Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 1/2016: Abstracts

The latest issue of the *"Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)"* features the following articles:

H.-P. Mansel/K. Thorn/R. Wagner, **European conflict of laws 2015: Reappraisal**
The article provides an overview of developments in Brussels in the field of judicial cooperation in civil and commercial matters from December 2014 until November 2015. It summarizes current projects and new instruments that are presently making their way through the EU legislative process. It also refers to the laws enacted at the national level in Germany as a result of new European instruments. Furthermore the authors look at areas of law where the EU has made use of its external competence. They discuss both important decisions and pending cases before the ECJ as well as important decisions from German courts pertaining to the subject matter of the article. In addition the article also looks at current projects and the latest developments at the Hague Conference of Private International Law.

K. Kroll-Ludwigs, **Conflict between the Hague Protocol on the law applicable to maintenance obligations (2007) and the Hague Maintenance Convention (1973): lex posterior derogat legi priori?**
On 18.6.2011, the European Union set into force the Hague Protocol on the law applicable to maintenance obligations of 23 November 2007 and established common rules for the entire European Union aiming to determine unanimously the applicable law where debtor and creditor are in different countries. The Protocol replaced the Hague Convention of 2 October 1973 on the Law applicable to maintenance obligations. Due to its universal application, its rules apply even if the applicable law is the law of a non-Contracting State. However, note that non-EU-States, as Turkey, Switzerland, Japan and Albania are not bound by the Protocol. As well as Germany they are Contracting States of the Hague Maintenance Convention. From the German perspective, in relation to these States the question raises whether the rules of the Hague Maintenance

Convention still apply. Taking into account that the Protocol – unlike the Hague Maintenance Convention – enables the parties to choose the applicable law, determining the relevant legal instrument is of great practical importance.

F.M. Wilke, **The subsequent completion of German judgments to be enforced abroad**

Under certain conditions, a German court can pass a judgment without a statement of facts and even without reasons. This can lead to problems abroad if the decision is to be recognized and enforced there. This is why the implementing statute concerning recognition and enforcement (AVAG) contains provisions that cover the subsequent completion of such decisions in light of certain international conventions and, so far, the Brussels regime. After the reform of the German Code of Civil Procedure (ZPO) in light of the Brussels I Recast, however, the scope of application of the AVAG does not extend to the Brussels I Regulation anymore. At first sight, this may seem plausible because of the abolition of exequatur. Yet it might be necessary for a court of an EU member state to examine the facts of a case and/or the reasons behind a decision in order to determine if its recognition/enforcement should be refused (Articles 45, 46 Brussels I Recast). This short article analyses for which cases the legal basis for subsequent completion seems to have vanished and how to deal with them. Essentially, the solutions de lege lata are to bypass the scope of application of the AVAG or to proceed by analogy. In a potential future reform, the respective AVAG provisions simply should be integrated into the ZPO.

S. Kröll, **The law applicable to the subjective reach of the arbitration agreement**

Defining the parties to an arbitration agreement, in particular whether nonsignatories are bound by the agreement, is one of the pervasive problems in international arbitration. It generally involves a number of conflict of laws questions some of which have been addressed by the German Supreme Court in its decision of 8 May 2014. A party's reliance on the „group of companies doctrine" does not relieve the courts from a detailed analysis of the various relationships involved. In most cases, it is the law governing the arbitration agreement which also determines who are the true parties to the arbitration agreement.

M. Weller, **No effect of foreign mandatory provisions on arbitration agreements under German law according to § 1030 ZPO**

The material scope of arbitration agreements, in particular with regard to tort claims, is a constant point of controversy before state courts. The note on the judgment by the Upper Regional Court Munich identifies opposing trends in German and European case law. The judgment also decides on the (lack of) influence of foreign mandatory provisions, arbitrability according to foreign law and the foreign ordre public on arbitration agreements, subject to German law.

C. Althammer/J. Wolber, **Cross-border enforcement of coercive fine orders in Europe and limitation on enforcement**

The European Court of Justice ruled in the case of Realchemie Nederland BV./. Bayer CropScience AG that decisions ordering a coercive fine fall within the scope of the Brussels I Regulation. This ruling made the German Federal Court of Justice decide upon the effects of a limitation on the crossborder enforcement of such an order. The judgment of the German Federal Court of Justice reveals a traditional understanding of the international law of enforcement and provokes the question if this approach is still appropriate for cross-border enforcement in Europe, especially as the recast of the Brussels I Regulation abolished the exequatur proceeding. The article examines the effects of obstacles resulting from national law of enforcement on the conditions of cross-border enforceability under the Brussels I and Ia Regulation. In this way the article leads into an issue that has so far not been discussed to a sufficient extent: the relationship between the cross-border enforceability of judgments and the national laws of enforcement.

