Cuadernos de Derecho Transnacional vol. 9 (2)

Cuadernos de Derecho Transnacional, vol. 9, nr. 2, has just been released. *Cuaderno*s is a bi-annual electronic law journal specialized in International Private Law, Uniform Law and Private Comparative Law, open to contributions in different languages. It is edited by the Private International Law Department of the University Carlos III, Madrid.

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Book: Marrella, "Manuale di diritto del commercio internazionale"

Prof. *Fabrizio Marrella*, Chair of International Law ("Cà Foscari" University of Venice & LUISS University of Rome) has recently published "Manuale di diritto del commercio internazionale" (CEDAM, 2017). A presentation has been kindly provided by the author (the complete TOC is available on the publisher's website):

> *Following the success of previous publication by the same Author, this book provides the first University textbook of International Business Law in Italian designed to introduce students and practitioners to this fundamental*

field of law. It classifies different sources of law affecting trasnational business operations according to their origin and legal system (National – i.e. Italian, European Union, Intergovernmental and non national – i.e. new lex mercatoria and the Unidroit Principles for international Commercial Contracts, as well as identifies the different actors in the field (companies, States, Intergovernmental Organizations, Non Governmental Organizations).

In such a framework, rules of International Economic Law (from WTO to the new EU Customs Code, from economic treaties to embargos) provides the setting into which the core contract are operationals. Thus, the main perspective of the book is that of Private International Law by which different rules are applied according to their sphere of application. Among the topics discussed, there are the main transnational business contracts (i.e. sales, transport, payment methods, insurance, agency and distribution contracts, intellectual property, trade finance, bank guarantees, foreign direct investments) and the most prominent dispute resolution mechanisms such as Arbitration and ADRs.

The book takes into proper account, inter alia, the Unidroit Principles for International Commercial Contracts 2016; EU Regulation n. 1215/2012 (Regulation Brussels Ia) and the new ICC Arbitration Rules 2017.

Title: F. Marrella, "Manuale di diritto del commercio internazionale", Padua, CEDAM, 2017.

ISBN: 978-88-13-36293-5. Price: EUR 55. Pages: XXXII-800. Available at CEDAM.

Global Forum on Private International Law & 2017 Annual

Meeting of China Society of Private International Law: Cooperation for Common Progress?Evolving Role of Private International Law" held in Wuhan, China

(This Report is provided by Guo Yujun, professor, Wuhan University Law School; Liang Wenwen, associate professor, Wuhan University Law School)

On 22 and 23 September 2017, the "Global Forum on Private International Law & 2017 Annual Meeting of China Society of Private International Law: Cooperation for Common Progress?Evolving Role of Private International Law" was held in Wuhan, China, under the auspices of the Ministry of Foreign Affairs and China Society of Private International Law. The event was held on the 30th anniversary of China's accession to the Hague Conference on Private International Law (HCCH) and the 30th anniversary of China Society of Private International Law. On the opening ceremony, Mr ZHANG Mingqi, Vice President of China Law Society; LIU Guixiang, Standing Member of the Adjudication Committee of the Supreme People's Court of the People's Republic of China; HAN Jin, President of University Council of Wuhan University; Christophe Bernasconi, Secretary-General of the HCCH; HUANG Jin, President of China Society of Private International Law, Professor and President of China University of Political Science and Law, and XU Hong, Director-General, Department of Treaty and Law, Ministry of Foreign Affairs of the People's Republic of China, gave speeches. The event gathered over 400 officials and academics from 18 countries and regions.

Mr ZHANG Mingqi reviewed the work of China Society of Private International Law in facilitating the adoption of China's first private international law act and in international exchange, and calls for its further contribution to providing the legal safeguards for the Belt and Road Initiative. Mr Liu Guixiang considered the Belt and Road Initiative an opportunity for Chinese private international law and

reviewed the work of the Supreme People's Court in providing the legal safeguards for the Belt and Road Initiative. Mr Han Jin welcomed the participants to Wuhan University, a leading institution in private international law. Mr Christophe Bernasconi recognized that the HCCH conventions can provide the legal safeguards for the Belt and Road Initiative, and China's contribution to the work of the HCCH. Mr Huang Jin reviewed the achievements of China Society of Private International Law in advising the legislature and the judiciary, and education, and called for building a community of private international law. Mr Xu Hong called for the common progress through private international law and legal safeguards of the Belt and Road Initiative.

On Title I: Common Progress through Private International Law over 30 Years, speakers and topics are as follows: GUO Xiaomei, Deputy Director-General, Department of Treaty and Law, Ministry of Foreign Affairs of the People's Republic of China, "Retrospect and Prospect on the 30th Anniversary of China's Membership of the Hague Conference on Private International Law"; Symeon C. Symeonides, Professor, Willamette University College of Law, "Private International Law Codifications: The Last 50 Years"; Hans Van Loon, Former Secretary-General of the HCCH, "Common Progress of Private International Law over the Past 30 Years – China, the Hague Conference, and the World"; LIU Renshan, Professor, Zhongnan University of Economics and Law, "The HCCH and China: the History, Practical Choice and the Future".

On Title II: The Belt and Road Initiative and International Legal Cooperation, speakers and topics are as follows: Christophe Bernasconi, Secretary-General of the HCCH, "The Belt & Road Initiative and the HCCH"; Mathijs H. ten Wolde, Professor, Department of Private International Law, University of Groningen, "Recognition and Enforcement of Chinese Money Judgments in the Netherland and the EU"; Anselmo Reyes, Professor of Legal Practice at the University of Hong Kong, "Facilitating the Resolution of Cross-Border Commercial Disputes within the Belt and Road Initiative"; Tang Zheng Sophia , Professor, Newcastle University Law School, "The Belt and Road and Cross-Border Judicial Cooperation"; HUO Zhengxin, Professor of Law, Faculty of International Law of the China University of Political Science and Law, "Proof of Foreign Law against the Background of the Belt and Road Initiative".

On Title III: A Global Look at Recent Developments of Private International Law, speakers and topics are as follows: Michael Dennis, Attorney Adviser, Executive

Director of the Department of State Advisory Committee on Private International Law, U.S. Department of State, “Improving Business Environment, Filling the Gaps, Missing Economic Legal Infrastructure in APEC Economies”; Kyung Han Sohn, Professor, Emeritus President, Korea Private International Law Association, Sungkyunkwan University School of Law, “Application of Lex Mercatoria in Asia: Focusing on Developments in Korea”; Tiong Min Yeo, Professor, School of Law Singapore Management University, “Party Autonomy in the Choice of Law for Torts in Asia” ; Yuko Nishitani, Professor, Kyoto University Graduate School of Law, “Enforcement of Choice of Court Agreements”; Elizabeth Aguiling-Pangalangan, Professor, College of Law, University of the Philippines, “The Hague Abduction Convention and Cross Border Family Relations”; CHEN Weizuo, Professor of Law, Tsinghua University School of Law, “The Asian Principles of Private International Law: Objectives, Contents, Structure and Selected Topics on Choice of Law”; Mary Keyes, Professor, Griffith Law School, “Developing Australian Private International Law: the Hague Choice of Court Agreements Convention and the Hague Principles of Choice of Law for International Commercial Contracts” ; Choong Yeow-Choy, Professor, Faculty of Law University of Malaya, “Harmonization of Transnational Dispute Resolution Mechanisms and the Recognition and Enforcement of Decisions in the ASEAN Region”; José Antonio Moreno Rodríguez, Lawyer and Professor, “The Hague Principles and the New Paraguayan Law on International Contracts: Potential Influence on Legal Reform in the Americas and Abroad”; Frank Poon, Representative of the Asia Pacific Regional Office (HCCH), “Recent Development of Private International Law” ; GUO Yujun, Vice President and Secretary-General of China Society of Private International Law, Professor, Wuhan University, “Changing the Law on Recognition and Enforcement of Foreign Judgments in China”.

