentieth century, passed away at 11:15pm on Saturday 2nd December 2006. His wife Gwyneth predeceased him in 1998 and he is survived by two daughters, Eve and Diana. Happily he was active to the very end of his life, and attended his last public function in the Law Faculty (20th November) on the occasion of the 70th anniversary of obtaining his PhD. In September 2006, Cambridge University compiled an account of his extraordinary career:

> *Kurt Lipstein was born in Frankfurt am Main, Germany on 19th March 1909. His father was from Königsberg in East Prussia (now Russia) and his mother from Frankfurt. He had an English great-grandfather, and his grandmother had grown up in England. This explained the relative ease with which Kurt eventually settled into England. After his schooling at the Goethe Gymnasium in Frankfurt, Kurt studied law at the University of Grenoble (1927) and Friedrich Wilhelm University in Berlin (1927-31). Here, he rubbed shoulders (metaphorically if not actually) with professors such as Wolff and Rabels, and younger colleagues including von Caemmerer, and Mezger. His classical education in Greek and Latin allowed him later to have clear insights into the inner workings of Roman Law – these days something of a lost art.*
>
> *Once graduated, his practical legal training began in 1931 as Referendar in Königstein and then at the district of Court of Appeal of Frankfurt, but with the election of the National Socialists to power, his career effectively collapsed. In April 1933 employment in the civil service was barred to Jewish professionals, and in 1934 Kurt emigrated to England to escape persecution. He obtained a place at Trinity College to study for his PhD, which was on the subject of suretyship within Roman Law: the beneficium cedendarum actionum. This was successfully defended in 1936 before Martin Wolff's brother-in-law, H. F. Jolowicz, who was then Professor of Roman Law at the University of London.*
>
> *At that point, financial matters reared their head. He was unsuccessful in applying for a scholarship at Trinity, was unwilling to become a burden on the English branch of his extended family. His savior, and his mentor was Harold*

Gutteridge, the Professor of Comparative Law, who, in 1937, began to pay Kurt from his own pocket to give "supervisions" in Roman Law, Public International Law and Constitutional Law.

Soon after the Second World War broke out (1940) Kurt was interned as an enemy alien and sent to camps at Bury St Edmunds and then Liverpool. Here he met an eclectic mix of academics and professionals, many of whom later went on to either high office or academic status (or both). He mentions some of these in the interviews that are archived elsewhere on this site (as a transcript published by the IJLI, and the original audio version). Luckily the university secured his release later in the year, and he returned to Cambridge where he was given membership of Clare College, with which he has been associated ever since. He became a fellow in 1956. In 2002, fellow legal academics at the college (Moore & Turpin, 2002) conducted an interview with Kurt to reminisce on his associations therewith.

The Faculty Board employed Kurt as Faculty Secretary for a small stipend, and in 1944 he married Gwyneth Herford. After the war, in 1946, he was appointed to one of a batch of new lectureships (which included David Daube, Trevor Thomas and R. Y. Jennings), and he remained in this post until 1962, when he was appointed Reader in Conflict of Laws. In 1973 Kurt became Professor of Comparative Law, following in the footsteps of his erstwhile friend and patron Harold Gutteridge, of whom he reminisces affectionately in our interviews. In 1977 the University awarded him his LLD.

Kurt Lipstein formally retired in 1977, but to this day (Michaelmas Term 2006, in his 98th year) he has continued to give supervisions with great enthusiasm and charisma to students at Clare College, and has remained academically active and scholastically productive. He also lectures at the annual Summer School in English Legal Methods offered by the Faculty of Law. His success with the students is grounded in his legal knowledge, but there is no doubt that his charm and sense of humour have much to do with his popularity.

Kurt Lipstein has an unparalleled association with the Squire Law Library, having occupied offices and worked as a scholar in each of its manifestations: Downing Street (1934-37), The Old Schools (1937-1995), and now the glass and concrete titanic West Road site (1995-). This is a unique achievement, and exploring his memories of its personalities and how the library developed over

those 72 years, forms the core of the interviews we conducted with Kurt in 2004. Remember, the Squire Law Library is only four years older than Kurt and it is fascinating to hear how relatively small and parochial the collections appear to have been in those early years.

Kurt has a long publications record, but many of his writings are in Festschriften and similar works that are not readily available in our digitised age: 14 from his total of 118 publications, and readers might find some of his publications difficult to lay their hands on. In the bibliography, we have listed all those for which we can account.

Although his earliest works dealt with Roman Law, Kurt's reputation and later career rest largely on his studies on the conflict of laws within international law (both public and private), and his views (with Gutteridge) have strongly influenced the coverage of the subject in Dicey & Morris's Conflict of Laws (Forsyth 2004). An important development in broadening his horizons on the reception of western law into jurisdictions with different cultures, was his appointment as Directeur des Recherches of the International Association of Legal Science for the period 1954-59. The results of this are apparent in the five publications Kurt produced on the legal regimes in Turkey and India.

