Douglas and Bath on important changes to the New South Wales' Uniform Civil Procedure Rules

Mr Michael Douglas and Prof Vivienne Bath, of Sydney Law School, have published an article on recent amendments to the Uniform Civil Procedure Rules regarding service outside the Australian state of New South Wales. Under the Rules, effective service of the court's originating process on a defendant outside New South Wales will establish the court's personal jurisdiction over the defendant. The article clearly sets out and analyses changes to the bases on which a defendant can be served outside Australia under the Rules. Numerous bases have been significantly expanded. It also considers the effect of a new rule allowing for a defendant to be served outside Australia, with the court's leave, where the claim does not fall within one of those bases. Among the particularly helpful aspects of the article are several comparative tables displaying the original rule, the revision and the authors' projected impact of the revision.

The authors' abstract is as follows:

'In December 2016, the Uniform Civil Procedure Rules 2005 (NSW) were amended in respect of service outside of the jurisdiction and outside Australia. Previously, service outside Australia was authorised if the claim had a specified connection to the forum. The claim was required to fall within one or more of the heads of Schedule 6. If the defendant failed to appear, the plaintiff would require leave to proceed. That position remains the default under the amended Rules, although the heads of Schedule 6 have been revised. However, there has also been a significant change. Under the new Rules, if the claim does not fall within Schedule 6, service may be authorised with the prior leave of the court. This article outlines and comments on the changes to the Rules, identifying areas which may require judicial clarification.'

The paper is available on SSRN at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3025146

Its suggested citation is: Michael Douglas and Vivienne Bath, 'A New Approach to Service Outside the Jurisdiction and Outside Australia under the Uniform Civil

Procedure Rules' (2017) 44(2) *Australian Bar Review* 160.

Litigación Internacional en la Unión Europea I: el Reglamento Bruselas I-bis

A new book on the Brussels I-bis Regulation, opening a brand new collection of Treaties on European Private International Law, has just seen the light. Entitled "Litigación internacional en la Unión Europea I: el Reglamento Bruselas I-bis" ("International litigation in the European Union I: the Brussels I-bis Regulation"), it is authored by Alfonso-Luis Calvo Caravaca, Javier Carrascosa González and Celia Caamiña Domínguez.

The book is divided into two major parts. The first is devoted to the European system of private international law. It examines the impact of European freedoms of movement on the European rules of private international law and the legal techniques used by the European legislator and the European court of Justice to implement these freedoms: the principle of mutual recognition (*Anerkennungsprinzip*), the doctrine of the "Law of origin" as a general rule of Private International Law and the creation of all-European new conflict rules. The process of europeanisation of Private International Law and its direct relationship with the European judicial area is also set out. To conclude this first part, the legal scenario of European private international law is analyzed, with a particular focus on the "Brussels Regulations" and the "Rome Regulations", as the fundamental pillars of EU private international law.

The second part is devoted to an in-depth study of the Brussels I-bis Regulation. It covers the general aspects of this important bastion of European private international law, as well as the rules of international jurisdiction those regarding extraterritorial validity of judgments and other decisions.

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For more information, click here

Alfonso-Luis Calvo Caravaca is Professor of Private International Law at the University Carlos III, Madrid, Spain, and co-director of the biannual electronic PIL journal Cuadernos de Derecho Transnacional (CDT).

Javier Carrascosa González is Professor of Private International Law at the University of Murcia, Spain, as well as the director of the Accursio DIP blog)

Celia Caamiña Domínguez is Lecturer of Private International Law at the University Carlos III, Madrid, Spain. She is currently in charge of the editorial management of CDT.

HCCH discussion paper on the operation of Article 15 of the 1980 Hague Child Abduction Convention

The Permanent Bureau of the Hague Conference on Private International Law (HCCH) has just issued a discussion paper on the operation of Article 15 of the 1980 Hague Child Abduction Convention for the attention of the *Special Commission meeting of October 2017 on the practical operation of the 1980 Child Abduction Convention and of the 1996 Child Protection Convention*.