P. Mankowski, **Inhibitions against arrest of ships abroad inside or outside an insolvency context?**

Sometimes seemingly technical cases at first instance open up a plethora of questions touching upon basics and fundamentals of international procedural law. Whether a court can inhibit parties from pursuing enforcement or arresting ships abroad in- or outside an insolvency context is precisely such a case. It touches upon the permissibility of measures against enforcement abroad and upon the universality approach in modern international insolvency law. Furthermore, it is inexplicably linked with the question to which extent (registered) ships are to be treated like real estate.

D. Otto, **Internationale Zuständigkeit indischer Gerichte bei Markenverletzungen**

In its decision of 15.10.2014, the Delhi High Court had to resolve whether it had competence in the international sense for a lawsuit by a U.S.-based claimant

without a presence in India against an Indian-based defendant, who had his business in a different state. Under Indian civil procedure rules, a court has jurisdiction in the international sense against a defendant residing within the jurisdiction of the court. As per such rule, claimant would have to litigate before the Bombay High Court, not the Delhi High Court. The Claimant invoked a new legal provision that gives jurisdiction in disputes involving copy right or trademark violations in India also to a court at the place where the claimant carries on business. Claimant argued that it did "carry on business" within the jurisdiction of the Delhi court because its website could be accessed in Delhi. The court accepted that. This Article questions such decision as previous jurisprudence by Indian courts required that an "essential" part of claimant's business is carried out in India; access to a website alone was deemed insufficient.

F. Heindler, **Austrian Supreme Court on Remuneration of Heir Locators**
The Austrian Surpreme Court in Civil Matters (Oberster Gerichtshof) has changed its jurisdiction on claims by commercial heir locators. Under Austrian law, according to the Oberster Gerichtshof, commercial heir locators are still entitled to reimbursement for expenses in negotiorum gestio. However, the amount of remuneration is no longer calculated in relation to the heir's inheritance right.

Choice of Law in the American Courts in 2015: Twenty-Ninth Annual Survey

Prof. Symeonides' Survey of American Choice-of-Law Cases, now in its 29th year, you can download it from SSRN by clicking on this link. It is also forthcoming in the American Journal of Comparative Law, Vol. 64, No. 1, 2016. The following are some of the cases discussed in this year's Survey:

*Three Supreme Court decisions, the first declaring unconstitutional all state laws

against same-sex marriages, the second interpreting the commercial activity exception of the Foreign Sovereign Immunity Act, and the third further constricting the range of state law in matters relating to arbitration;

* A Second Circuit decision resuscitating for now that court's theory that corporations are not accountable for international law violations under the Alien Tort Statute (ATS), and two decisions holding that the violations at issue did not "touch and concern the territory of the United States . . . with sufficient force";

* Two cases refusing to allow a Bivens action for an extraterritorial violation of the Fourth Amendment and an intra-territorial violation of the Fifth Amendment, respectively, and several cases upholding the extraterritorial application of criminal statutes;

*Several cases refusing (and some not refusing) to enforce choice-of-law and forum-selection or arbitration clauses operating in tandem to deprive employees or consumers of their otherwise unwaivable rights;

* A New York Court of Appeals case explaining why a New York choice-of-law clause in a retirement plan did not include a conflicts rule contained in New York's substantive successions statute;

* Several cases involving the "chicken or the egg" question of which law governs forum-selection clauses;

* A New Jersey decision ruling on actions for "wrongful birth" and "wrongful life," and several other cases arising from medical malpractice, legal malpractice, deceptive trade practices, alienation of affections, and, of course, traffic accidents, along with products liability cases involving breast implants and pharmaceuticals;

* The first case granting divorce to a spouse married under a "covenant" marriage in another state, and a Texas case recognizing a Pakistani talaq;

* An Alabama Supreme Court decision refusing to recognize a Georgia adoption by a same-sex spouse on the ground that the Georgia court misapplied its own law regarding subject matter jurisdiction;

* A Delaware case holding that the Full Faith and Credit clause mandates recognition of a sister-state judgment that has recognized a foreign judgment, and

does not allow examination of the underlying foreign judgment; and

* A case recognizing a foreign judgment challenged on the ground that the foreign country did not provide impartial tribunals or procedures compatible with due process.

