International Law Association: New Website and Annual Meeting of the German Branch

The International Law Association (ILA) has a new website (please click here) with an improved look. The ILA hopes that visitors will find the site more informative and easier to navigate; in particular, the Members Only Area has been upgraded and will continue to be developed in order to provide members with more targeted and relevant information.

The ILA was founded in Brussels in 1873. Its objectives, under its Constitution, are "the study, clarification and development of international law, both public and private, and the furtherance of international understanding and respect for international law". The ILA has consultative status, as an international non-governmental organisation, with a number of the United Nations specialised agencies. For further information and a welcome address from ILA chairman *Lord Mance*, please click here.

The German branch of the ILA will hold its annual meeting on 23 June, 2017, in Frankfurt (Main). This year's topic is „Human Rights in International Business". The list of distinguished speakers will include Professors *Marc-Philippe Weller* (Heidelberg) and *Karsten Nowrot* (Hamburg) as well as lawyers Dr. *Birgit Spießhofer* and Prof. Dr. *Remo Klinger* (both from Berlin). You may find the full programme and further information here.

Regulating economic activity in the international sphere and

freedom of establishment (XI Seminar on Private International Law). Call for Papers

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

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

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

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

The Seminar will include the following panels:

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

Main speaker: Prof. Dr. Jessica Schmidt, Professor of Civil Law and German,

European and International Law of Companies and Capital Markets (University of Bayreuth, Germany)

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

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

3. **Tax issues**

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

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

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

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

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

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

Main speaker: *to be confirmed*

7. **Arbitration**

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

Internationalizing the New Conflict of Laws Restatement

The Duke Journal of Comparative & International Law has just published a symposium issue on the importance of international law and comparative law for the American Law Institute's new Conflict of Laws Restatement project. Professors Ralf Michaels and Christopher Whytock have a Foreword entitled Internationalizing the New Conflict of Laws Restatement. Here is the Table of Contents for the complete issue:

Netherlands International Law Review (NILR) 1/2017: Abstracts

In the recent issue of the *Netherlands International Law Review* (NILR) three articles on private international law issues were published.

Peter Mankowski (The European World of Insolvency Tourism: Renewed, But Still Brave?, NILR 2017/1, p. 95-114) discusses the cross border insolvency tourism under the Insolvency Regulation. He also pays attention to the upcoming changes after Brexit to the Recast Insolvency Regulation.

The abstract of his article reads:

"Insolvency tourism and COMI migration have become key features in modern European international insolvency law. Fostered, in particular, by the ingenuity of the English insolvency industry. Yet it has not gone unanswered. The Recast European Insolvency Regulation introduces a not insignificant number of counter-measures as well as an antidote in the shape of a look-back period. Furthermore, as a prospective aftermath of Brexit, the race is on once more in the field of pre-insolvency restructuring measures."

Marek Zilinsky (Mutual Trust and Cross-Border Enforcement of Judgments in Civil Matters in the EU: Does the Step-by-Step Approach Work?, NILR 2017/1, p. 116-139) deals with the question on the implementation of the principle of mutual trust in different EU instruments in the field of cross border recognition and enforcement of judgments. He points out that the EU legislator has chosen different approaches for implementation. Special attention is paid to three instruments: the Brussels I Regulation Recast, the Brussels IIbis Regulation and

the Maintenance Regulation.

The abstract of this article reads:

"Mutual trust is one of the cornerstones of cooperation in the field of European Union private international law. Based on this principle the rules on the cross-border recognition and enforcement of judgments in the European Union are still subject to simplification. The step-by-step approach of the implementation of this principle led to the abolition of the exequatur, often accompanied by a partial harmonization of enforcement law to improve and support the smooth working of cross-border enforcement without exequatur. In this regard, it seems that the Member States still want to have control over the 'import' of judgments which results in maintaining the ground for non-recognition and the possibility of relying on them in the Member State of enforcement. This article considers the implementation of the principle of mutual recognition in three areas of justice: civil and commercial matters, family law and maintenance. In these areas the European Union legislator has chosen three different approaches for the implementation of this principle."

Jacobien Rutgers (NILR 2017/1, p. 163-175) discusses the *VKI/Amazon* Case of the European Court of Justice (Case C-191/15) where the Court gave its interpretation of Art 6(1) of the Rome II regulation and Art 6(1) Rome I Regulation in a procedure started by a consumer organization based on allegedly unfair terms in general terms and conditions of the seller.

