Skopje Conference on impact of EU PIL on local laws

The conference "**Recent trends in European Private International Law – Challenges for the national legislations of the South East European countries**" is held in Skopje, Macedonia on 24 September 2011. This is the 9th conference in the series of regional private international law conferences, the most recent being announced here. This conference will gather number of private international lawyers who prepare to discuss questions related to impact the European Union codifications in the field have on their national laws as well as issues that arise in the context of European integration. The program is below:

9:00 am to 9:45 am Registration of the participants
9:45 am to 10:00 am Opening of the conference
10:00 am to 11:15 am **I panel** General issues of private international law

Mirko Zivkovic, PhD, University Nis

Discussion

11:15 am to 11:30 am Coffee break

11:30 am to 1:00 pm **II panel** Integration of EU PIL into national PIL codifications of the region (conflict of laws)

Zlatan Meskic, PhD, University of Zenica
"Integration of EU Private International law into national PIL codifications of the region"

Mirela Župan, PhD, University of Osijek
"Normiranje mjerodavnog prava za osobno ime – novina budu?eg hrvatskog Zakona o me?unarodnom privatnom pravu" / "Regulating cross border personal name issues – novelty of new Croatian PIL code "

Ivana Kunda, PhD, University of Rijeka
"Intellectual Property Contracts in EU Conflict of Laws"

Discussion

1:00 pm to 2:00 pm Lunch at University Restaurant

2:00 pm to 3:45 pm **III panel** Integration of EU PIL into national PIL codifications of the region (influence of EU civil procedure)

Ales Galic, PhD, University of Ljubljana
“Uredba Brisel 1 – temelj evropskog gra?anskog procesnogprava / The Brussels I Regulation – the Cornerstone of the European Civil Procedure”

Vesna Lazic, PhD, University of Utrecht
“The Commission’s Proposal to Revise the EC Jurisdiction Regulation: the amendment of the lis pendens rule and of the arbitration exception”

Evangelos Vassilakakis, PhD, Aristotle University Thessaloniki
“The Unification of European Procedural Law and its Impact on Agency and Distributorship Agreements”

Vesna Tomljenovic, PhD, University of Rijeka
“Forum of necessity – novelty in the new Croatian PIL Act”

Jasmina Alihodzic, PhD, University of Tuzla
“Pravila o me?unarodnoj nadležnosti kod pojedina?nih ugovora o radu u pravu Evropske unije i Bosne i Hercegovine” / “International jurisdiction for individual employment contracts in EU and Bosnia and Herzegovina”

Gjorgje Krivokapic LLM, University of Belgrade, and Ugljesa Grusic LLM, London School of Economics
“Zasto Srbija treba da pristupi Haskoj konvenciji o sporazumima o nadleznosti suda?” / “Why should Serbia access Hague Choice of Court Convention?”

Sanja Marjanovic, PhD, University of Nis,
“Jurisdikcioni imunitet strane drzave izmedju unutrasnjeg i medjunarodnog prava” / “Jurisdictional immunity of a foreign state – between domestic and international law”

Apostolos Anthimos, PhD, Panelist at the CAC for .eu ADR, Greece
Online Dispute Resolution – The .eu ADR Paradigm

Discussion

3:45 pm to 4:00 pm Coffee break

4:00 pm to 4:45 pm **IV panel** Conflict of laws on property

Slavko Djordjevic, PhD, University of Kragujevac
“Merodavno pravo za stvarnopravne odnose sa elementom inostranosti – de lege lata i de lege ferenda” / “Determining applicable law for Property Relations with foreign element – de lege lata and de lege ferenda”

Discussion

4:45 pm to 5:15 pm

Christa Yesell Holst, GIZ
“Support to development of draft laws and model solutions in the field of Private International Law (Closing of the component)”

5:15 pm Closing of the conference

8:30 pm Dinner at National Restaurant “Dukat”

Thirty-one publications on South African private international law 2008-2011

- Bennett and Kopke “Characterization and ‘gap’ in the conflict of laws” 2008 South African Law Journal 62
- Eiselen “Goodbye arrest ad fundandam. Hello forum non conveniens?” 2008 TSAR 794
- Harder “Statutes of limitation between classification and renvoi: Australian and South African approaches compared” 2011 ICLQ 659
- Neels “Falconbridge in Africa” 2008 Journal of Private International Law 167