U.S. Federal Judicial Center Publication on "Discovery in International Civil Litigation"

The Federal Judicial Center (FJC) has just published the most recent item in their series on international litigation. The text, entitled "Discovery in International Civil Litigation: A Guide for Judges," was written by Timothy Harkness, Rahim Moloo, Patrick Oh and Charline Yim. The guide joins a variety of other titles, including those on mutual legal assistance treaties (T. Markus Funk), the Foreign Sovereign Immunities Act (David Stewart), international commercial arbitration (S.I. Strong), recognition and enforcement of foreign judgments (Ron Brand), and international extradition (Ronald Hedges).

The new text can be downloaded from the FJC website here. The other texts are also available for download at fjc.gov. If you would like a free copy of the new discovery guide or any of the judicial guides on international law, just contact the FJC.

International Seminar on Private

International Law, Madrid 2016. Call for Papers

The 10th edition of the International Seminar on Private International Law, organized by Prof. Fernández Rozas and Prof. de Miguel Asensio will be held next 14 and 15 April 2016, at the Faculty of Law of the Universidad Complutense of Madrid .

At the sitting of Thursday 14 special attention will be paid to the recent reforms of Spanish private international law; the latest developments towards codification of private international law in Latin America will also be addressed . The following sessions, on Friday, will focus on the development of private international law in Europe and within international commercial arbitration.

As in previous editions the main lectures of the seminar will be in charge of well-known scholars, including Jürgen Basedow (Max Planck Institute Hamburg), Roberto Baratta (University of Macerata), Bertrand Ancel (Paris II), Christian Heinze (University of Hannover) and Sebastien Mancieaux (University of Dijon). Nonetheless, the seminar is open to all scholars, either Spanish or foreigners, willing to participate with brief presentations. In this regard proposals including both the title and a brief summary are to be sent no later than December 15 to Prof. Angel Espiniella Menéndez (espiniell@gmail.com). The final written version of the presentations, not exceeding 25 pages, is to be submitted before April 1, 2016. Subject to prior peer-review they will be published in the *Anuario Español de Derecho Internacional Privado,* vol. XVI.

The registration deadline to attend the seminar, as well as the programme and further information will be announced in due time.

Procedural Science at the Crossroads of Different Generations: a New Book published in the MPI Luxembourg Book Series

Barely one month after the publication of the third volume of the MPI collection of Studies another volume has been released, edited by Prof. Loïc Cadiet (Université Paris I, IAPL), and Prof. Burkhard Hess and Marta Requejo Isidro (MPI).

The book is one of the outcomes of first Post-doctoral Summer School in procedural law, which was held in July 2014 at the Max Planck Institute Luxembourg under the auspices of the International Association of Procedural Law and the Max Planck Institute itself. It reflects both the philosophy of the School and the contents of its first edition. As stated in the Foreword, "modern procedural law is characterized by its opening to comparative and international perspectives", and "the opening of procedural science also requires a new approach of research which has to be based on comparative methodology". The common will of the IAPL and the Max Planck Institute for Procedural Law to support modern research in procedural law, backing particularly young researchers, led to the School one year ago, and achieves another goal with this volume.

The book collects most of the papers which were presented by the students in July 2014, after having been reworked in the light of the discussions of last summer and the advice of the attending professors. Many different areas of procedural law, ranging from regulatory approaches to procedural law, to comparative procedural law, arbitration and ADR, as well as the Europeanisation of civil procedure, are addressed. In this way the treatise demonstrates the current trends of scientific research in procedural law and the specific approach of an incoming generation of researchers.

The contributions of the professors to the School are also to be found in the book. They constitute a kind of homage to an academic work or an author considered as a milestone in the development of procedural and comparative procedural law. In this way also former generations of proceduralists joined the meeting of the different generations: thus the title of the book.

As one of the editors I would like to thank all the authors, and to encourage other young researchers to apply to the next edition of the IAPL-MPI Summer School, July next year.

