Valencia, 8 September 2017: 4th unalex Conference on the EU Matrimonial and Partnership Property Regulations

The University of Valencia (Spain) will be organising a conference on 8 September 2017 on selected issues regarding the new Regulations 2016/1103 and 2016/1104. The conference is part of the project **"unalex – multilingual information for the uniform interpretation of the instruments of judicial cooperation in civil matters"** which is co-financed by the European Commission and organised by the University of Innsbruck together with the Universities of Genoa, Prague, Riga, Valencia, Zagreb and the legal publisher IPR Verlag.

The conference is chaired by Prof. Carlos Esplugues, University of Valencia and Prof. Andreas Schwartze, University of Innsbruck.

Topics and speakers:

Overview over Regulations 2016/1103 and 2016/1104, Mr. Franco Salerno-Cardillo, Notary in Palermo (Italy), Council of the Notariats of the European Union (CNEU)

Interaction of Regulations 2016/1103 and 2016/1104 with the Brussels IIa Regulation, Ass. Prof. Dr. Pablo Quinzá, University of Valencia (Spain)

Interaction of Regulations 2016/1103 and 2016/1104 with the Succession Regulation, Ass. Prof. Marion Ho-Dac, University of Valenciennes (France)

Drawing the border line between Succession Regulation and Matrimonial Property Regulation, Prof. Rainer Hausmann, University of Konstanz (Germany)

Choice of law in the Matrimonial Property Regulation no. 2016/1103, Dr. Susanne Goessl, University of Bonn (Germany)

European Land Registry Association (ELRA) – Application of Regulations 2016/1103 and 2016/1104 in "non-uniform" systems, Mr. Gabriel Alonso Landeta, Land Register in La Coruña (Spain)

Application of Regulations 2016/1103 and 2016/1104 by notaries, Ms. María Reyes Sánchez Moreno, Notary in Alicante (Spain), Council of the Notariats of the European Union (CNEU)

Application of Regulations 2016/1103 and 2016/1104 by land registers, Mr. Mihai Taus, Head of land registry Dept. Of Brasov County Office (Romania), European Land Registry Association (ELRA)

Registration to the conference is possible by sending an email to Ass. Prof. Dr. Pablo Quinzá: pablo.quinza@uv.es.

Please find further information and a detailed conference timetable here.

Or please contact us: anke.schaub@unalex.eu

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.

International Protection of Human Rights and Activities of

Transnational Corporations

Prof. Dr.Dr. *Fabrizio Marrella* has just published his course entitled "Protection internationale des droits de l'homme et activités des sociétés transnationales/International Protection of Human Rights and Activities of Transnational Corporations", delivered at The Hague Academy of International Law in 2013, as vol. 385, 2016, of the Recueil des cours/Collected Courses (RCADI).

Here is a short abstract:

Since the 1960's the regulation of multinational corporations has become a hot topic in the international agenda. Fifty years later, the negative (or positive) impact of transnational corporations activities on human rights has steadily increased. Economic globalization has largely involved the activities of transnational corporations and such a trend has even been powered by Nation States. Since the end of the Second World War, Governments have liberalised trade and investment flows and more recently, to cut public deficits, they have started the decentralization, outsourcing and privatization of certain classic functions of the State. International Human Rights Law is based on an inter-State matrix where international responsibilities are imposed on Nation-States, not directly on corporations. Therefore, forum shopping and law shopping strategies have been used by some transnational corporations in order to hide behind State sovereignty while benefiting from dogmas of Public International Law denying any international responsibility for them.

In 2011, the UN Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights (UNGPs), which is the first global standard for preventing and addressing the risks of adverse impacts on human rights linked to business activities. The UNGPs encompass three pillars outlining how states and businesses should implement the framework: 1) The state duty to protect human rights; 2) The corporate responsibility to respect human rights and 3) Access to remedy for victims of business-related abuses.