- Neels “Consumer protection and private international law” 2010 Obiter 122
- Neels “South Africa” in Fernandez Arroyo (ed) Consumer Protection in International Private Relationships (2010) CEDEP 415
- Neels “External public policy, the incidental question properly so-called and the recognition of foreign divorce orders” in Boele-Woelki, Einhorn, Girsberger and Symeonides (eds) Convergence and Divergence in Private International Law. Liber amicorum Kurt Siehr (2010) Eleven International Publishers / Schulthess 331 (reprint in 2010 TSAR 671)
- Neels and Fredericks “The music performance contract in European and Southern African private international law” 2008 Tydskrif vir die Hedendaagse Romeins-Hollandse Reg / Journal of Contemporary Roman-Dutch Law 351 and 529
- Neels and Fredericks “Tacit choice of law in the Hague Principles on Choice of Law in International Contracts” 2011 De Jure (forthcoming)
- Neels and Wethmar-Lemmer “Constitutional values and the proprietary consequences of marriage in private international law” 2008 TSAR 587
- Oppong “Roman-Dutch law meets the common law on jurisdiction in international matters” 2008 Journal of Private International Law 311
- Oppong “Enforcing judgments of the SADC Tribunal in the domestic courts of member states” 2010 Monitoring Regional Integration in Southern Africa Yearbook 115
- Oppong “Inter-institutional relations: public-private international law dimensions” chapter 8 in Oppong: Legal Aspects of Economic Integration in Africa (2011) Cambridge University Press
- Oppong “Interstate relations, economic transactions and private international law” chapter 9 in Oppong: Legal Aspects of Economic Integration in Africa (2011) Cambridge University Press
- Roodt “Recognition of Muslim marriages in South Africa: a conflicts perspective” 2008 The International Journal of Diversity in Organisations, Communications and Nations 137
- Roodt “Party autonomy in international law of succession” 2009 TSAR 241
- Roodt “Conflicts of procedure between courts and arbitral tribunals in Africa: an argument for harmonization” 2010 Tulane European and Civil Law Forum 65
- Roodt “Autonomy and due process in arbitration: recalibrating the balance” 2011 European Journal of Law Reform (forthcoming)

- Roodt “Conflicts of procedure between courts and arbitral tribunals with particular reference to the right of access to court” 2011 African Journal of Comparative and International Law 236
- Schulze “Conflict of laws” 2008 Annual Survey of South African Law 167
- Schulze “International jurisdiction in claims sounding in money: is Richman v Ben-Tovim the last word?” 2008 South African Mercantile Law Journal 61
- Schulze “Conflict of laws” 2009 Annual Survey of South African Law 134
- Schulze “Arbitration agreements and jurisdiction in terms of the Judgment Regulation” 2010 The Comparative and International Law Journal of Southern Africa 68
- Schulze “Conflict of laws” 2010 Annual Survey of South African Law (forthcoming)
- Sibanda “Jurisdictional arrest of a foreign peregrines now unconstitutional in South Africa” 2008 Journal of Private International Law 167
- Van Niekerk “Choice of English law and practice in a ‘South African short-term policy’ of marine insurance: jurisdiction and applicable law” 2010 TSAR 590
- Van Niekerk “Choice of foreign law in a South African marine insurance policy: an unjustified limitation of party autonomy?” 2011 TSAR 159
- Wethmar-Lemmer “When could a South African court be expected to apply the United Nations Convention on Contracts for the International Sale of Goods (CISG)?” 2008 De Jure 419
- Wethmar-Lemmer “The impact of article 95 reservation on the sphere of application of the United Nations Convention on Contracts for the International Sale of Goods (CISG)” 2010 De Jure 362
- Wethmar-Lemmer: The Vienna Sales Convention and Private International Law (2010) LLD thesis University of Johannesburg
- Wethmar-Lemmer “Party autonomy and international sales contracts” 2011 TSAR 431

TSAR = Tydskrif vir die Suid-Afrikaanse Reg / Journal of South African Law

Spanish Legislación de Derecho Internacional Privado, latest edition

The 14th edition of the *Legislación de Derecho Internacional Privado* has been released. Prepared by Professors Santiago Álvarez González, Carlos Esplugues Mota, Pilar Rodriguez Mateos and Sixto Sánchez Lorenzo, it a useful tool for students, practitioners, and foreign scholars willing to know what PIL laws, either autonomous, conventional or European, are applicable in Spain (and, for the last two, what their Spanish wording is: not always the same as in other languages). The *Legislación de Derecho Internacional Privado* includes most of the rules in force in Spanish PIL: ad. ex., those of domestic source, provisions of the European Union and the EFTA, Hague Conference, Council of Europe Conventions, International Commission on Civil Status Conventions and United Nations Conventions, as well as a list of 25 bilateral agreements on cooperation. New to this edition is the inclusion of the Hague Convention of October 19, 1996; Regulation (EU) no. 1259/2010 (Rome III); and the important reform of the Spanish Arbitration Act. To have a look at the complete summary click here.