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Rechtslage – James Goldschmidt 1925 Proceedings As a Sequence of Judicial Situations – A Critique of the Procedural Doctrine; PROF. DR. EDUARDO OTEIZA, Linn Hammergren. Envisioning Reform. Improving Judicial Performance in Latin America; PROF. DR. MARTA REQUEJO ISIDRO, Francisco Beceña González; PROF. DR. DRES. H.C. ROLF STÜRNER, Einführung in die Rechtsvergleichung – Konrad Zweigert und Hein Kötz 3. Auflage 1996. Comparative Civil Procedure and Comparative Legal Thought .

For further information click here.

Save the Date: German-speaking young scholars' conference on "Politics and Private International Law" in April 2017

The following announcement has been kindly provided by Dr. Susanne L. Gössl, LL.M., University of Bonn:

"As a group of doctoral and post-doctoral students with a keen interest in private international law (PIL), we are trying to improve the exchange between young scholars in this field. To further this aim, we have undertaken to organize a conference for all German-speaking young scholars (i.e. doctoral and post-doctoral students) with an interest in private international law.

PIL is understood broadly, including international jurisdiction and procedure, ADR, uniform and comparative law, as long as there is a connection to cross-border relationships.

The conference – which we hope to develop into a recurring event – will take place at the University of Bonn on 6 and 7 April 2017. It will be dedicated to the topic

Politics and Private International Law

– German title: Politik und Internationales Privatrecht –

Choice-of-law rules established in continental Europe have since Savigny traditionally been regarded as 'neutral' as they only coordinate the law applicable in substance. However, the second half of the last century was marked by a realisation that choice-of-law rules may themselves promote or prevent certain substantial results. In the US, this has led to a partial abolishment of the classic understanding of the conflict of laws, and to its replacement by an analysis of the particular governmental interests concerned. Other legal systems have also seen traditional choice-of-law rules changed or limited by governmental or other political interests. The conference is dedicated to discussing the different aspects of this interplay between private international law and politics as well as their merits and demerits.

We welcome contributions which focus on classic political elements of private international law, such as *lois de police*, *ordre public* or substantial provisions within choice-of-law systems, but also comparisons to methodical alternatives to PIL or contributions discussing more subtle political influences on seemingly neutral choice-of-law rules. Examples range from the ever increasing influence of the European Union over national or international political agendas to questions of 'regulatory competition' (which may be relevant in establishing a national forum for litigation or arbitration) or other regulatory issues (such as the regulation of the allegedly international internet). By the same token, international family law and questions of succession are constantly increasing in relevance, the current growth of international migration making it a particularly important field for governmental regulation.

We are glad to announce that Professor Dagmar Coester-Waltjen (University of Göttingen) has accepted our invitation to inaugurate our conference on 6 April 2017. The afternoon will be dedicated to academic discourse and discussion and conclude with a dinner. The conference will continue on 7 April. We plan to publish all papers presented in a conference volume.

We intend to accommodate 6 to 10 papers in the conference programme, each of which will be presented for half an hour, with some additional room for discussion. We will publish a Call for Papers in early 2016 but invite everyone

interested to note down the conference date already and consider their potential contributions to the conference topic (in German language).

For further information please visit https://www.jura.uni-bonn.de/institut-fuer-deutsches-europaeisches-und-internationales-familienrecht/ipr-tagung/.

Questions may be directed at Dr. Susanne L. Gössl, LL.M. (sgoessl(at)uni-bonn.de)."

TDM Call for Papers: Special Issue on Africa

TDM is pleased to announce a forthcoming special issue on international arbitration involving commercial and investment disputes in Africa.

Africa's accelerating economic development is attracting a substantial increase in cross-border commerce, trade, and investment on the continent, and disputes arising from this increased economic activity are inevitably bound to follow. International arbitration will be the preferred method for resolving many of these disputes. Indeed, the growing focus on international arbitration to resolve commercial and investment disputes relating to Africa is reflected, among other ways, in the fact that the International Council on Commercial Arbitration (ICCA) will be holding its 22nd Congress for the first time in Africa in May 2016 in Mauritius.

To a great extent, the issues that arise in international arbitration in or relating to Africa will be no different than those that arise in arbitrations around the globe. Converging international arbitration procedures and the predictability and stability afforded by the New York Convention and Washington Convention help to ensure that this is the case. Yet party autonomy remains a core value of the international arbitral system, and, as such, regional approaches and local culture will continue to shape African-related arbitrations to a degree, just as they do

elsewhere. Africa's rapid development is also likely to play a role in shaping international arbitration in this region.