Article 15 of the Child Abduction Convention reads as follows: "The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child **a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention**, where such a decision or

determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination." (our emphasis)

The paper proposes the following summary of possible measures to improve the application of Article 15:

- "Encouraging the availability of Article 15 decisions or determinations in all Contracting States;
- Encouraging clarification and improvement of internal Article 15 implementation with a view to making the procedures expeditious and effective;
- Enhancing the Country Profile under the 1980 Convention in relation to Article 15;
- Drafting of an Information Document on Article 15, which would also encourage:
    1. discretion in the use of the Article 15 mechanism and the use of alternatives;
    2. the systematic use of Article 8(3)(f) and Article 14, and the use of direct judicial communications and the IHNJ, where appropriate;
- Drafting of an Article 15 Model Request Form;
- Improving Central Authority practice in:
    1. facilitating the obtaining of decisions or determinations from competent authorities;
    2. encouraging more systematic inclusion of Article 8(3)(f) certificates / affidavits in applications, where deemed necessary;
- Encouraging improved quality of the decisions or determinations (under Art. 15) and certificates or affidavits (under Art. 8(3)(f)) (*e.g.*, through an Information Document and / or Model Request Form);
- Encouraging greater international consistency in a number of identified areas, if feasible (*e.g.*, certain trends / approaches could be described in an Information Document drafted with the assistance of a Working Group; use of a questionnaire to Contracting States to collect additional information)."

Preliminary and Information Documents of the meeting are available at https://www.hcch.net/en/publications-and-studies/details4/?pid=6545&dtid=57.

A draft agenda, as well as other Preliminary Documents including statistical information, will be uploaded in due course.

Please note that the meeting above-mentioned is open only to delegates or experts designated by the Members of the Hague Conference, invited non-Member States and International Organisations that have been granted observer status.

The Special Commission on Inter-Regional Conflict of Laws of the Chinese Society of Private International Law Organized Its Third Annual Symposium on Inter-Regional Taking of Evidence Within China

This Report is prepared by Prof. Guangjian Tu/Zeyu Huang (a PhD Candidate in University of Macau)

On 26 August 2017, one of the Special Commissions of the Chinese Society of Private International Law, the Special Commission on Inter-Regional Conflict of Laws (chaired by Professor Guangjian Tu) organized its third annual symposium titled “Inter-Regional Taking of Evidence Within China: Problems, Reflections and Improvements” under the support of the Chinese Society of Private International Law and the Institute for Advanced Legal Studies of Faculty of Law of University of Macau. Legal scholars and practitioners from the Mainland China, Hong Kong and Macau participated in this event on the beautiful newly-built campus of University of Macau, located in the Hengqin Island (Zhuhai City, PRC).

With the Mainland China –Macau Taking of Evidence Arrangement being made in 2001 and the Mainland China-Hong Kong Taking of Evidence Arrangement being promulgated in March 2017, this symposium was devoted to discussing and examining the potential problems, practical implementation and possible improvements of the two Arrangements. Given that at a global level the Hague Evidence Convention is regularly revisited every five years, useful information arising out of the Convention could be very good reference for Chinese Arrangements; the enhanced version of the Hague Evidence Convention, the EU Evidence Regulation could provide valuable experience to Chinese practice. While emphasis was put on the special features of the two Arrangements, international and foreign ideas and approaches were paid enough attention. It is suggested that within the Chinese Context, for the cross-border taking of evidence, shorter route between court to court could be explored, direct taking of evidence on voluntary witnesses is potentially possible and modern technologies could be made more use of.