New ICC Rules in 2012

The International Chamber of Commerce (ICC) has launched a revised version of its Rules of arbitration. The new Rules will come into force on 1 January 2012.

See the announcement of the ICC here.

Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts" (5/2011)

Recently, the September/October issue of the German law journal "Praxis des Internationalen Privat- und Verfahrensrechts" (**IPRax)** was published.

Here is the contents:

- ***Marc-Philippe Weller***: "Anknüpfungsprinzipien im Europäischen Kollisionsrecht: Abschied von der „klassischen" IPR-Dogmatik?" – the English abstract reads as follows:

Friedrich Carl v. Savigny has influenced modern private international law. His method is known as the "classic" private international law doctrine. Its principles are the international harmony of decisions and the neutrality of private international law, embodied in the principle of the most significant relationship.

However, in European private international law a slight paradigm change concerning the structure of the conflict of law rules can be detected from a classic point of view. The conflict of law rules of the Rome I and Rome II Regulation are prevalently oriented according to the material principles of the European Union such as the promotion of the internal market, the increase of legal security and the protection of the weaker party (e.g. consumer protection).

Nevertheless, in the event of a future codification of private international law at European level, the classic connecting principles of private international law deserve greater attention in the law making process. The Lisbon Treaty would allow such a "renaissance" of the classic private international law doctrine.

- ***Dieter Martiny***: "Die Kommissionsvorschläge für das internationale Ehegüterrecht sowie für das internationale Güterrecht eingetragener Partnerschaften" – the English abstract reads as follows:

On 16 March 2011 the European Commission proposed two separate Regulations, one for married couples on matrimonial property regimes and another on the property consequences of registered partnerships. A Communication of the Commission explains the approach of the proposals. While it is in principle to be welcomed that the Proposals are gender neutral and neutral regarding sexual orientation, the relationship between the intended overarching European rules with the (existent) divergent national rules for different types of marriages and partnerships raises some doubts. It is regrettable that, whereas spouses may themselves expressly choose the applicable law to a certain extent, the assets of registered partnerships are, as a rule, subject to the law of the country where the partnership was registered. In the absence of a choice of law by the spouses, similar to the Rome III Regulation – but following the immutability doctrine – the law of their common habitual residence applies in the first instance. The scope of the Proposals as to "matrimonial property" is not totally clear, nor is the role of overriding mandatory rules. Rules on jurisdiction and recognition are broadly in line with the Brussels II bis Regulation and the Succession Proposal. Many details of the recent Proposals need more clarification. However, despite a number of flaws the Proposals seem basically to be acceptable – at least for the civil law Member States.

- ***Andreas Engert*/Gunnar Groh**: "Internationaler Kapitalanlegerschutz vor dem Bundesgerichtshof" – the English abstract reads as follows:

In 2010, the German Federal Court handed down a number of judgments on the liability of investment service providers in an international setting. The Court faced two specific fact patterns: On the one hand, broker-dealers from the U.S. and Britain participated in a fraudulent investment scheme operated by a German asset manager through investment accounts located abroad. The question arose whether German courts had jurisdiction over the foreign defendants for aiding and abetting, and if so, which tort law governed the case. On the other hand, an investment fund from Turkey and a Swiss asset manager offered their services to investors in Germany without being licensed by the German financial services supervisor.

As regards the jurisdiction issue vis-à-vis defendants from the U.S. and Turkey, the Court concluded that foreign aiders and abettors to a tort committed in

Germany can be sued in Germany. The tortfeasor's acts were imputed to them under § 32 Zivilprozessordnung (German Code of Civil Procedure). In relation to European defendants, the Federal Court claimed jurisdiction under art. 5 no. 3 Brussels I Regulation/Lugano Convention based on the place where the damage occurred. Because investors were almost certain to lose money on the

fraudulent scheme, the damage occurred in Germany when investors transferred their funds to a foreign account. In one case, the Court relied on its jurisdiction over consumer contracts for adjudicating a torts claim, which allowed the Court to dismiss a jurisdiction clause.