This special issue will explore topics of particular interest and relevance to international arbitration in light of Africa's unique and evolving situation. The issue will focus on sub-Saharan Africa and will address issues pertaining to both commercial and investment arbitration. It will also likely explore alternative methods for resolving disputes, including litigation, mediation, and local dispute-resolution mechanisms.

Possible topics for submission to the special issue might include:

* The proliferation of international arbitral institutions in Africa and what the future holds for institutional arbitration on the African continent;

* The attitudes of African states and state-owned enterprises towards international commercial arbitration;

* Salient issues in the OHADA international arbitration framework;

* The influence of China and other Asian countries on international arbitration in Africa;

* Issues in enforcing arbitral awards in African states;

* Evolving attitudes in Africa towards bilateral investment treaties (BITs) and the extent to which BITs are (or are not) helping African states attract foreign direct investment;

* South Africa's draft investment law and other notable country-specific developments in Africa;

* Cultural issues impacting international arbitration in Africa;

* Empirical studies relating to international arbitration in Africa;

* Capacity building for arbitrators, judges, and practitioners in the region; and

* Alternative methods of resolving cross-border commercial and investment disputes in Africa.

We invite all those with an interest in the subject to contribute articles or notes on one of the above topics or any other relevant issue.

This special issue will be edited by Thomas R. Snider (Greenberg Traurig LLP), Professor Won Kidane (Seattle University Law School and the Addis Transnational Law Group), and Perry S. Bechky (International Trade & Investment Law PLLC).

Please address all questions and proposals to the editors at SniderT@gtlaw.com, kidanew@seattleu.edu, and pbechky@iti-law.com, copied to info@transnational-dispute-management.com.

Coming soon: Yearbook of Private International Law Vol. XVI (2014/2015)

This year's volume of the Yearbook of Private International Law is just about to be released. The Yearbook is edited by Professors Andrea Bonomi (Lausanne) and Gian Paolo Romano (Geneva) and published in association with the Swiss Institute of Comparative Law. This year's edition is the first volume to be published by Otto Schmidt (Cologne), ISBN 978-3-504-08004-4. It is 588 pages strong and costs 189,00 €. For further information, please click here.

The new volume contains the following contributions:

Doctrine
Linda J. SILBERMAN
Daimler AG v. Bauman: A New Era for Judicial Jurisdiction in the United States
Rui Manuel MOURA RAMOS
The New Portuguese Arbitration Act (Law No. 63/2011 of 14 December on Voluntary Arbitration)
Francisco GARCIMARTÍN
Provisional and Protective Measures in the Brussels I Regulation Recast

Martin ILLMER
The Revised Brussels I Regulation and Arbitration – A Missed Opportunity?
Ornella FERACI
Party Autonomy and Conflict of Jurisdictions in the EU Private International Law on Family and Succession Matters
Gian Paolo ROMANO
Conflicts between Parents and between Legal Orders in Respect of Parental Responsibility

Special Jurisdiction under the Brussels I-*bis* Regulation
Thomas KADNER GRAZIANO
Jurisdiction under Article 7 no. 1 of the Recast Brussels I Regulation: Disconnecting the Procedural Place of Performance from its Counterpart in Substantive Law. An Analysis of the Case Law of the ECJ and Proposals *de lege lata* and *de lege ferenda*
Michel REYMOND
Jurisdiction under Article 7 no. 1 of the Recast Brussels I Regulation: The Case of Contracts for the Supply of Software
Jan VON HEIN
Protecting Victims of Cross-Border Torts under Article 7 No. 2 Brussels I*bis*: Towards a more Differentiated and Balanced Approach

Surrogacy across State Lines: Challenges and Responses
Marion MEILHAC-PERRI
National Regulation and Cross-Border Surrogacy in France
Konstantinos ROKAS
National Regulation and Cross-Border Surrogacy in European Union Countries and Possible Solutions for Problematic Situations
Michael WELLS-GRECO / Henry DAWSON
Inter-Country Surrogacy and Public Policy: Lessons from the European Court of Human Rights

Uniform Private International Law in Context
Apostolos ANTHIMOS
Recognition and Enforcement of Foreign Judgments in Greece under the Brussels I-*bis* Regulation
Annelies NACHTERGAELE
Harmonization of Private International Law in the Southern African Development

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"Judicial Education and the Art of Judging"–2014 University of

Missouri Symposium Publication

Last fall, the University of Missouri Center for the Study of Dispute Resolution convened an international symposium entitled “Judicial Education and the Art of Judging: From Myth to Methodology.” Panelists included judges, academics and judicial education experts from the United States, Canada and Australia.