Such a framework clearly identifies different roles and "responsibilities" but does not differentiate situations of "accountability" from those of "legal responsibility". It makes Corporate Social Responsibility operative through the obligation of "due

diligence" and impact evaluations to identify and remedy adverse effects.

All that has implications both for public international law and for private international law. Private international law analysis, in particular, becomes crucial to explore, as it is done in the second part of the course, the legal meaning of the implementation of the third pillar of the UNGPs, i.e. on access to remedies for victims of violations of human rights committed in the context of business activities. If remedies precede rights, it is regrettable that the third pillar turns out to be the weakest one as compared to the other two. Indeed, it becomes evident that the proliferation of international treaties of protection of human rights, international acts, supervisory bodies, laws, initiatives of RSE or doctrinal studies, risk to remain just different forms of political dialogue if they have no effective legal use for victims on the ground.

Further information, including a table of contents and some extracts, is available on the publisher website.

The Mexican Academy of Private International and Comparative Law organises its XL Seminar on Private International Law

The *Mexican Academy of Private International and Comparative Law* (AMEDIP) will be hosting its XL Seminar entitled "The Migration of Persons and Capital within the Framework of Private International Law" at the *Universidad Autónoma de San Luis Potosí* (San Luis Potosí, Mexico) from 15 to 17 November 2017. The seminar will focus on a wide array of topics such as international legal co-operation, international family law, international contracts, and alternative dispute resolution.

Potential speakers are invited to submit a paper in Spanish, English, French or Portuguese by 1 October 2017. Papers must comply with the criteria established by AMEDIP and will be evaluated accordingly. Selected speakers will be required to give their presentations preferably in Spanish as there will be no interpretation services but some exceptions may be made by the organisers upon request.

The final programme of the seminar will be made available by mid-October. It is envisaged that registration for the seminar will be free of charge for all participants by sending a message to the e-mail included below. Please note that space is limited.

More detailed information will soon be made available on the Mexican Academy website http://www.amedip.org/amedip_mexico/. Some information is already available on the Facebook page of the Mexican Academy, click here. Any queries, as well as registration requests, may be directed to asistencia@amedip.org.

2018 Nygh Hague Conference Internship Award

Applications for the 2018 Nygh Hague Conference Internship Award are open and close on 30 September 2017.

The award contributes towards the costs of a student or graduate of an Australian law school working for up to six months at the Secretariat of the Hague Conference on Private International Law in the Netherlands. It aims to foster Australian involvement in the work of the Hague Conference and is established in honour of the late Hon. Dr. Peter Nygh AM. The Australian Institute of International Affairs and the Australian Branch of the International Law Association sponsor the award.

Further details and information on how to apply is available at: http://www.internationalaffairs.org.au/news-item/2018-nygh-internship-applications-open/.

Recent publications by Prof. Symeonides

Prof. Symeon C. Symeonides,Willamette University – College of Law, uploaded recently two articles on SSRN.

The Third Conflicts Restatement's First Draft on Tort Conflicts

Abstract

This Article discusses the first draft of the proposed Third Conflicts Restatement dealing with tort conflicts. The Draft's most noteworthy features include: (1) the distinction between conduct-regulating and loss-allocating tort rules; (2) the application of the law of the parties' common home state in loss-allocation conflicts; and (3) a rule giving victims of cross-border torts the right to request the application of the law of the state of injury, if the occurrence of the injury there was objectively foreseeable,

The Draft is a vast improvement from the Second Restatement. It accurately captures the decisional patterns emerging in the more than forty U.S. jurisdictions that have joined the choice-of-law revolution, and which have been cast in statutory form in the successful codifications of Louisiana and Oregon. It strikes an appropriate equilibrium between certainty and flexibility and generally makes good use of the lessons of the revolution without reproducing its excesses.