The abstract to this article reads:

"In Amazon the CJEU decided which conflict rules applied to a claim in collective proceedings that was initiated by a consumer organization to prohibit allegedly unfair terms contained in the general terms and conditions of a seller. The terms were used in electronic b2c contracts, where the seller targeted consumers in their home country. The CJEU distinguished between the conflict rule concerning collective action, Article 6(1) Rome II, and the conflict rule concerning the fairness of the term, Article 6(2) Rome I. In addition, the CJEU introduced a new test to assess the fairness of a choice-of-law term under Directive 93/13 on unfair contract terms. In the note, it is argued that the CJEU's distinction between those two conflict rules is unnecessary and that the test that the CJEU formulated to

assess whether a choice-of-law term is unfair, is less favourable to the consumer than the tests formulated in prior decisions."

The text of the articles is free available on the website of the publisher of the *Netherlands International Review*.

Thanks go to Marek Zilinsky for providing the above-noted abstracts.

Buxbaum on "Determining the Territorial Scope of State Law in Interstate and International Conflicts: Comments on the Draft Restatement (Third) and on the Role of Party Autonomy"

Professor Hannah L. Buxbaum of Indiana University Bloomington Maurer School of Law hast just released an article adressing the treatment of geographic scope restrictions in state law in the current draft of the Restatement (Third) of Conflicts of Law.

The article begins by analyzing the role of the presumption against extraterritoriality in supplying implied restrictions on the scope of law. It considers the role of the presumption in both international and interstate conflicts of laws, and argues that the Restatement (Third) should differentiate clearly between those two contexts. It then turns to the question whether geographic scope restrictions should properly be considered part of a state's internal law. The paper analyzes that question through the lens of a common problem: a

contract dispute involving a transaction or event that falls outside the scope of the law chosen by the parties to govern their agreement. On the basis of that analysis, it concludes that forthcoming sections will need to address the implications of the draft's categorical treatment of legislative scope.

The Indiana Legal Studies Research Paper No. 372 is available on SSRN and will be published in the Duke Journal of Comparative & International Law, Vol. 27, 2017.

Pay Day – The German Federal Labour Court Gives its Final Ruling on Foreign Mandatory Rules in the Nikiforidis Case

On February 25, 2015, the German Federal Labour Court had referred questions relating to the interpretation of Art. 9 Rome I to the CJEU (see here). In the context of a wage claim made by a Greek national who is employed by the Hellenic Republic at a Greek primary school in Germany, the German Federal Labour Court faced the problem whether to apply the Greek Saving Laws No 3833/2010 and 3845/2010 as overriding mandatory provisions. The claimant, Mr. Nikiforidis, had argued that, as a teacher who is employed in Germany under a contract governed by German law, he did not have to accept the wage cuts imposed on his Greek colleagues working in the Hellenic Republic. For a closer analysis, see the earlier post by Lisa Günther here.

In its decision of October 18, 2016 – C-135/15 (available here), the CJEU held (at para 50) that Article 9 of the Rome I Regulation must be interpreted "as precluding the court of the forum from applying, as legal rules, overriding mandatory provisions other than those of the State of the forum or of the State where the obligations arising out of the contract have to be or have been performed. Consequently, since, according to the referring court, Mr. Nikiforidis's

employment contract has been performed in Germany, and the referring court is German, the latter cannot in this instance apply, directly or indirectly, the Greek overriding mandatory provisions which it sets out in the request for a preliminary ruling ". According to the CJEU, the duty of sincere cooperation laid down in Article 4(3) TEU does not modify this restrictive approach. The Court went on, however, to confirm the practice established by German courts of taking foreign mandatory rules into account as a matter of fact (at para 52): "On the other hand, Article 9 of the Rome I Regulation does not preclude overriding mandatory provisions of a State other than the State of the forum or the State where the obligations arising out of the contract have to be or have been performed from being taken into account as a matter of fact, in so far as this is provided for by a substantive rule of the law that is applicable to the contract pursuant to the regulation." Finally, the CJEU reached the conclusion (at para. 53) that "[a]ccordingly, the referring court has the task of ascertaining whether Laws No 3833/2010 and No 3845/2010 are capable of being taken into account when assessing the facts of the case which are relevant in the light of the substantive law applicable to the employment contract at issue in the main proceedings." For a critical evaluation of this decision, see the comment by Geert van Calster here.