The symposium arose out of the recognition that although there is a large and ever-increasing body of literature on matters relating to judicial appointments, judicial independence, judicial policy making and the like, there is an extremely limited amount of information on how someone learns to be a judge. The conventional wisdom in the common law world holds that judges arrive on the bench already equipped with all the skills necessary to manage a courtroom and dispense justice fully, fairly and rapidly. However, many judges have written about the difficulties they have had adjusting to the demands of the bench, and social scientists have identified a demonstrable link between judicial education and judicial performance. As a result, it is vitally important to identify and improve on best practices in judicial education.

The symposium sought to improve the understanding of judicial education by considering three related issue: (1) what it means to be a judge and what it is about judging that is different than other sorts of decision-making; (2) what the goal of judicial education is or should be; and (3) how judges can and should be educated. While most of the discussion took place within the context of common law legal systems, much of the material is of equal relevance to civil law systems.

Articles from this symposium are freely available here. The table of contents shows below.

Judicial Education and Regulatory Capture: Does the Current System of Educating Judges Promote a Well-Functioning Judiciary and Adequately Serve the Public Interest? S.I. Strong
What Judges Want and Need: User-Friendly Foundations for Effective Judicial Education Federal Circuit, Judge Duane Benton and Jennifer A.L. Sheldon-Sherman
Judicial Bias: The Ongoing Challenge, Kathleen Mahoney
International Arbitration, Judicial Education, and Legal Elites, Catherine A.

Rogers
Towards a New Paradigm of Judicial Education, Chief Justice Mary R. Russell
Writing Reasoned Decisions and Opinions: A Guide for Novice, Experienced, and Foreign Judges S.I. Strong
Judging as Judgment: Tying Judicial Education to Adjudication Theory, Robert G. Bone
Of Judges, Law, and the River: Tacit Knowledge and the Judicial Role, Chad M. Oldfather
Educating Judges—Where to From Here?, Livingston Armytage
Judicial Education: Pedagogy for a Change, T. Brettel Dawson

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 5/2015: Abstracts

The latest issue of the *"Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)"* features the following articles:

Christoph Benicke, **Die Anknüpfung der Adoption durch Lebenspartner in Art. 22 Abs. 1 S. 3 EGBGB**
In Germany, step child adoption by the partner of a same sex civil union (registered partnership) has been legal since 2004, but was restricted to the other partner's biological child. 2014, following a landmark ruling by the German Constitutional Court the German Parliament has enacted legislation that rescinded this restriction and allowed thereby partners of registered same-sex couples to legally adopt the other partner's adoptive child. Not mandated by the Constitutional Court's ruling the legislator stopped short of totally putting same sex registered partnerships on equal footing with traditional marriages. The joint adoption by both partners is still reserved to the spouses of a heterosexual marriage.
On the occasion of this new legislation, a special choice of law rule for the

adoption by same sex partners has been enacted. The general choice of law rule (Art. 22 par. 1 s. 2 EGBGB) calls for the national law of the adoptive parent. In the case of the adoption by one or both spouses of a heterosexual marriage the law applicable to the general effects of the marriage (Art. 14 EGBGB) is to be applied. This holds true for the joint adoption by both spouses or for the single (step parent) adoption by only one spouse. The new rule for same sex partners (Art. 22 par. 1 s. 3 EGBGB) follows the example of the rule for married couples, in that it calls for the application of the law that governs the general effects of the registered partnership, i.e. the law of the registering state (Art. 17b par. 1 EGBGB). However, the new rule for same sex partners limits itself to the case of the adoption by only one partner, leaving unregulated the choice of law question of a joint adoption by both partners. The single and only reason for this limitation is the ban on joint adoption by same sex partners in German internal adoption law, not taking into account, that the laws of other countries allow the joint adoption by same sex partners. As there is no valid reason for this limitation in regard to the choice of law question this same rule must be extended to cover the joint application for the adoption by both partners. The general choice of law rule would lead to a quite preposterous result as it would call for the joint application of the national laws of both partners, whereas in the case of the adoption by only one partner the law that governs the effects the same sex partnership would apply.