On Title IV: The Hague Judgments Project, speakers and topics are as follows: Andreas Stein, Head of Unit, DG Justice and Consumers, European Commission, “The Hague Judgments Project: an EU Perspective”; Ronald A. Brand, Professor, Director, Center for International Legal Education, University of Pittsburgh School of Law, “Determining Qualification for the Global Circulation of a Judgment Under a Hague Judgments Convention”; Geert van Calster, Professor, University of Leuven, “The Hague Judgments Project: A powerful Potion or a Cauldron Full of Jurisdictional Spells?”; Richard Garnett, Professor, Law School of University of Melbourne, “The Hague Judgments Project and Increasing Interaction between Australia and China”; Alex Mills, Professor, UCL University

Law School, “The Hague Judgments Project: Back to the Future”; Jan von Hein, Professor, Director, Director of the Institute for Comparative and Private International Law, University of Freiburg, “The Guarantee of a Fair Trial as an Obstacle to the Recognition and Enforcement of Judgments: Comparative Perspectives”; Maria Blanca Noodt Taquela, Professor, Universidad de Buenos Aires, “Relationship between the Hague Judgment Project and Other Instruments: The Argentina-China Treaty on Judicial Cooperation on Civil and Commercial Matters Adopted in 2001”; Knut Benjamin Pissler, M.A, Senior Research Fellow, Max Planck Institute for Comparative and International Private Law, “Recognition and Enforcement of Chinese Court Decisions in Germany: Problems and Perspectives”; SUK Kwang Hyun, Professor, Vice President, KOPILA, Seoul National University, “Several Issues of the Hague Choice of Court Convention”; HE Qisheng, Professor, Wuhan University, “Dilemma and Its Way out in Judgments Reciprocity: From Sino-Japan Model to Sino-Singapore Model”.

Chinese scholars gave presentations in Chinese on four titles: Doctrines and Practices of Chinese Private International Law; the Belt and Road Initiative and International Legal Cooperation; the Belt and Road and Innovations in Chinese Arbitration; China and the Hague Choice of Court Convention.

The Closing ceremony was chaired by Ms GUO Yujun. Mr Frank Poon, Representative of HCCH Asia Office, made a speech on behalf of Christophe Bernasconi, Secretary General of the HCCH, appreciating the involvement of China in the HCCH and the potential of the HCCH to the Belt and Road Initiative. Mr XIAO Yongping, Professor, Director of Wuhan University Institute of International Law, Standing Vice President of China Society of Private International Law, made the closing speech, summarizing the discussions and making three points: first, the Asian regional cooperation needs a set of effective dispute settlement mechanisms; secondly, the current international dispute settlement mechanism is dominated by western developed economies. It is the time for Asian countries to establish a dispute resolution body with regional characteristics; thirdly, to construct a more equitable and reasonable regional dispute resolution body should be the ideal choice for all Asian countries to promote regional cooperation. Professor Huo Zhengxin read the Wuhan Declaration, reviewing the development of private international law and the involvement of China in the work of the HCCH over the past thirty years and the current challenges to private international law, and calling for joint contributions

to the prosperity of global private international law of all participants.

Second Issue of 2017's Journal of Private International Law

The second issue of 2017's *Journal of Private International Law* has been published.

Just how free is a free choice of law in contract in the EU? by *Peter Mankowski*

> *Free choice of law appears to be the pivot and the unchallenged champion of the private international law of contracts. Yet to stop at this would be a fallacy and would disregard the challenges it has to face. Those challenges come from different quarters. In B2C contracts in the EU not only the more favourable law principles as enshrined in Article 6(2) of the Rome I Regulation must be observed, but also any requirements which the Unfair Contract Terms Directive imposes. Transparency in particular ranks high. In Verein für Konsumenteninformation v Amazon the Court of Justice of the European Union has imposed duties on businesses and professionals to inform their consumer customers about at least the existence and the basic structure of the more favourable law principle. This landmark decision might not stand on ground as firm as it implies at first sight. Its fundament might be shaken by inconsistency. But practice has to comply with it and has to observe its consequences. On a more abstract level, it raises ample necessity to reflect about the modern-day structure of "free" choice of law. In this context, it is argued that the system established for parties' choice of law in the Rome I Regulation does not allow for a content review of choice of law agreements.*

Constitutionalizing Canadian private international law – 25 years since *Morguard* by *Joost Blom*

> *Because of its structuring function, private international law tends to be given a*

status distinct from the ordinary rules of domestic law. In a federal system, private international law of necessity implicates some aspects of the constitution. In a series of cases beginning in 1990 the Supreme Court of Canada has engaged in a striking reorientation of Canadian private international law, premised on a newly articulated relationship between private international law and the Canadian constitutional system. This constitutional dimension has been coupled with an enhanced notion of comity. The new dynamic has meant that changes in private international law that were initially prompted by constitutional considerations have gone further than the constitutional doctrines alone would demand. This paper traces these developments and uses them to show the challenges that the Supreme Court of Canada has faced since 1990 in constructing a relationship between Canada's constitutional arrangements and its private international law. The court has fashioned the constitutional doctrines as drivers of Canadian private international law but its own recent jurisprudence shows difficulties in managing that relationship. The piece concludes with lessons to be learned from the experience of the last 25 years.

Freedom of establishment, conflict of laws and the transfer of a company's registered office: towards full cross-border corporate mobility in the internal market? by *Johan Meeusen*

Cross-border corporate mobility in the internal market has developed in particular through the interpretation by the Court of Justice of the European Union of the Treaty provisions on freedom of establishment. Certain issues at the crossroads of conflict of laws and European Union (EU) law are still the subject of debate. One of these is whether freedom of establishment includes a right to solely transfer a company's registered office between Member States. As such transformation results in a change of the company's lex societatis, it is intrinsically linked to the debate on regulatory competition in the EU internal market, freedom of choice and the proper balancing of the public and private interests involved. The author defends a nuanced position, referring to the true meaning of "establishment" in the internal market, the policy of "safe" regulatory competition and the equivalence of the Member States' conflict of laws rules.