With regard to the conflicts rules on tort law, the cases were still governed by German conflicts law leading to similar issues. As a result, investors were able to rely on German tort law. Under the new Rome II Regulation, future tort claims may well qualify as culpa in contrahendo. The applicable law then depends on the law applicable to the contract itself. In this case, the special conflict rule for consumer contracts (Art. 6 Rome I Regulation) ensures that retail investors can invoke their home country's tort law.

- ***Jürgen Samtleben:*** "Schiedsgerichtsbarkeit und Finanztermingeschäfte – Der Schutz der Anleger vor der Schiedsgerichtsbarkeit durch § 37h WpHG" – the English abstract reads as follows:

The present article discusses the disputed provision of § 37h of the German Securities Trading Act (WpHG), according to which non-merchants are not able to enter into a valid advance arbitration agreement as regards financial services transactions. The decision of the Federal Court of Justice (BGH) at issue addressed a damages claim brought against a US broker who had, through the use of independent German financial intermediaries, secured clients for the purchase of financially risky futures. As in other cases, the BGH found the business practice of the financial intermediaries to be contrary to public policy and concluded that the broker is subject to liability for his participation in an unlawful commercial practice. The central issue, however, was the defendant's contention that the court was bound to refer the matter to arbitration in light of an arbitration clause included in the original account agreement. Although signed only by the client, the clause arguably comported with US law, notwithstanding its failure to meet the formal requirements of Art.

II of the New York Convention. As it was not clear whether the claimant could be labeled a merchant, the BGH could not make a final determination on the applicability of § 37h WpHG. Equally left open was the question whether the claimant had engaged in the financial activities in question for private purposes and thus as a consumer; in such a case the account agreement would fail to satisfy the formal requirements of § 1031(5) of the German Code of Civil Procedure (ZPO). The article makes clear that the formal requirements of § 1031(5) ZPO can be overridden by a written arbitration agreement that otherwise satisfies the New York Convention. In contrast, § 37h WpHG constitutes a matter of (missing) subjective arbitrability which, according to the Convention, is to be determined under national law. Whereas § 37h WpHG in its current version only protects non-merchants, this limitation is overly narrow and should be abandoned so that all investors acting in a private capacity are protected from the application of an arbitration clause.

- ***Astrid Stadler***: "Prozesskostensicherheit bei Widerklage und Vermögenslosigkeit" – the English abstract reads as follows:

The key issue in the proceedings before the Court of Appeal in Munich was the question whether an insolvent US corporation – with its center of main interest being located in Great Britain – was exempt from its obligation to provide security for legal expenses of a counterclaim after the principal cause of action had been dismissed. The author agrees with the court's judgment, stating that the counterclaimant legally was exempt but disagrees with the reasons given by the court. In her opinion, an exemption would have been possible according to Sec. 110 para. 1 German Code of Civil Procedure, which imposes the obligation to provide security only upon claimants domiciled outside the EU. With the (counter-)claimants insolvency estate being located in Great Britain, the companies statutory head office in the US (Delaware) was irrelevant. The article furthermore raises the question whether an exemption to the obligation of providing security for legal expenses should be granted whenever the foreign (counter-)claimant is penniless. The article objects to such a rule considering the ratio legis of Sec. 110 German Code of Civil Procedure, which simply tries to compensate the difficulties being linked to an execution outside the EU or the EEA. The defendants risk of being sued by an insolvent plaintiff not being able to reimburse the defendant's legal costs in case of a dismissal of his action

exists as well with respect to plaintiffs domiciled in the forum state. Thus a general rule applicable to all insolvent plaintiffs would be necessary, which however runs contrary to a tendency in European countries of generally abolishing the obligation of foreign plaintiffs to provide security for legal expenses in order to make their court more attractive.