The new legislation also casts new light on the discussion of the ramifications of Art. 17b par. 4 EGBGB. This rule limits the effects of a same sex partnership that was registered in another country and therefore is governed by this other country's laws. The legal effects cannot exceed the effects of a registered same sex partnership under German internal law. Under the previous law the majority opinion was that Art. 17b par. 4 EGBGB bans same sex partners from adopting jointly in Germany even if the joint adoption was legal under the applicable foreign adoption law. In granting the unrestricted step child adoption German law effectively allows partners to adopt a child jointly, just in two immediately consecutive proceedings. Therefore, there are no real differences left in regard to the legal effects of a registered partnership under a foreign law that allows the simultaneous joint adoption by same sex partners in one and only proceeding.

Christoph Thole, **The differentiation between Brussels I and EIR in annex proceedings and the relation to art. 31 CMR**

On the occasion of the ECJ ruling (4.9.2014 – C-157/13), the author discusses the

precedence of special conventions (CMR) according to art. 71 (1) Brussels I-reg. and the question of the criteria necessary for the application of art. 3 EIR. With respect to art. 3 EIR, the ECJ rightly concludes that an action for the payment of a debt based on the provision of carriage services taken by the insolvency administrator of an insolvent undertaking in the course of insolvency proceedings is covered not by the EIR, but is a civil matter within the Brussels I-reg. However, once again, the Court has failed to further elaborate on the criteria necessary for the classification of an action as an insolvency-related action within the meaning of art. 3 EIR and art. 1 para. 2 lit. b Brussels I-reg.
With respect to art. 71 Brussels I-reg., it is a step forward that, in contrast to earlier verdicts, the ECJ itself decided upon the compatibility of the convention with the principles of EU law, instead of referring the matter to state courts. It would have been even more conclusive to rely on the wording of Art. 71 (1) Brussels I-reg. and omit the unwritten necessity of compatibility with EU Law entirely.

Burkhard Hess/Katharina Raffelsieper, **Debtor protection within Regulation 1896/2006: Current gaps in European procedural law**
Regulation 1896/2006 does not provide for effective debtor protection in cases when a European Order for Payment was not properly served on the debtor. As a result of the unilateral nature of the procedure for issuing the order, the order will be declared enforceable if the defendant does not challenge it within a period of 30 days. However, the service of the payment order shall safeguard the right to a defense. When the defendant has never been informed about the ongoing procedure, he should be able to easily contest the Order for Payment even after it has been declared enforceable. Yet, the text of the Regulation does not provide for a remedy in this situation. In a reference for a preliminary ruling, the Local Court Berlin-Wedding asked the European Court of Justice which remedy should apply. The referring court suggested an application by analogy of the review proceedings provided for in Article 20 of Regulation 1896/2006 in order to ensure an effective right to a defense. Regrettably, the CJEU did not endorse this solution. It declared national procedural law applicable in accordance with Article 26 of the Regulation. As a consequence, parties are sent to the fragmented remedies of national procedural laws. As the efficiency and uniform application of Regulation 1896/2006 is no longer guaranteed, the European lawmaker is called to remedy the insufficient situation. This article addresses the final decision of the Local Court which implemented the CJEU’s judgment.

Peter Huber, **Investor Protection: Lugano Convention and questions of international insolvency law**

The article discusses a recent decision of the German Bundesgerichtshof which primarily deals with matters of international jurisdiction in tort claims under Article 5 No. 3 of the Lugano Convention. In doing so, the author also analyses to what extent the decision is in line with the more recent judgment of the ECJ in Kolassa v Barclays Bank. A second issue of the decision is how provisions of foreign insolvency law which modify a creditor's claim against a (not insolvent) co-debtor of the insolvent party should be characterised under domestic German private international law.

Christoph Thole, **Porsche versus Hedgefonds: The requirements for lis pendens under Art. 32 reg. 1215/2012 (Art. 30 reg. 44/2001)**

Porsche SE, which is currently trying to fend off several actions for damages connected to the failed takeover of Volkswagen, has reached a partial success before the OLG Stuttgart. The OLG has ruled that the negative declaratory action against an institutional investor in Germany takes precedence over the action for performance filed in London. The proceedings clearly demonstrate how fiercely disputes concerning the place of jurisdiction in capital market law are fought. Specifically, the court needed to judge upon the necessary requirements for lodging the claim with the court under Art. 30 of the Brussels I-reg. (Art. 32 Reg. No. 1215/2012). The decision as well as most of the reasoning is convincing.