Suggested citation:

Symeonides, Symeon C., The Third Conflicts Restatement's First Draft on Tort Conflicts (August 5, 2017). Tulane Law Review, Vol. 92, 2017. Available at SSRN: https://ssrn.com/abstract=3014068

What Law Governs Forum Selection Clauses

Abstract

This Article examines how American courts answer the question of which law governs the enforceability and interpretation of forum selection (FS) clauses in cases that have contacts with more than one state. It divides the cases into categories, depending on whether the question is litigated in the court chosen in the FS clause or in another court, and whether or not a choice-of-law clause accompanies the FS clause.

The Article finds that: (1) When the action is filed in the court chosen in the FS clause, all courts ap-ply the internal law of the forum state, without any choice-of-law analysis, both in interpreting the clause and in determining its enforceability; and (2) When the action is filed in another court, most courts apply the internal law of the forum (with or without a choice-of-law analysis) in determining whether the clause is enforceable and the law that governs the contract in interpreting the clause.

The Article explains why the distinction between interpretation and enforceability is necessary, and why the application of forum law to the question of enforceability is appropriate.

Suggested Citation:

Symeonides, Symeon C., What Law Governs Forum Selection Clauses (August 5, 2017). Louisiana Law Review, Vol. 78, No. 4, 2018. Available at SSRN: https://ssrn.com/abstract=3014070

In addition, mention needs to be made to his recent lecture at the Hague Academy, which was published June this year.

Private International Law: Idealism, Pragmatism, Eclecticism. General Course on Private International Law, Volume 384

More details can be found here.

Jurisdiction, Conflict of Laws and Data Protection in Cyberspace – Conference in Luxembourg, 12 October 2017

The *Max Planck Institute for Procedural Law* in Luxembourg and the *Vrije Universiteit Brussel* are jointly organising a Conference on 'Jurisdiction, Conflict of Laws and Data Protection in Cyberspace' which intends to contribute to the ongoing discussion on the challenges to the protection of privacy in the Digital Age. The organizers describe this event as follows:

„Thanks to the Internet, people who are thousands of miles apart can effortlessly engage in social interactions, business transactions and scientific dialogue. As pointed in by John Perry Barlow in his famous 'Declaration of the Independence of Cyberspace', all these activities rely – more or less consciously – on sophisticated data-exchanges which take place 'both everywhere and nowhere', lying outside the borders of any particular State.

Against this backdrop, the regulatory challenge posed by the ephemeral nature of the information exchanged via the Web – and of the Web itself – is twofold. While Private International Law struggles to frame the allegedly borderless nature of cyberspace within the dominant discourses of law and territoriality, Data Protection Law has to reconcile the individuals' fundamental right to privacy with the public interests connected to the processing of personal data.

The conference will explore some of the most controversial issues lying at the intersection between these two areas of law, by addressing, in particular, the problems arising in connection with cross-border telematics exchanges of data in the field of biomedical research and the contractual relationships stemming from social networking and the use of social media.“

The conference will take place at the Max Planck Institute in Luxembourg on Thursday, 12 October 2017. Participation is free of charge. For a list of speakers, the full programme and details on registration, please see here.

Implementation of Art. 56 Brussels IIa in Greece

Following the formation of a specialized law drafting committee nearly 4 years ago, the implementation Act on cross border placement of children in accordance with Art. 56 Brussels IIa has been published in the Official State Gazette on June 23, 2017. The ‘Act’ constitutes part of a law, dealing with a number of issues irrelevant to the subject matter in question. The pertinent provisions are Articles 33-46 Law 4478/2017.

Art. 33 establishes the competent Central Authority, which is the Department for International Judicial Cooperation in Civil and Criminal Cases, attached to the Hellenic MoJ. Art. 34 lists the necessary documents to be submitted to the Greek Central Authority. Art. 35-37 state the requirements and the procedure for the placement of a child to an institution or a foster family in Greece. Advance payment for covering the essential needs of the child, and the duty of foreign Authorities to inform the respective Greek Central Authority in case of changes regarding the child’s status, are covered under Art. 38 & 39 respectively.