- ***Thomas Rauscher:*** "Ehegüterrechtlicher Vertrag und Verbraucherausnahme? – Zum Anwendungsbereich der EuVTVO" – the English abstract reads as follows:

The contribution discusses several decisions rendered by the Berlin Court of Appeal (Kammergericht) concerning the qualification of a right in property as arising out of a matrimonial relationship in the sense of Art 2 (a) of the EC-Enforcement-Order-Regulation (Regulation (EC) No 805/2004) as well as the application of the EC-Enforcement-Order-Regulation towards consumer cases. The meaning of matrimonial property rights under the EC-Enforcement-Order-Regulation should be interpreted with regard to the ECJ's DeCavel-decisions given under the Brussels Convention. The primary claim will be decisive for the interpretation of this exemption from the Regulation's scope of application; secondary claims are exempted from the scope of application as well. The protection of consumers under Art 6 (1)(d) EC-Enforcement-Order-Regulation should not only apply in B2C-cases as under Art 15 Brussels I-Regulation but also in C2C-cases; the consumer being the defendant needs protection against certification of a title as European Enforcement Order without regard to the plaintiff's qualification as a consumer or professional. Finally it is questionable that the court did not ask the ECJ to render a preliminary decision concerning those remarkable questions.

- ***Martin Illmer***: "Englische anti-suit injunctions in Drittstaatensachverhalten: zum kombinierten Effekt der Entscheidungen des EuGH in Owusu, Turner und West Tankers" – the English abstract reads as follows:

Due to the territorial limits of the ECJ's judgments in Turner and West Tankers, English courts are still granting anti-suit injunctions in relation to non-EU Member States. However, even this practice may be contrary to EU law due to the combined effect of the ECJ's judgments in Turner, West Tankers and

Owusu. This line of argument which was lurking in the dark for some time now came only recently before the English High Court. Based on the assumption that forum non conveniens (which was the critical issue in Owusu) and anti-suit injunctions (which were the critical issue in Turner and West Tankers) are two related issues with overlapping preconditions, anti-suit injunctions might have been buried altogether. The High Court, however, rejected such an assumption without further discussion of the issue and granted the anti-suit injunction.

- ***Ghada Qaisi Audi***: DIFC Courts-ratified Arbitral Award Approved for Execution by Dubai Courts; First DIFC-LCIA Award pursuant to Dubai Courts-DIFC Courts Protocol of Enforcement

The enforcement of arbitral awards made by the Dubai International Financial Centre-London Court of International Arbitration (DIFC-LCIA) can only be achieved by a ratification Order of the Dubai International Financial Centre Courts (DIFC Courts). The first DIFC Courts-ratified arbitral award was recently approved for execution by the Dubai Courts under the 2009 Protocol of Enforcement that sets out the procedures for mutual enforcement of court judgments, orders and arbitral awards without a review on the merits, thus providing further uniformity and certainty in this arena.

- ***Christel Mindach***: Russland: Novellierter Arbitrageprozesskodex führt Sammelklagen ein
- ***Carl Friedrich Nordmeier***: Beschleunigung durch Vertrauen: Vereinfachung der grenzüberschreitenden Forderungsbeitreibung im Europäischen Rechtsraum – Tagung am 23./24.9.2010 in Maribor
- ***Mathäus Mogendorf***.: 16. Würzburger Europarechtstage am 29./30.10.2010

Second Issue of 2011's Revue Critique de Droit International Privé

The last issue of the *Revue critique de droit international privé* was just released. It contains three articles and several casenotes. The full table of contents can be found here.

In a first article, Pascal de Vareilles Sommieres, who is a professor of law at Paris I Pantheon Sorbonne University, explores the relationship between international mandatory rules and policy (*Lois de police et politiques legislatives*). The English asbtract reads:

> *Still somewhat ill-defined the role of legal policy, which is irrelevant in the determination of ordinary private law rules in Savigny's methodology, is of course a decisive element in characterization of mandatory rules, as a definition of their scope. In conflict of laws, policy considerations occupy a more significant place when the mandatory rule emanates from the legal system of the forum then when it is a foreign rule. In conflict of jurisdiction, policy requirements of varying intensity have to compose with other considerations of judicial administration, so that each mandatory rule exerts its own specific impact, whether on the jurisdiction of the court or on the status of foreign judgments.*

In the second article, Petra Hammje, who is a professor of law at the University of Cergy-Pontoise, offers a survey of the new Rome III Regulation (*Le nouveau reglement (UE) no 1259/2010 du Conseil du 20 décembre 2010 mettant en oeuvre une coopération renforcée dans le domaine de la loi applicable au divorce et à la séparation de corps*).