Grounds for Refusal of Recognition of (Quasi-) Annex Judgements in the Recast European Insolvency Regulation

Written by Zoltán Fabók, Fellow of INSOL International, Counsel at DLA Piper (Hungary) and PhD Candidate at Nottingham Trent University

Insolvency-related (annex) actions and judgements fall within the scope of the Recast European Insolvency Regulation ('Recast EIR'). That instrument both determines international jurisdiction regarding annex actions and sets up a simplified recognition system for annex judgements. However, tension between the Recast EIR's provisions on jurisdiction and recognition arises when a court of a state different from the state of insolvency erroneously assumes jurisdiction for

annex actions. Such ‘quasi-annex’ judgements rendered by foreign courts erroneously assuming jurisdiction threaten the integrity of the insolvency proceedings. Besides, the quasi-annex judgements may violate the effectiveness and efficiency of the insolvency proceedings as well as the principle of legal certainty.

In my paper, it is argued that even the current legal framework may offer some ways to avoid the recognition of such quasi-annex judgements. First, the scope of the public policy exception may be extended in order to protect the integrity of the insolvency proceedings from the quasi-annex judgements rendered by foreign courts erroneously assuming jurisdiction. Second, it may be argued that quasi-annex judgements do not equal real annex judgements and therefore do not enjoy the automatic recognition system provided by the Recast EIR. At the same time, their close connection to the insolvency proceedings – disregarded by the forum erroneously assuming jurisdiction – may exclude quasi-annex judgements from the scope of the Brussels Ibis Regulation, as well. As a consequence, those quasi-annex judgements may fall within the gap between the two regulations, meaning that no European instrument instructs the courts of the member state addressed to recognise quasi-annex judgements.

My research article has been accepted for publication by International Insolvency Review. The paper can be accessed in the Early View section at http://onlinelibrary.wiley.com/doi/10.1002/iir.1284/full.

Egyptian Court of Cassation on the application of the Hague Service Convention

[The author wishes to thank Justice *Hossam Hesham Sadek*, Vice President of the Civil and Commercial Chamber of the Court of Cassation, and reporting judge in the case at hand, for granting access to the Supreme Court’s ruling].

1. Introduction

In a recent ruling (22/05/2017), the Egyptian Court of Cassation tackled with the issue of service of process abroad. The facts of the case were the following: The claimant (and appellant) was an Egyptian Medical Equipment company, situated in Cairo. The respondents and appellees were a Chinese company, with its seat in Nanshan district, Shenzen, the Egyptian General Organization for Import and Export Control, and an Egyptian company, with its seat in Heliopolis, Cairo.

2. Facts and instance ruling

The Appellant filed a lawsuit against the Chinese Company and the Second Appellee at Cairo Court of Appeal, requesting a judgment obliging the First Appellee to pay the amount of ten million Egyptian pounds as monetary and moral compensation resulting from the contract's termination. The Appellant asserted that it had been assigned as the sole agent of the First Appellee in Egypt, for selling ultrasonic wave devices, and that it was unexpectedly notified by the First Appellee that the contract was terminated.

The first instance court ordered that the lawsuit be dismissed for lack of proper service to the Chinese company. The Appellant claimed that service had been effected through the Public Prosecution Office, following all necessary procedures through diplomatic channels in China, pursuant to article 13 (9) of the Egyptian Civil and Commercial Code of Procedure (CCCP), and by notification of the claim to the first Appellee's legal representative (Commercial Agent) pursuant to article 13 (5) CCCP.

Article 13 (9) CCCP states that, if no international treaty or a specific provision of law is applicable, service shall be made by delivering the documents to the public prosecutor, who then forwards them to the Minister of Foreign Affairs, to be delivered through diplomatic channels to the country of destination. Art. 13 (5) CCCP stipulates that, if service is addressed to a foreign company that has a branch or agent in Egypt, domestic service shall be effected (i.e. to the branch or agent located in Egypt).

3. The Supreme Court ruling

The Court of Cassation referred initially to Art. 13 (5) & (9) CCCP. It then mentioned Articles 3 & 14 of the Judicial Cooperation Treaty on Civil, Commercial

and Criminal Matters between the Arab Republic of Egypt and The People's Republic of China, signed on 21/4/1994, which stipulates that: "*For the purposes of requesting and providing judicial assistance, parties shall communicate through their central authorities unless otherwise provided for in this Treaty. Central authorities of both parties are represented by the Ministries of Justice. Both parties shall serve judicial documents in civil and commercial matters pursuant to Hague Convention on the service Abroad of Judicial and Extrajudicial Documents in civil or Commercial Matters concluded on 15/11/1965*''.