Art. 40 regulates the reverse situation, i.e. the placement of a Greek minor to an institution or a foster family within an EU Member State. A prior consent of the competent foreign State Authority is imperative, pursuant to Art. 41. The necessary documents are listed under Art. 42, whereas the procedure to be

followed is explained in Art. 43. The modus operandi regarding the transmission of the judgment to the foreign Authority is clarified in Art. 44. A duty of the Prosecution Office for minors to request information on the status of the child at least every six months is established under Art. 45. Finally, Art. 46 covers aspects of transitional nature.

Prima facie it should be stated that the implementing provisions are welcome. In a country where not a single domestic tool has been enacted in the field of judicial cooperation in civil matters since the Brussels Convention era, this move allows us to hope for further initiatives by the government. However, swiftness is the key word in the matter at stake, and I wouldn't be sure whether the procedure enacted would fully serve the cause.

Beyond that, there are some other hot topics related to the Brussels IIa Regulation and its implementation in Greece, the first and foremost being the rules and procedures for issuing the certificates referred to in Art. 39, 41 & 42 [Annexes I-IV of the Regulation]. Bearing in mind that the latter forms almost part of the court's daily routine (at least in major first instance courts of the country), priority should have been given to an implementing act providing guidance on this issue, in stead of opting to elaborate on a matter with seemingly minimal practical implications.

Last but not least, it should be reminded that a relevant study has been released last year, commissioned by the Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee of the European Parliament, which may be retrieved here.

The application of the 1996 Hague Child Protection Convention to

unaccompanied and separated migrant children

The Permanent Bureau of the Hague Conference on Private International Law has recently issued a document illustrating the application of the 1996 Hague Child Protection Convention to unaccompanied and separated children.

The document, drafted in preparation of the upcoming meeting of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, concludes that dialogue and collaboration "should be facilitated between authorities responsible for international co-operation in child protection matters – at both the domestic and international levels – with those responsible for immigration and asylum matters, with regard to the operation of the 1996 Convention in order to better assist unaccompanied and separated children across borders".

The hope is also expressed, among other things, that "UNICEF and UNHCR officials will meet with government officials from some Central Authorities designated under the 1996 Convention to discuss and examine the application of the 1996 Convention to unaccompanied and separated children" and that "the global implementation of the 1996 Convention will assist with the on-going elaboration and future realisation of the United Nations Global Compact on Refugees and Global Compact for Migration", referred to in the New York Declaration for Refugees and Migrants adopted by the General Assembly of the United Nations on 19 September 2016.

New Editors for Conflict of Laws.net: Welcome on board!

The editors of CoL decided to enlarge their team in order to increase the coverage of certain jurisdictions and regions. All (existing and new) editors are of

course free and encouraged to report on interesting issues beyond their home jurisdictions.

Today we very warmly welcome on board (in alphabetical order):

Mukarrum Ahmed (UK)

Asma Alouane (France)

Apostolos Antimos (Greece)

Pamela Bookman (USA)

Mayela Celis (Hague Conference)

Adeline Chong (Singapore)

Rui Dias (Portugal)

Maria Hook (New Zealand)

Antonio Leandro (Italy)

Brooke Adele Marshall (Australia)

Ralf Michaels (USA)

Rahim Moloo (USA)

Marie Nioche (France)

Hakeem Olaniyan (Africa)

Richard Oppong (Africa)

Ekaterina Pannebakker (Russia)

Sophia Tang (China/UK)

Zeynep Derya Tarman (Turkey)

Guangjian Tu (China)

Please feel invited to click on the profiles of the new editors and learn more about

them (if you do not know them already anyway). The existing editors are looking forward to working with their new colleagues on CoL and to seeing more of the intriguing field of the conflict of laws worldwide.

Giesela and Matthias