The recast of the Insolvency Regulation: a third country perspective by *Nicolò Nisi*

> *During the recasting process of the EU Insolvency Regulation, issues relating to the relationship between the Regulation and the outer world were not debated. Indeed, the new Regulation (EU) 2015/848 maintains its territorial scope of application by making the application of the Regulation subject to the location of the centre of main interests within the territory of a Member State. This article tries to highlight the drawbacks of such geographical limitation concerning different aspects of the Regulation: in particular, jurisdiction, groups of companies, recognition of insolvency proceedings, cooperation and communication among courts and insolvency practitioners. Considering various possibilities to establish a truly universal regime, the article concludes that, in the light of the objective of an efficient administration of insolvency proceedings, the preferred approach is to extend the scope of application of the Regulation unilaterally, thereby including insolvencies significantly linked with third States.*

A new frontier for Brussels I – private law remedies for breach of the Regulation? by *Ian Bergson*

> *The English courts have held that the Brussels I Regulation confers private law rights, such that an employee may obtain an anti-suit injunction on the basis of their "statutory right" to be sued in England under the employment provisions of the Regulation. This article examines the correctness of this proposition and argues that the Regulation does not confer rights or impose obligations on private individuals that they may enforce against one another. The article goes on to consider the implications of the English decisions and their remedial consequences, including the possibility of seeking an award of damages for breach of the Regulation.*

Exclusive choice of court agreements: some issues on the Hague Convention on choice of court agreements and its relationship with the Brussels I recast especially anti-suit injunctions, concurrent proceedings and the implications of BREXIT by *Mukarrum Ahmed and Paul Beaumont*

> *This article contends that the system of "qualified" or "partial" mutual trust in*

the Hague Choice of Court Agreements Convention ("Hague Convention") may permit anti-suit injunctions, actions for damages for breach of exclusive jurisdiction agreements and anti-enforcement injunctions where such remedies further the objective of the Convention. However, intra-EU Hague Convention cases may arguably not permit remedies for breach of exclusive jurisdiction agreements as they may infringe the principles of mutual trust and effectiveness of EU law (effet utile) underlying the Brussels I Recast Regulation. The relationship between Article 31(2) of the Brussels I Recast Regulation and Articles 5 and 6 of the Hague Convention is mapped in this article. It will be argued that the Hartley–Dogauchi Report's interpretative approach has much to commend it as it follows the path of least resistance by narrowly construing the right to sue in a non-chosen forum as an exception rather than the norm. This exceptional nature of the right to sue in the non-chosen forum under the Hague Convention can be effectively reconciled with the Brussels I Recast Regulation's reverse lis pendens rule under Article 31(2). This will usually result in the stay of the proceedings in the non-chosen court as soon as the chosen court is seised. The impact of Brexit on this area of the law is uncertain but it has been argued that the likely outcome post-Brexit is that the regime applicable between the UK and the EU (apart from Denmark) in relation to exclusive jurisdiction agreements within the scope of the Hague Convention will be the Hague Convention.

The Asian Principles of Private International Law: objectives, contents, structure and selected topics on choice of law by *Weizuo Chen and Gerald Goldstein*

The Asian Principles of Private International Law (APPIL) finalized in 2017 is a project undertaken by private international law scholars of 10 East and Southeast Asian jurisdictions to harmonize the region's private international law rules or principles. Containing principles on choice of law, international jurisdiction, the recognition and enforcement of foreign judgements, and the judicial support of international commercial arbitration, they are the first harmonization effort in Asia based on comparative analyses of the private international law of the 10 participating APPIL-Jurisdictions. Being the first "voice of Asia" in private international law, they may serve as a model for national and regional instruments and thus may be used by the private international law legislators of Asian jurisdictions to interpret, supplement and enact their own private international law statutes; and may even be applied by

state courts and arbitral tribunals, albeit not as legally binding instrument but as "soft law". They will mainly function as a private international law model law.

The "statutist trap" and subject-matter jurisdiction by *Maria Hook*

Common law courts frequently rely on statutory interpretation to determine the cross-border effect of legislation. When faced with a statutory claim that has foreign elements, courts seek to determine the territorial scope of the statute as a matter of Parliamentary intent, even if it is clear that Parliament did not give any thought to the matter. In an article published in this journal in 2012, Christopher Bisping argued that "statutism" – the idea that statutory interpretation should determine whether a statute applies to foreign facts – is inconsistent with established principles of choice of law. The purpose of this paper is to demonstrate that, in addition to cutting across principles of choice of law, a statutist approach has the potential to obscure fundamental questions of subject-matter jurisdiction. In particular, statutism can lead to conflation of subject-matter jurisdiction and choice of law, and it impedes the development of coherent principles of subject-matter jurisdiction.

State of play of cross-border surrogacy arrangements – is there a case for regulatory intervention by the EU? by *Chris Thomale*

Mother surrogacy in and of itself, as a procreative technique, poses a series of social, ethical and legal problems, which have been receiving widespread attention. Less prominent but equally important is the implementation of national surrogacy policies in private international law. The article isolates the key ethical challenges connected with surrogacy. It then moves on to show how, in private international law, the public policy exception works as a vehicle to shield national prohibitive policies against international system shopping and how it continues to do so precisely in the best interest of the child. Rather than recognizing foreign surrogacy arrangements, national legislators with intellectual support by an EU model law, should focus on adoption reform in order to re-channel intended parents' demand for children.

General Principles of Procedural Law and Procedural Jus Cogens

Professor S.I. Strong has just posted a new paper on international procedural law. From the abstract:

> *General principles of law have long been central to the practice and scholarship of both public and private international law. However, the vast majority of commentary focuses on substantive rather than procedural concerns. This Article reverses that trend through a unique and innovative analysis that provides judges, practitioners and academics from around the world with a new perspective on international procedural law.*
>
> *The Article begins by considering how general principles of procedural law (international due process) are developed under both contemporary and classic models and evaluates the propriety of relying on materials generated from international arbitration when seeking to identify the nature, scope and content of general principles of procedural law. The analysis adopts both a forward-looking, jurisprudential perspective as well as a backward-looking, content-based one and compares sources and standards generated by international arbitration to those derived from other fields, including transnational litigation, international human rights and the rule of law.*
>
> *The Article then tackles the novel question of whether general principles of procedural law can be used to develop a procedural form of jus cogens (peremptory norms). Although commentators have hinted at the possible existence of a procedural aspect of jus cogens, no one has yet focused on that precise issue. However, recent events, including those at the International Court of Justice and in various domestic settings, have demonstrated the vital importance of this inquiry.*
>
> *The Article concludes by considering future developments in international procedural law and identifying the various ways that both international and domestic courts can rely on and apply the principles discussed herein. In so*

doing, this analysis provides significant practical and theoretical assistance to judges, academics and practitioners in the United States and abroad and offers ground-breaking insights into the nature of international procedural rights.

Out now: Issue 3 of RabelsZ 81 (2017)

The new issue of "Rabels Zeitschrift für ausländisches und internationales Privatrecht – The Rabel Journal of Comparative and International Private Law" (RabelsZ) has just been released. It contains the following articles:

Holger Fleischer, *Spezialisierte Gerichte: Eine Einführung* (Specialized Courts: An Introduction)

Specialized courts are on the rise. This introduction takes a look at different patterns and types of judical specialization both nationally and internationally. It also addresses potential advantages and disadvantages of a specialized judiciary.