Finally, in the last article, Horatia Muir Watt, who is a professor of law at the Paris Institute of Political Science (*Science Po*) discusses the implications of the Chevron litigation (*Chevron, l'enchevetrement des fors. Un combat sans issue ?*). I am grateful to the author for providing me with the following abstract:

A decade after the dismissal of their claim by US courts for forum non conveniens and the victims' return to Ecuador, a new act of the Chevron (Texaco) drama began when the local court gave judgment in early 2011 against the multinational for its role in the environmental pollution in the Amazon forest region and its harmful consequences for the health of its indigenous population. Various strategies are currently being deployed internationally with a view to resist, neutralise or invalidate this judgment (in the form of a worldwide anti-suit injunction, a RICO action, or the invocation of international investment law) before the US court or in international arbitration. In this complex game where multiple fora make simultaneous claim to autority and engage in its mutual neutralisation, the reassuring traditional liberal model of international legal order is clearly out-of-step. The lesson of Chevron case is that it is time to quit the Westphalian perspective so that private international law may assume a useful role in global governance.

Subscribers of *Dalloz* can download the *Revue* here.

Hague Academy, Summer Programme for 2012

Private International Law

* **Inaugural Conference** (30 July)
Conflicts of Laws and Uniform Law In Contemporary Private International Law : Dilemma or Convergence?
Didier OPERTTI BADÁN; Professor at the Catholic University of Montevideo.

General Course (6-17 August)
The Law of the Open Society
Jürgen BASEDOW; Director of the Max Planck Institute for Comparative and

International Private Law, Hamburg.

The Private International Law Dimension of the Security Council's Economic Sanctions (30 July-3 August)
Nerina BOSCHIERO; Professor at the University of Milan.

* *The New Codification of Chinese Private International Law* (30 July-3 August)
CHEN Weizuo; Professor at Tsinghua University, Beijing.

Applying Foreign Public Law in Private International Law – A Comparative Approach (30 July-3 August)
Andrey LISITSYN-SVETLANOV; Professor at the Institute of State and Law, Russian Academy of Sciences, Moscow.

* *Party Autonomy in Private International Law: A Universal Principle between Liberalism and Statism* (6-10 August)
Christian KOHLER; Honorary Director-General at the Court of Justice of the European Union, Luxembourg.

Applying the most Favourable Treaty or Domestic Rules to Facilitate Private International Law Co-operation (6-10 August)
Maria Blanca NOODT TAQUELA; Professor at the University of Buenos Aires.

* *Bioethics in Private International Law* (13-17 August)
Mathias AUDIT; Professor at the University of Paris Ouest Nanterre La Défense

Compétence-Compétence in the Face of Illegality in Contracts and Arbitration Agreements (13-17 August)
Richard H. KREINDLER; Professor at the University of Münster

* Lectures delivered in French, simultaneously interpreted into English.

More information is available here.

EESC Opinion on the Brussels I Review published yesterday

The Opinion of the European Economic and Social Committee on the 'Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters' was published yesterday (OJ, C, 218). Though the Committee warmly welcomes the Commission's proposal and supports it, it nevertheless critisises the following aspects:

.- the exclusion of collective proceedings when abolishing the exequatur (art. 37)
.- the extent of the defamation exception (art. 37)
.- the drafting of the new mechanism for legal cooperation (art. 31)
.- the vagueness of the requirement that 'coordination' should be ensured between the court with jurisdiction on the substance and the court in another Member State which is seised with an application for provisional measures.
.- the insuficiency of the new rule on the recognition of arbitration agreements

According to the EESC, the Commission should also

.- consider amending Article 6 of Regulation 44/2001 in order to allow actions brought by different claimants to be dealt with collectively

.- keep a particularly close eye on the conduct of courts in the Member States, to ensure that the principle of mutual recognition of judgments is implemented correctly whenever decisions are made on jurisdiction for reasons of public policy

.- promote the development of a communication or guide on how to interpret Article 5 of the proposal

.- review the wording of Art. 24, in order to strengthen the legal position of consumers and employees and ensure that the same procedure is followed, regardless of which court has jurisdiction.

Australian article round-up 2011: General

Readers may be interested in a range of articles which have been published since the last Australian article round-up in 2010. Over the coming days, I will post abstracts for the articles roughly grouped into themes. Today's is a general theme.

- **John Fogarty, 'Peter Edward Nygh AM: His Work and Times' (2010) 1 *Family Law Review* 4:**

In this article the author outlines and honours the work and life of Peter Edward Nygh AM. From his early life in western Europe, through his relocation to Australia and to his subsequent contributions in academia, the Family Court of Australia and the Hague Conference on Private International Law, the article honours Peter Nygh's success as an academic, judge, reformer and internationalist, and his life as an honourable and decent man.