Peter Mankowski, **Lack of reciprocity for the recognition and enforcement of judgments between Liechtenstein and Germany**

Liechtenstein fashions a system of recognition and enforcement of foreign judgments with a strict and formal requirement of reciprocity in the Austrian tradition. In particular, judgments from Germany are not recognised in Liechtenstein. The retaliative price Liechtenstein has to pay is that judgments from Liechtenstein are not recognised in Germany, either, for lack of reciprocity. Methodologically, German courts are idealiter required to research whether reciprocity is guaranteed in a foreign country in relation to Germany. The popular lists in the leading German commentaries should only serve as a starting point.

Lars Klöhn/Philip Schwarz, **The residual company's applicable law**

The "theory of the residual company (Restgesellschaft)" deals with legal problems that may arise in the context of winding-up companies doing business in at least two countries. In Germany, the theory applies in particular to English private

companies limited by shares ("Limited") with assets in Germany. If a Limited is dissolved in its home country, the residual company will come into existence and be considered as the owner of the company's "German" assets. The discussion in the literature as well as recent case law by Higher Regional Courts (Oberlandesgerichte) has focused on the question which law applies to the residual company. This paper analyzes the newest judgement on this issue by the Higher Regional Court of Hamm, which states that German law applies. The authors agree with this result while pointing out that this conclusion will be reached regardless of whether one follows the theory of domicile (Sitztheorie) or the theory of establishment (Gründungstheorie). Furthermore, German law applies irrespective of whether the company is still doing business or has already entered into liquidation.

Piotr Machnikowski/Martin Margonski, **Anerkennung von punitive damages- und actual damages-Urteilen in Polen**

The case note concerns the judgment of the Polish Supreme Court of October 11, 2013 on the enforceability of US-American punitive damages and judgments on actual damages in Poland. The enforceability has been rejected in case of punitive damages which, as a rule, are contrary to Polish public policy as such. Polish civil law is governed by the principles of compensation and restitution of the damage. The damage should be repaired to the condition that would have existed had the wrong not occurred. The injured party may not be enriched as a result of the damages awarded. The compensation law in Poland does recognize some exceptions to that rule which allow to grant compensation not closely based on the value of the restored damage. Such exceptions are, however, justified under the constitutional proportionality principle. Punitive damages do not meet such requirements to the extend they peruse penal objectives. They are permissible only to the extent they perform a compensatory function and are linked to the damage suffered. In case of actual damages, such conflict with the Polish public order does not occur by nature of the legal instrument. Yet, the said proportionality principle may lead to only a partial enforceability of a US-American actual damages judgment. The crucial factor here is how closely the factual setting of the case is connected to Poland. The judgment in question addresses the general problem of partial enforceability of foreign judgments, which has been found possible in case of divisible obligations. Despite some critique on detailed aspects of the findings, the case note positively appraises the judgment.

Bernhard König, **Austrian money judgments which do not finally determine the amount of payment**

Judgments given in a Member State which are enforceable in that State are enforceable in other Member States. Difficulties could arise if a money judgment was given in a Member State which does not require a final determination of the amount of the payment in the judgment itself and has to be enforced in a Member State which national law requires the final determination of the amount of payment already in the judgment. This paper offers a glimpse to the question if and to what extent other Member States will have to deal with Austrian judgments which have not finally determined the amount of the payment.

Miguel Gómez Jene/Chris Thomale, **Arbitrator liability in International Arbitration**

Recent decisions by Spanish courts raise questions upon the conditions as well as the extent of arbitrator liability. Authors suggest a distinction between qualified adjucative and simple managerial tasks: It is only when acting as a quasi-adjudicative agent that arbitrators should be essentially exempt from personal liability. Conversely, as far as an arbitrator's conduct of an arbitration procedure is concerned, he should assume general tort liability for negligence.

Jürgen Samtleben, **The New Panamanian Code of Private International Law – A Kaleidoscope of Conflict of Laws**

Panama is known as an important banking center and as the registered office of many internationally active corporations. Therefore, international relations between private subjects need specific regulation. Up to now, the private international law of Panama found its basis in individual provisions of the Civil Code, the Family Code and some special laws. These provisions were replaced by Law 7 of 2014, which contains in 184 articles a comprehensive regulation of nearly all conflict-of-law topics. The following article gives an overview of the new Law. As a result, it must be stated that the Law contains many flaws, due to insufficient coordination between the different parts and a lack of careful editing of the individual articles. In Panama, as well, the law has been criticized and there is a call for its thorough reform.