Anatol Dutta, *Gerichtliche Spezialisierung für Familiensachen* (Specialized Courts for Family Matters)

In many jurisdictions, matters of family law are dealt with by specialized family courts. After outlining the different approaches from a comparative perspective (section I.), the article argues that a specialization in the area of family law is desirable. Family matters are not only self-contained from a substantive as well as procedural law perspective and clearly distinguishable from civil and commercial matters, but they are also characterised by a considerable degree of complexity which justifies judicial specialization (section II.). Furthermore, the dangers connected with specialized courts do not materialise in this area of law (section III.). However, a sensible specialization in family matters requires certain conditions as to the organisational structure and staffing of the

competent courts (sections IV.1. and IV.3.). These conditions depend upon the role substantive family law assigns to courts. The paper argues that modern family law has abandoned its therapeutic attitude – family law matters are no longer regarded as a potential indication of pathologic families – therefore necessitating a legally oriented and conflict-solving judge rather than a court with a "therapeutic atmosphere". Moreover, the jurisdiction of family courts has to be defined carefully – for example, regarding the question of whether matters of juvenile delinquency and succession matters are to be handled by family courts (section IV.2.). Finally, the paper alludes to a tendency to remove family matters from courts by shifting them to extra-judicial institutions or even to the parties and their party autonomy (section V.).

Matteo Fornaser, *Streitbeilegung im Arbeitsrecht: Eine rechtsvergleichende Skizze* (Dispute Settlement in Employment Matters: A Comparative Overview)

Labour disputes are resolved through a broad array of resolution mechanisms. Interests disputes which arise when collective bargaining fails to reach an agreement on the terms of employment are generally settled through extra-judicial conciliation and arbitration procedures. State courts have no role to play in this context since interests disputes are not adjudicated on the basis of legal norms. Rather, such disputes are settled by reaching a compromise which strikes a fair balance between the competing interests of the parties involved. Rights disputes, on the other hand, are generally resolved through specialized state courts and, though more rarely, private arbitration (e.g. in the U.S.). The emergence of these mechanisms has resulted from a general dissatisfaction with the performance of ordinary state courts in resolving labour disputes: employers have taken the view that ordinary state courts are not sufficiently acquainted with the customs and usages of employment, while employees have feared that the courts are biased in favour of employers. The creation of special courts, including lay judges appointed by employers and employees, has sought to tackle these problems and to meet the needs of labour and management. One important aim of labour courts is to facilitate access to justice for employees with a view to ensuring that litigants are on an equal footing. Thus, in most jurisdictions the labour court procedure is designed to reduce litigation costs, e.g. by expediting proceedings and by limiting the right of an employer to recover attorney's fees from the employee-plaintiff in the event the claim is dismissed. Another way to ensure that proceedings before labour courts are

speedy and inexpensive is to provide assistance to the parties so as to facilitate their reaching an amicable settlement. With regard to substantive law, labour courts play a dual role. First, they facilitate the enforcement of employee rights and, thus, complement substantive employee protection rules. Second, the emergence of specialized courts for the settlement of employment matters has had a deep impact on the development of labour law as a distinct field of law both in scholarship and practice.

Wolfgang Hau, *Zivilprozesse mit geringem Streitwert: small claims courts, small claims tracks, small claims procedures* (Small Claims: Courts, Tracks, Procedures)

In principle, constitutional standards require courts to deal with actions irrespective of the amount in controversy. But this does not necessarily mean that it is appropriate to let ordinary courts apply the standard rules of civil procedure in small claims cases. Rather, it is commonly understood that petty litigation raises particular problems and deserves special solutions. The question of how to design such organizational and/or procedural rules seems to gain momentum perpetually and across all jurisdictions. A comparative and historical analysis reveals an amazing variety of approaches and solutions, i.e. small claims courts, small claims tracks and small claims procedures. When providing special rules for small claims disputes, law-makers normally purport to facilitate access to justice, but more often than not try to cut costs. The latter aim, however, is not to be disregarded since affordability of justice is of utmost importance; moreover, there are numerous examples illustrating that procedural rules which emerged by necessity rather than by design may stand the test of time. Yet one should accept that both goals – removing barriers to justice and relieving the burden on the justice system ? are unlikely to be simultaneously achieved: you cannot have your cake and eat it. Both aims can be reached only if one is willing to cut down on the quality in the administration of justice (in particular as regards factfinding, the legal assessment of the case and the respondent's rights to defend). But in a system governed by the rule of law, this is no less acceptable than the converse, i.e. restricting access to justice as a means of cost-efficiently providing a high-quality system to a reduced number of lawsuits. High standards of accessible justice come at a price: a reasonably funded and elaborated judicial infrastructure available even for small claims.

Holger Fleischer, **Sebastian Bong** and **Sofie Cools**, *Spezialisierte Spruchkörper im Gesellschaftsrecht* (Specialized Courts in Company Law)

Specialized courts are on the advance in many locations. This development is on display also in commercial law and company law. The present article cannot address the topic in its entirety and focuses instead on those judicial bodies that adjudicate internal corporate disputes. Three historic and comparative examples illustrate the particular types of institutions that have been formed. At the outset, the venerable German Divisions for Commercial Matters (Kammern für Handelssachen) are analysed, followed by likely the two best-known special courts for company law matters: the Delaware Court of Chancery and the Companies and Business Court (Ondernemingskamer) of the Amsterdam Court of Appeals. These three case studies are followed by a number of comparative observations on specialized judicial bodies in company law.

Stefan Reuter, *Das Rechtsverhältnis im Internationalen Privatrecht bei Savigny* (Savigny and Legal Relationships in Private International Law)

In the legal system conceptualised by Savigny, legal relationships serve as the starting point. Savigny defines a legal relationship as a relation between two people or between one person and an object as determined by legal rules. Accordingly, a legal relationship always has two elements: a material element (the specific facts in question) and a formal element (the legal rules). For example, where the facts of a concrete case involving two people match the conditions of the contract law rules, a legal relation exists between these two people. As compared to a legal relationship, a legal institution consists only of formal elements, namely legal rules, having the same subject matter. For example, all legal provisions regarding marriage form the legal institution of marriage. Although Savigny uses legal relationships as the starting point in both substantive law as well as in private international law, he creates different categories of legal relationships for each of them. Whereas in substantive law Savigny distinguishes between four categories (law of property, law of obligations, family law and law of succession) he adds a fifth category for the sake of private international law: legal capacity. In substantive law, Savigny defines legal capacity not as a legal relationship but only as a pre-condition of a legal relationship. This seems logical given that legal capacity cannot be

described as a relation either between two people or between one person and an object, with such a relation being an essential condition according to Savigny's definition of a legal relationship. Nevertheless, in private international law it is generally accepted that legal capacity needs its own, separate conflict rule. Legal capacity was therefore one of the subjects of private international law, and for this reason Savigny re-categorised it as a legal relationship for the purpose of conflict of laws. Ultimately, no advantages follow from having legal relationships serve as the starting point in private international law – as opposed to legal institutions or legal rules. Legal relationships do not result in a greater number of connections nor in a de-politicization of private international law. Rather, difficulties result when attempting to classify legal relations unknown to the lex fori.