On April 26, 2017, the Federal Labour Court delivered its final decision in this case (5 AZR 962/13; the German press release is available here). Although the CJEU has, as a general principle, allowed German courts to take foreign mandatory laws into account as a matter of fact, the Federal Labour Court respectfully declines to follow this path in the particular case because substantive German labour law does not provide for a suitable point of entry for the Greek saving laws. Under German labour law, an employee is – unless specifically agreed between the parties – not obliged to accept permanent wage cuts merely because his employer is in financial difficulties. Seen in this light, the preliminary reference of February 2015 has, at least partially, a certain hypothetical flavour to it – nevertheless, the methodological clarifications made by the CJEU will be helpful in future cases.

U.S. Supreme Court: The Hague Service Convention Does Not Prohibit Service of Process By Mail

The 1965 Hague Convention on Service of Process is one of the cornerstone treaties for international litigation. It provides a simple and effective process to provide due notice of a proceeding in one signatory state to a party in another, via a designated Central Authority in each signatory state. Nevertheless, one provision has vexed U.S. courts for decades. Article 10 provides that, notwithstanding the Central Authority procedures, and "[p]rovided the State of destination does not object, the present Convention shall not interfere with. . . the freedom to send judicial documents, by postal channels, directly to persons abroad." By virtue of the fact that the provision says "send" and not the magic word "serve," U.S. Courts have long disagreed over whether the Convention's procedures preclude international service of process by mail.

Today, the U.S. Supreme Court settled the question, and held that the Hague Service Convention does not prohibit service of process by mail. This permissive reading serves to increase the practical utility of the Convention around the world.

The opinion is available here, and it is a fairly straightforward exercise in treaty interpretation by Justice Alito. He starts with the "treaty's text and the context in which its words are used," as well as the overall "structure of the Convention" to divine the meaning of Article 10. To buttress his permissive interpretation, he then discusses "three extratextual sources [that] are especially helpful in ascertaining Article 10(a)'s meaning": the Convention's drafting history, the interpretation of the U.S. Executive Branch, and that of other signatories to the Convention.

As a practical matter, though, this decision doesn't necessarily open the mailboxes of the world to liberal service of process. Rather, service by mail is still only permissible if the receiving state has not objected to service by mail (some

do by way of reservations) and if such service is authorized under otherwise-applicable law. In this case, because the Court of Appeals concluded that the Convention prohibited service by mail, it did not consider whether Texas law authorizes the methods of service. That question was sent back to the lower courts to consider on remand.

TDM Call for Papers: Special Issue on Judicial Measures and Investment Treaty Law

Investment treaty claims arising out of judicial conduct—whether based on annulment of a contract for corruption or other irregularity or a fundamental jurisprudential shift—have been on the rise. To a foreign investor affected by such judicial measures, it is not always clear, however, what judicial measures can be subject to a claim under investment treaty law; which theory of liability is appropriate for a state's liability arising out of judiciary's conduct (or omissions); and which policy issues these different theories of liability raise.
This TDM special, thus, will be a unique, timely, and significant contribution to the current debate on investment treaty claims arising out of judicial measures. The special will explore the legal dimensions of judicial measures and potential theories for a state's liability under investment treaty law, as well as the appropriate remedy for illegal judicial measures.

This special issue will be edited by Rajat Rana (Dechert LLP) and Nicole Silver (Winston & Strawn LLP). The call for papers can also be found on the TDM website here

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Integration of the Arbitration Award in the State System: Comparative Perspectives *Dong Jingjing*

Part III: International Sale of Goods and Material Solutions

The Vienna United Nations Convention on Contracts for the International Sale of Goods: Applicability, Gaps and Implementation *Laura García Gutíerrez*

The Unidroit Principles of International Commercial Contracts in the Sino-European Sale of Goods Contracts *Gustavo Cerqueira*

Part IV: International Sale of Goods and Consumers

International Consumer Sales: International Jurisdiction and ADR in Europe and Chine *Markus Petsche*

The Law Applicable to the Consumer Contracts: Protection and Gaps in China and in Europe *Nicolas Nord*

The Preface, Presentation and Foreword can be freely accessed here