- **Mary Keyes, 'Substance and Procedure in Multistate Tort Litigation' (2010) 18 *Torts Law Journal* 201:**

Where a tort occurred outside the territory of the forum state, the Australian tort choice of law rule requires that the forum court must apply the law of the place where the tort occurred to resolve the dispute. Several exceptions to this principle are recognised, according to which the forum court may apply forum law instead of the otherwise applicable foreign law. This article considers these exceptions, focusing on the distinction between matters of substance, which may be governed by foreign law, and matters of procedure, which are always governed by forum law. The justifications for the separate treatment of procedural rules are critically examined. This article suggests that most of those justifications are weak and that, when taken together with the other exceptions that permit a forum court to apply its own law, they show that the Australian choice of law rule for multistate torts remains in need of further refinement.

- **Kate Lewins, 'Australian Cruise Passengers Travel in Legal Equivalent of Steerage — Considering the Merits of a Passenger Liability Regime for Australia' (2010) 38 *Australian Business Law Review* 127:**

Two Australian passengers contact their travel agent on the same day. Each books a cruise of similar duration, embarking at an Australian port for a Pacific cruise, on a different cruise ship line. One contract claims to be governed by United States law, with any claim to be brought in Florida within one year, and a limit on liability of about A$80,000 for personal injury or death claims. The second, (the lucky one), boards a ship with a contract governed by Australian law, allowing commencement in an Australian court within two years. Any legal recovery for injury or death sustained on the cruise is already fraught with complexity. But the variation between cruise ship liner's passenger contracts for voyages departing Australia can be significant. This article argues that the time has come for Australia to introduce a regime for the liability for passengers carried by sea from or to Australian ports.

- **Guan Siew Teo, 'Choice of Law in *Forum Non Conveniens* Analysis: *Puttick v Tenon Ltd* [2008] HCA 54′ (2010) 22 *Singapore Academy of Law Journal* 440:**

The overlap between questions of jurisdiction and choice of law is perhaps most visible when applying the doctrine of forum non conveniens: it is now generally accepted that the lex causae is indicative of where the natural forum is. But as the facts and holding of the decision of the High Court of Australia in Puttick v Tenon Ltd suggest, some issues remain which warrant careful treatment when considerations of the applicable law enter the jurisdictional analysis. Such difficulties relate to uncertainties on the threshold of proof, as well as the interaction between the forum non conveniens inquiry and procedural rules on pleading and proof of foreign law.

- **Rachel Joseph, 'Enabling the Operation of Religious Legal Systems in Australia by Extending Private International Law Principles' (2011) 85 *Australian Law Journal* 105:**

The current failure to recognise and accommodate religious law outside an arbitration context has led to informal religious dispute resolution processes that often lack protections (such as natural justice) which are inherent in Australia's secular legal system. This article proposes recognising and accommodating religious law through an expansion of common law principles of private international law. It argues that enabling the use of religious law outside an arbitration context would discourage the use of informal religious dispute resolution processes and enable Australia's secular legal system to

reassert control over all legal issues, including matters involving religious significance, by ensuring that the operation of religious law is governed by, and subject to, secular laws.

Commercial Conflict of Laws Course – Sydney Summer School in Oxford, July 2011

As part of the University of Sydney's Summer School Programme, there will be a Commercial Conflict of Laws course at Magdelen College, Oxford on 11-12 and 14-15 July 2011. It will be taught by Andrew Bell and Andrew Dickinson. From the website:

Objectives

- *Focus on commercial disputes with a transnational dimension.*
- *Determine the features which characterise transnational commercial litigation, where the forum is itself a matter of dispute.*
- *Identify and apply techniques for determining the law applicable to contractual and non-contractual claims.*
- *Compare and contrast the approaches to commercial private international law topics in Australia, UK and the European Union*

Content

The importance of venue in commercial litigation; Australian, UK and European approaches to jurisdiction; techniques of forum control; the law relating to anti-suit injunctions; the role of jurisdiction and arbitration agreements; introduction and ascertainment of foreign law; provisional measures, including freezing injunctions; rules of applicable law for contractual and non-contractual claims; and the distinction between substance and procedure..

The course is open to everyone, and may be of special interest to Australian lawyers working in London. Further details can be found on Sydney's website.