Conference Report: INSOLVENCY PROCEEDINGS WITHIN THE EU: LATEST DEVELOPMENTS, ERA, 8 to 9 June 2017

by Lukas Schmidt, Research Fellow at the Center for Transnational Commercial Dispute Resolution (TCDR) of the EBS Law School, Wiesbaden, Germany.

On 8 and 9 June 2017 the Academy of European Law (ERA), in co-operation with the Academic Forum of INSOL Europe hosted a conference in Trier on the latest

developments of insolvency proceedings within the EU. The conference aimed not only at giving an in-depth analysis of the Recast EIR (EU Regulation No 2015/848), but also at discussing post-Brexit implications for insolvency and restructuring as well as examining the new Commission proposal for a Directive on insolvency, restructuring and second chance, published late 2016.

After opening and welcoming remarks by Dr. Angelika Fuchs (Head of Section – Private Law, ERA, Trier) and Prof. Michael Veder (Adviser at RESOR, Amsterdam; Professor of Insolvency Law at Radbound University Nijmegen; Chair of INSOL Europe Academic Forum), the first session of the conference dealt with recent CJEU case law on cross-border insolvency proceedings. Stefania Bariatti (Professor at the University of Milan; Of Counsel, Chiometi Studio Legale, Milan) presented the most important cases on the EIR decided in 2016 by the CJEU, as well as some cases still pending. As it was shown by Prof. Bariatti the CJEU decided on various open questions relating to Art. 3 EIR and the COMI concept in the case of *Leonmobili* (case C-353/15) in 2016. Another question regarding the interpretation of Art. 3 EIR is still pending before the CJEU in the case of *Tünkers* (C-641/16). The treatment of rights in rem, and the interpretation of Art. 5 EIR, was object of *SCI Senior Home and Private Equity Insurance Group "SIA"* (C-156/15). After the CJEU decided the first two cases dealing with Art. 13 EIR and detrimental acts in 2015 – *Lutz* (C-557/13) and *Nike* (C-310/14) – an Italian case (*Vynils Italia* SpA, C-54/16) concerning Art. 13 is still pending before the CJEU. Other cross-border insolvency issues that went to the CJEU in 2016 concerned the Dutch prepack proceeding (*Federatie Netherlandse Vakvereiniging,* C-126/16) and the interplay between the Regulation No 800/2008 and the EIR (*Nerea SpA/Regione Marche*, C-245/16).

Subsequently, Michal Barlowski (Senior Counsel, Wardynsky & Partners, Warsaw) gave an introduction about the new EIR focusing on its scope of application especially regarding pre-insolvency and hybrid proceedings. Mr. Barlowski identified the following six changes in the Recast Regulation as most important: 1.) the revisited and expanded COMI concept, 2.) the expansion of the scope of applicability, 3.) the synchronization (coordination) of main and secondary proceedings, 4.) the introduction of group coordination proceedings, 5.) the extension of authority and duties of IP's and 6.) the ease of access to insolvency registers. Analyzing the positive and negative prerequisites of the scope of applicability as laid down in Art. 1 EIR Recast, Barlowski emphasized

that it might be problematic to include certain pre-insolvency or hybrid proceedings under the scope of the EIR Recast. This is due to the fact, that Art. 1 EIR Recast requires "public" proceedings, although especially pre-insolvency proceedings more commonly seek a solution of the debtors situation rather in "private". Furthermore, Barlowski pointed out that the widened scope of application, the synchronisation of main and secondary proceedings as well as of proceedings within a group, the rising role of IPs and the higher availability of legal instruments lead to greater complexity of processes and thereby create new opportunities as well as challenges. Barlowski concluded with stating that the new EIR is characterized by "complexity vs. simplicity".

Gabriel Moss QC (Barrister, 3-4 South Square, Gray's Inn, London; Visiting Professor at Oxford University) dealt with the definition of COMI and the "Head Office Functions" test, as well as COMI shifts. There are now express provisions confirming the previous case law such as *Interedil* (Case C-396/09), although the concept of COMI remains the same under the Recast Regulation. Therefore, the "Head Office Function" test is still valid for determining the COMI. In regards to COMI shifting the EIR Recast now contains several new provisions dealing with fraudulent or abusive moves of COMI or with "bad" forum shopping. Whereas "good" forum shopping, usually done by a legal person, tends to benefit the general body of creditors, "bad" forum shopping, usually done by a natural person, tends to escape the creditors or generally disadvantages them. Especially Art. 3 (1) EIR Recast now states that the registered office presumption will be disapplied, if the debtor's registered office is moved to another Member State within three months prior to the request for opening of proceedings, respectively six months if the debtor is an individual and moves his or her habitual residence. Furthermore, Art. 4 EIR Recast now requires a court considering a request to open insolvency proceedings to examine whether it has jurisdiction under Art. 3 EIR Recast whereas Art. 5 EIR Recast gives any creditor the right to challenge the opening of main proceedings on the grounds of international jurisdiction. However, the new presumptions designed to prevent "bad" forum shopping may not be effective as cases are usually decided based on facts not presumptions. Moss concludes that both, the court's duty to check jurisdiction and the ability of creditors to challenge an opening of a main proceeding, are powerful tools against fraudulent COMI shifts. In Moss' view the codification of the case law relating to COMI is welcome and useful, especially in jurisdiction, that rely rather on the relevant statute than case law.

Reinhard Dammann (Avocat à la Cour, Partner, Clifford Chance Europe LLP, Paris) analysed the coordination of main and secondary proceedings as well as tools to prevent secondary proceedings. Dammann started out with assessing that secondary proceedings are not weakened in the Regulation Recast, but rather strengthened. On the one hand, the Member States understand secondary proceedings as a defence against the universal main proceedings, on the other hand secondary proceedings might prove useful in ensuring an effective administration, especially in cases of a complicated estate or an intended eradication of the protection of rights in rem through Art. 8 EIR Recast. But, the EIR Recast includes two new tools to prevent secondary proceedings: the giving of an undertaking pursuant to Art. 36 EIR Recast and a stay of the opening of secondary proceedings pursuant to Art. 38 III EIR Recast. However, Dammann heavily criticized both tools. Although the Regulation of the undertaking in Art. 36 EIR recast may be used to facilitate a sale of the assets in a combined set allowing for going concern of the insolvent company, it shows several inconsistencies and flaws: it might be difficult to identify the "known" local creditors in terms of Art. 36 EIR Recast; Art. 36 EIR Recast is discriminating the non-local creditors; pursuant to Art. 36 (5) EIR Recast the rules on majority and voting that apply to the adoption of restructuring plans shall also apply to the approval of the undertaking, whereas the matter of subject is not a restructuring, but an asset sale, and lastly the relationship between the undertaking and Art. 8 EIR Recast is unclear. Therefore, if an asset sale is intended in the main proceeding, it should be more effective to execute an asset sale in the main proceeding and subsequently open secondary proceedings and distribute the proceeds in the single proceedings. If a debt restructuring is intended in the main proceeding, the opening of a secondary proceeding, as well as an undertaking would frustrate the debt restructuring. In such cases a stay of the opening of secondary proceedings pursuant to Art. 38 (3) EIR Recast might prove helpful. However, the scope of applicability of Art. 38 (3) EIR Recast is unclear as it is specifically designed after the Spanish pre-insolvency proceeding pursuant to Art. 5bis Ley Concursal.