During our interviews, it was clear that Kurt was particularly sensible (the word proud would be an unworthy epithet for such a self-effacing man) of the honour accorded him on his invitation to give The Hague lectures in 1972 (and which he published separately in 1976). When he was asked for the highlights of his career at the end of the interviews, he replied; the achievement of an academic career, the title of Queen's Counsel, and his membership of the Institute of International Law.

His academic career has been long and fruitful, and its legacy is bound to be felt for the foreseeable future. As for the others, Kurt was called to the Bar (Middle Temple) in 1950, and in 1993 he was elected to the Institut de Droit International. The Institut then gave him the task of preparing a Resolution on a theme of "Taking foreign private international [law] into consideration". This was a taxing remit: under the heading "Renvoi" it had twice previously come before the Institut for resolution (1896-1900 & 1957-1965), with inconclusive results. Kurt Lipstein tackled it with his usual foresight, and when he reported (in 1998), as he modesty put it, his new "Resolution was accepted with few

modifications" (Lipstein 2004 p. 769). The question of his success, where others had failed, was raised during our interviews (question 73), and his reply is a model of understatement.

His final highlight was achieved when he was made an Honorary Queen's Counsel in 1998. Kurt was an Honorary Fellow of Wolfson College, and still lives in the secluded house in Newnham he built in 1947-8 and shared with Clive Parry, and their respective families.

Finally, it is clear from the last paragraph of his own reminiscences of his time at Cambridge, that Kurt Lipstein feels he owes a debt of gratitude to the institution that gave him the chance to make a new life when the land of his birth was no longer welcoming (Lipstein 2004). This has manifest itself in a lifetime devoted to upholding its values and faithfully following a path of true scholarship.

A bibiography of all of Professor Lipstein's published works can be found here, and you can also look through an archive of photos charting Professor Lipstein's life. A series of interviews with the man himself can be downloaded from here, and you can leave your thoughts and condolences on the comments board on the Cambridge website. Our thoughts are with his family, as I'm sure are all those who have felt the influence of Professor Lipstein's unparalleled scholarship in the field over the last seventy years.

Determinants for Dataflow

Georg Philip Krog (Norwegian Research Center for Computers and Law) has posted a short article on SSRN entitled, "Determinants for Dataflow: Norm and Action – Causation in Law, and Causation from Law to Action". Here's the abstract:

The paper explores succinctly two questions in abbreviated form: First, how may law, elucidated by the rules of international adjudicatory authority, be a

determinant for cross-border circulation of intangible data and communicational behaviour in global computer networks? Second, why are rules on international adjudicatory authority the starting point for such a determination?

The full article is available here.

New Text on Private International Law in Australia

Reid Mortensen (*TC Beirne School of Law, University of Queensland*) has published a new text on **Private International Law in Australia**. Here's the publisher's summary:

Private International Law in Australia is a substantial new text, providing comprehensive coverage by an internationally respected expert author in this area of law. The standard range of topics is covered in suitable detail for LLB students. The book includes important recent developments in private international law. Examination of the decision in Renault v Zhang (2002) and other recent developments will make this the most current, accurate text covering the private international law of tort, a major part of the field for practitioners and students. Summary of contents:

- *Introduction to Private International Law*
- *Jurisdiction and Judgments*
- *Choice of Law*
- *International Family Law*
- *Choice of Obligations Law*
- *Choice of Property Law*

ISBN: 9780409322446. Price: $95.00 (Australian dollars). Available from

LexisNexis Australia.

New Edition of International Civil Litigation Text

Peter Rutledge of the Columbus School of Law, Catholic University of America, and Gary Born of WilmerHale recently announced the release of the fourth edition of their text, **International Civil Litigation in United States Courts**. In previous editions, the book has been lauded by critics as the leading US commentary and casebook on international civil litigation in US courts:

- *"The bible for litigation lawyers*
- *"An excellent work….A felicitous combination of theory and practice."*
- *"The best available approach…."*
- *"The most comprehensive work in the field"*
- *"A remarkable work…No practitioner should be without it…."*

More information can be found here.

Deadline for Submission of Abstracts – Journal of Private International Law Conference

2007

Call for Papers DEADLINE NOTICE

for the Journal of Private International Law Conference 2007

to be held at the **University of Birmingham on 26th -27th June 2007**

The deadline for submission of an abstract of a proposed conference paper is **20th December 2006**, at which time all submitted abstracts will be considered by the editors. Vacancies for speaking at the conference can not be guaranteed after the deadline.

Please see here for details on submitting an abstract.