Bob Wessels (Independent Legal Counsel, Adviser and Arbitrator; Professor emeritus at University of Leiden) continued with practical concerns surrounding the publication of insolvency proceedings. Whereas the publicity of proceedings and the lodging of claims was one of the major shortcomings of the EIR, the Regulation Recast now requires the Member States to publish all relevant court decisions in cross-border insolvency cases in a publicly accessible electronic

register and provides for the interconnection of national insolvency registers, as well as introduces standard forms for the lodging of claims. Wessels then gave a detailed analysis of Art. 24 to 27 concerning the establishment of insolvency registers and the interconnection between insolvency registers. Both Art. 24 (1) EIR Recast (establishment of insolvency registers) as well as Art. 25 (1) EIR Recast (interconnection between insolvency registers) will not apply from 26 June 2017, but from June 2018 and 26 June 2019. The wording of recital 76 of the EIR Recast, as well as the requirements of Art. 24 (2) EIR Recast seem to indicate that only proceedings found in Annex A will be taken into the register that have extra-territorial effect. Whereas Art. 24 (2) EIR Recast provides for mandatory information, Member states are not precluded to include additional information (see Art. 24 (3) EIR Recast). The information that has to be taken into the registers differs depending on whether the debtor is an individual exercising an independent business or a professional activity, a legal person, or a consumer (Art. 24 (4) EIR Recast intends to protect the privacy of consumers). Pursuant to Art. 24 (5) EIR Recast, the publication of information in the registers has only the legal effects laid down in Art. 55 (6) EIR Recast and in national law. However, it is unclear whether this applies only to the mandatory information or to optional information as well. After all the access to EU-wide insolvency registers through the European e-Justice Portal should improve the efficiency and effectiveness of cross-border insolvency proceedings with benefits such as a quicker, real-time access to information crucial for business decisions, the free availability of key insolvency information and clear explanations on the insolvency terminology and the systems of the different Member States facilitating a better understanding of the content. As a last point Wessels presented the requirements for lodging claims as laid down in Art. 53 to 55 EIR Recast.

After lunch Alexander Bornemann (Head of Division, Federal Ministry of Justice and Consumer Protection, Berlin) scrutinized the treatment of corporate groups under the EIR Recast. The Recast's approach to corporate groups rests on two pillars. The first pillar may be described as the centralization of venue, in cases where there is a common COMI or an undertaking pursuant to Art. 36 EIR Recast is given. The centralization of venue avoids costs, delays and frictions associated with coordination of proceedings across borders. The second pillar may be described as the coordination of decentralized main proceedings, either through "centralized" coordination with coordination proceedings pursuant to Art. 61 to 77, or through "decentralized" coordination with cooperation and coordination

between courts and IPs pursuant to Art. 56 to 59 or participation and invention rights pursuant to Art. 60. However, the EIR Recast still lacks the next logical step in the treatment of corporate groups, namely the consolidation of proceedings. The new group coordination proceeding is inspired by the German *Koordinationsverfahren* as laid down in §§ 269d et seqq. of the German Insolvency Code and provides a procedural framework for the centralization of some of the functions of coordination such as the development of a plan, recommendations and mediation. However, the coordinated proceedings remain autonomous and thus combines centralized coordination with decentralized implementation. Ultimately the new coordination proceeding provokes significant difficulties in the practical administration of the proceeding and the complex system of procedural requirements and safeguards may offset the aspired advantages. The new regime should therefore be viewed as a field trial and a first modest step towards a "real" framework for groups. New perspectives may be opened for private autonomous (synthetic) replications by way of agreements and protocols as laid down in Art. 56 (2) EIR Recast. Other further developments will be based upon the experiences made or not made under the EIR Recast (see evaluation clause Art. 90 (2) EIR Recast).

During the next panel Nicolaes Tollenaar (RESOR, Amsterdam) presented a case study dealing with the restructuring of a group of companies based on real facts. The concerned group consisted of a holding company incorporated in the Netherlands, where it has its COMI as well, and two subsidiaries one based in Delaware (USA) and one based in Germany. The financial debt is mainly located at the level of the holding company, but the subsidiaries are guarantors of such debt and some obligations are secured by pledges over the shares or participations in those subsidiaries. Due to financial difficulties suffered by the group, the Dutch Company obtained a court moratorium in the Netherlands in order to be able to conduct negotiations with its creditors. However, the Dutch Company has a significant portion of its assets outside the Netherlands. The conference audience then had to discuss the cross-border effects of the Dutch moratorium. The case was a perfect example of how easily cross-border insolvency issues might get very complicated, but with the help of experts such as Michael Veder, Gabriel Moss, Jenny Clift, Bob Wessels and many other present, probably no case is too complicated. However, the lesson to be learned was that the scope of applicability of the EIR Recast regarding pre-insolvency or hybrid proceedings might turn out to be problematic, due to its requirements as laid

down in Art. 1 EIR Recast. Additionally, the case showed that the protection of rights in rem through Art. 8 EIR Recast and the new provisions in Art. 2 EIR Recast about the location of assets might lead to difficulties in cases where assets are situated in another Member State and the debtor does not possess an establishment in this Member State and therefore the opening of a secondary proceeding is not possible.

Jenny Clift (Senior Legal Officer, International Trade Law Division, UNCITRAL Secretariat, Vienna) reported on harmonisation trends on security rights and insolvency law at an international level. Topics considered for harmonization efforts, include both current and future work and national law reform efforts on insolvency and secured transactions. Currently, work is being undertaken on a model law on recognition and enforcement of insolvency-related judgments, and it is hoped that it can be finalised for adoption, together with a guide to enactment, at the 2018 Commission session. UNCITRAL is as well working on a set of draft legislative provisions on facilitating the cross-border insolvency of enterprise groups. However, areas still requiring further discussion include the use of "synthetic" proceedings to minimise the commencement of both main and non-main proceedings, the powers of the group representative appointed in a planning proceeding to coordinate the development of a group insolvency solution and the approval of a group insolvency solution. Furthermore, part four of Legislative Guide will be extended to include obligations of directors of enterprise group companies in the period approaching insolvency. Moreover, the Commission has agreed that work should be undertaken on the insolvency of micro, small and medium-sized enterprises (MSMEs). Possible future topics include choice of law in insolvency, a review of the Legislative Guide in regard to insolvency treatment of financial contracts and netting, the treatment of intellectual property contracts in cross-border insolvency cases, the use of arbitration in cross-border insolvency cases and sovereign insolvency. On a national level, there are now 43 states that enacted the UNCITRAL Model Law on Cross-Border Insolvency. Topics being considered for harmonization efforts regarding secured transactions include the Guide to Enactment of the UNCITRAL Model Law on Secured Transactions. Possible future topics entail contractual issues, transactional and regulatory issues, finance for MSMEs, warehouse receipt financing, intellectual property licensing, as well as alternative dispute resolution in secured transactions. On a national level, there has been significant activity in secured transactions law reform and in the establishment of collateral registries, as well as interest in the

enactment of the Model Law on Secured Transactions.

The conference day ended with a “Brexit Dialogue” between Gabriel Moss and Bob Wessels, discussing potential effects of Brexit on European cross-border insolvency law and possible solutions to caused problems. Moss argued that from a rational point of view the EU Regulations and Directives are a “win-win” for all parties, and should therefore be kept. However, some EU politicians refuse “cherry-picking” and consider that the UK must be seen worst off outside the EU. Currently, the UK intends a “Great Reform Bill” which will keep all EU law as domestic UK law. Nevertheless, this will only be temporary and subject to change and the Regulations and Directives then cannot be applied on a unilateral basis, so reciprocity will no longer exist, unless otherwise agreed between the UK and the EU. If the UK loses the EU legislation it may fall back to s. 426 UK Insolvency Act 1986, the Model Law and the Common Law. However, the 27 Member States do not have s. 426 UK Insolvency Act 1986 or common law (except Ireland) and only some have adopted the Model Law. This would result in a “win” for the EU Member States and a “lose” for the UK. Wessels (see also) then proposed three solutions including only the Member States and three solutions including the EU. One could be a revival of existing treaties such as listed in Art. 85 EIR Recast. Another option is that the UK is treated as a third country making it subject to the national legislation of each Member State. However, the Member States then might enact the Model Law. Last, but not least one could think about reviving the Istanbul Convention. As an EU oriented solution, one could consider a transitional rule similar to Art. 84 (2) EIR Recast, i.e. that the EIR Recast continues to apply up to certain date in the future. Another solution could be found in a new multiparty initiative by academics and practitioners. It also seems possible to strengthen the role of courts, relying much stronger on court-to-court cooperation and communication.

The first conference day ended with a guided tour of the Karl-Marx-Haus and a joint dinner at the “Weinhaus”.

The second conference day dealt with the new Commission proposal for a Directive on insolvency, restructuring and second chance and pre-insolvency restructuring in general.

Alexander Stein (Head of Unit, Civil Justice Policy, DG Justice and Consumers, European Commission, Brussels) began with a presentation of the new Commission proposal for a Directive on insolvency, restructuring and second chance. Its main objectives are reducing the barriers for cross-border investment, increasing investment and job opportunities in the internal market (Capital Markets Union Action Plan), decreasing the cost and improving the opportunities for honest entrepreneurs to be given a fresh start (Single Market Strategy) and supporting efforts to reduce future levels of non-performing loans (ECOFIN Council Conclusions of July 2016). The proposal provides for the harmonisation of preventive restructuring procedures and contains seven main elements to ensure efficient and fast proceedings with low cost: Early access to the procedure, strong position of the debtor, a stay of individual enforcement actions, the adoption of restructuring plans, encouraging new financing and interim financing, court involvement and rights of shareholders. Other efficiency elements include early warning tools. The proposal touches upon discharge periods for over-indebted entrepreneurs, the training and specialisation of judges and IPs, the appointment, remuneration and supervision of IPs and the digitalisation of procedures. It also contains provisions about data collection to allow a better assessment of how Member States are implementing the directive, how it is performing, and how it would need to be improved in the future. Stein reported that on 8 June the Council already discussed the role of courts and the debtor-in-possession principle. The next step is a hearing on 20 June before the European Parliament. Points that will be discussed once more include the role of the IP and the court involvement. However, the Commission plays a constructive role and intends a quick adoption of the proposal.

Nicolaes Tollenaar then took over again and presented the procedural steps of preventive restructuring proceedings with a view to the new Commission proposal. Although, Tollenaar welcomed the proposal as such, he has some significant critique as well. Firstly, the proposal only provides the debtor with the right to propose a restructuring plan. Thus, the debtor might use the right to propose a plan in an abusive manner. Secondly, it is unclear what exactly is meant with a minimum harmonisation in regard to pre-insolvency proceeding: May Member States grant creditors the right to propose a plan as well? Thirdly, the “likelihood of insolvency” is sufficient to open a pre-insolvency proceeding and use a cross-class cram down to adopt a restructuring plan. However, it is questionable if the “likelihood of insolvency” justifies a cross-class cram down.

Tollenaar therefore recommends giving creditors the right to propose a plan and to distinguish between two phases: The “likelihood of insolvency”, where only the debtor has the right to propose a plan and no cram down is available and “Insolvency or inevitable insolvency”, where creditors have the right to propose a plan and cram down is available. Furthermore, he recommends giving a wide right to seek early (non-public) court directions on issues such as jurisdiction, admittance of claims or permissible content of the plan and confirmation criteria and to established specialized courts.

Next, Florian Bruder (Rechtsanwalt, Counsel, DLA Piper, Munich) spoke about creditor’s rights and the protection of new and interim finance in the restructuring process in the proposal. From a creditor’s point of view the proposal provides a framework procedure allowing the debtor to pursue a quasi-consensual (financial) restructuring, addressing creditor hold outs and shareholder opposition as the most practical issues. Creditors and the debtor may prepare and lead the restructuring process supported by new finance. However, there is a substantial risk of deterioration of the value of the business and therefore recovery for the creditors due to the stay. The suspension of creditor’s rights to file for insolvency and to accelerate, terminate or in any other way modify executory contracts to the detriment of the debtor severely restricts the creditor’s rights to control the procedure. Therefore, adequate protection is crucial. Eventually safeguards for the creditors mostly rely on active intervention of the creditors and are available quite late. Hence, the adequate protection of the creditor’s interests depends even more on the access to commercially-minded and experienced courts.

Michael Barlowski then focused on the interplay between the proposed Directive and the Recast Insolvency Regulation. Both instruments will overlap regarding cross-border aspects of restructuring proceedings. Practical problems which need to be further examined include rights in rem (1), territorial proceedings (2) and the effectiveness in third-countries (3): 1.) While Art. 6 (2) of the proposal provides for a stay of individual enforcement actions in respect of secured creditors as well, Art. 8 (1) EIR Recast exempts the rights in rem of creditors from the effects of the opening of proceedings, resulting in a paradox situation. 2.) Admittedly, Art. 7 of the proposal provides for a general stay covering all creditors that shall prevent the opening of insolvency procedures at the request of one or more creditors, however this covers only “principle” proceedings, but not

“territorial proceedings”, which therefore may frustrate the negotiations between the creditors and the debtor. Art. 38 (3) EIR Recast is no help either, as its scope of applicability is unclear. 3.) If the debtor has assets outside the EU, it may be essential to ensure that the effects of the stay and the restructuring plan cover those assets as well. However, there is no EU agreement, and therefore the domestic law of the concerned third country applies.

Finally, a round table consisting of Michal Barlowski, Florian Bruder, Andreas Stein, Michael Veder and Alexander Bornemann discussed the question of how the insolvency landscape in the EU is changing. It was agreed upon that the Commission proposal tries to strike a balance between cost-efficiency and the protection of the involved parties’ interests. The proposal is flexible as well, and covers not only one proceeding but a variety of different proceedings. It was proposed that the Member States should provide for different types of proceedings for different situations, i.e. proceedings for small and medium enterprises and proceedings for bigger companies, similar to the UK regime of the Company Voluntary Arrangement and the Scheme of Arrangement.

The event ended with warm words of thanks and respect to the organizers and speakers for an outstanding conference.

Gabriel Moss

Reinhard Dammann

Michal Barlowski

Bob Wessels

Gabriel Moss and Bob Wessels

Regulating economic activity in the international sphere and freedom of establishment (XI Seminar on Private International Law). Call for Papers

The Seminar on Private International Law organized since 2007 at the Universidad Complutense of Madrid by Professors Fernández Rozas and De Miguel Asensio is an annual meeting devoted to private international law. This year the Seminar goes to Barcelona, where it will held on October 26 and 27, 2017.

This edition of the Seminar, entitled "Regulating economic activity in the international sphere and freedom of establishment (corporate law, tax law, competition law, private law and arbitration law)", will deal with the regulation of the economic activity in an international framework and its relationship with the freedom of establishment recognized by EU law. The goal is to bring together specialists in private international law, tax law and commercial law as well as law practitioners in order to analyze the current situation of the regulation of economic activity in Europe.

In addition to this central issue, there will be room for the study of the regulation of economic activity in other geographical areas (America, Asia …), and of arbitration as a fundamental tool both for resolving conflicts between economic operators, as well as between investors and states.

The Seminar welcomes the presentation of papers on any topic related to one of the panels, in Spanish, English or French. A summary (900 words) and a basic bibliography must be submitted to the Scientific Committee before September 15, to this address: rafael.arenas@uab.cat. The Scientific Committee will select the papers to be presented at the Seminar by September 29. The final version must be delivered on October 20 at the latest.

The Seminar will include the following panels:

1. **Establishment of Companies (perspective of PIL)**

Main speaker: Prof. Dr. Jessica Schmidt, Professor of Civil Law and German, European and International Law of Companies and Capital Markets (University of Bayreuth, Germany)

2. **Establishment of Companies (perspective of Commercial Law)**

Main speaker: Prof. Dr. Andrés Recalde Castells, Professor of Commercial Law at the Autonomous University of Madrid

3. **Tax issues**

Main speaker: Prof. Dr. Cristina García Herrera-Blanco, Financial and Tax Law Adviser, Institute of Fiscal Studies

4. **Economic law (free competition, unfair competition and administrative regulation of economic activity)**

Main speakers: Prof. Dr. Amadeo Petitbó Juan, Professor of Applied Economics; Prof. Dr. Barry Rodger, Professor of Law at Strathclyde University in Glasgow (United Kingdom).

5. **Freedom of establishment and private law**

Main speaker: Prof. Dr. Gerry Maher, Professor of Law at the University of Edinburgh (UK)

6. **Regulation of economic activity and private law outside the EU**

Main speaker: *to be confirmed*

7. **Arbitration**

Main speaker: Prof. Dr. José Carlos Fernández Rozas, Professor of Private International Law at the Universidad Complutense de Madrid.

American Association of Law Schools Section on Conflict of Laws Call for Papers

AALS Section on Conflict of Laws Call for Papers – 2018 AALS Annual Meeting

The AALS Section on Conflict of Laws invites papers for its program entitled "Crossing Borders: Mapping the Future of Conflict of Laws Scholarship" at the AALS Annual Meeting, January 3-6, 2018, in San Diego.

TOPIC DESCRIPTION: Now more than ever, the challenges created by conflicting laws are figuring prominently in multiple areas of legal scholarship. In subjects as diverse as state and federal regulation, technology and intellectual property, and commercial arbitration, scholars using a variety of methodological approaches are finding innovative ways to study conflict of laws problems. This panel discussion will explore these emerging trends in conflicts scholarship, and their implications for future work in the field. The Section Executive Committee welcomes papers that are theoretical, doctrinal, policy-oriented, or empirical.

ELIGIBILITY: All full-time faculty members of AALS member and fee-paid law schools are eligible to submit papers. Please note that presenters will be responsible for paying their registration fee and hotel and travel expenses.

SUBMISSION PROCEDURE: All submissions must be e-mailed, in Microsoft Word format, to Section Chair Jamelle Sharpe's administrative assistant Ms. Angela Martin (aymartin@illinois.edu). The title of the e-mail submission should read: "Submission – 2018 AALS Section on Conflict of Laws." Please do not e-mail your submission directly to the Section Chair, or to any other member of the Section Executive Committee.

The Section Executive Committee will select up to five papers for presentation at the program. There is no formal requirement as to the form or length of submissions. However, the Committee will give priority to more complete drafts as compared to abstracts. The Committee will only review anonymous submissions. Accordingly, please redact your name, institution, and other

identifying information from the submission itself; we will track your submission via the e-mail to which you attached it.

DEADLINES: Submissions must be e-mailed to Ms. Angela Martin no later than **6:00 p.m. EST on Friday, August 18, 2017**. Authors of selected submissions will be notified no later than September 22, 2017. Complete drafts of the selected papers are due no later than December 8, 2017.

QUESTIONS: If you have any questions, please contact the Section Chair, Jamelle Sharpe, at jcsharpe@illinois.edu.

Book: International sale of goods – A Private International Law Comparative and Prospective analysis of Sino-European Relations

International sale of goods – A Private International Law Comparative and Prospective analysis of Sino-European Relations, Niicolas Nord, Gustavo Cerqueira (Eds.), Pref. Cl. Witz, International Sale of Goods, China-EU Law Series 5, Springer, 2017, 183 pp.

This book provides an in-depth study of Private International Law reasoning in the field of international sale of goods contracts. It connects the dots between European and Chinese law and offers an unprecedented transversal and comparative legal study on the matter. Its main purpose is to identify the consequences of European rules on Chinese companies and vice versa. The first part addresses the conflict of jurisdiction and conflict of law rules, while the second part discusses in detail the practical importance and the impact of arbitration, which is becoming more common thanks to its flexibility. The third

part focuses on the Vienna Convention on Contracts for the International Sale of Goods and the Unidroit Principles of International Commercial Contracts and carefully analyses their use. The final part examines contracts involving consumers.

The chapters of this book reproduce the lectures given during the fifth symposium of the China-EU School of Law (CESL) — International Symposium Series, held on the 20th and the 21st of June 2016 at the China University of Political Science and Law, in Beijing, and jointly organised by the University of Strasbourg and the China-EU School of Law at the China University of Political Science and Law.

Prefaced by Professor Claude Witz (Saarland University) and foreworded by Mrs. Cheng Minzhu (Supreme People's Court of PRC), this book is organized by the French Professors Nicolas Nord (University of Strasbourg) and Gustavo Cerqueira (University of Reims).

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The Preface, Presentation and Foreword can be freely accessed here