Based on the above, the Court of Cassation decided as follows: The Hague Convention exclusively stipulates methods, means and conditions for serving judicial documents unless agreed between the Parties on other methods pursuant to Article 11 of the same Convention, and obliges the judge to stay proceedings, save when a document was served by a method prescribed by the internal law of the State addressed, or when the document was actually served to the defendant in its residence under one of the methods prescribed in the Convention in sufficient time to enable him to arrange for his defence.

Since the legislator has permitted in Article 13(5) CCCP that foreign companies may be served by delivering a copy to its branch or agent in Egypt, their existence is considered a question of fact under the exclusive competence of the court. Accordingly, the Court of Cassation confirmed the instance decision, which ruled that service made to the first Appellee through the third appellee (Trade And Importing Company in Heliopolis), ostensibly being its commercial agent and representative, was improper, since the representative of the latter denied its relation with the first Appellee.

Finally, delivering the document to the Public Prosecution in order to take necessary actions towards service by diplomatic channels is not sufficient, because notice was not delivered / served to the first Appellee.

4. Conclusion

The judgment offers a valuable insight into the practice of Egyptian courts in regards to notification of documents abroad. It is noteworthy that the Court of Cassation examined carefully all legal regimes related to the subject matter: It referred to domestic law (CCCP), the Egyptian – Chinese bilateral treaty, and the multilateral convention, to which the bilateral convention refers. The question

whether service of process abroad was necessary or not was decided on a substantive level: Given that the appellant failed to demonstrate that the third appellee was the representative of the Chinese company, the court rightfully considered that service solely to the local Transmission Authority through the Prosecutor's Office does not suffice. Hence, whenever the Hague Service Convention applies, the Court of Cassation dismisses fictitious service (remise au parquet).

Baudenbacher on Brexit and the EFTA option

By Stephan Walter, Research Fellow at the Research Center for Transnational Commercial Dispute Resolution (TCDR), EBS Law School, Wiesbaden, Germany.

In response to the United Kingdom's intention to leave the jurisdiction of the Court of Justice of the European Union after Brexit (see in this respect the policy paper on providing a cross-border civil judicial cooperation framework issued by the Department for Exiting the European Union), Carl Baudenbacher, the President of the Court of the European Free Trade Association (EFTA), has just published an interesting article which advocates that the United Kingdom could use his court to resolve disputes. According to him, the relationship of the EFTA Court and the CJEU is based on judicial dialogue. On the one hand, the EFTA Court as a rule follows relevant case law of the CJEU. On the other hand, the CJEU usually follows EFTA Court case law, both explicitly and implicitly. In case of a conflict between the two courts, the EFTA Court is, in his opinion, not easily "outgunned" by the CJEU. By contrast, he highlights that the EFTA Court has gone its own way on essential questions of European single market law. Nonetheless, he argues that the case law of the EFTA Court and the CJEU must develop in a homogeneous way.

The article can be found here.

Second Issue of 2017's Journal of Private International Law

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

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

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

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

> *Because of its structuring function, private international law tends to be given a status distinct from the ordinary rules of domestic law. In a federal system, private international law of necessity implicates some aspects of the constitution. In a series of cases beginning in 1990 the Supreme Court of*

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

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

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

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

During the recasting process of the EU Insolvency Regulation, issues relating to

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

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

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

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

This article contends that the system of "qualified" or "partial" mutual trust in the Hague Choice of Court Agreements Convention ("Hague Convention") may permit anti-suit injunctions, actions for damages for breach of exclusive jurisdiction agreements and anti-enforcement injunctions where such remedies further the objective of the Convention. However, intra-EU Hague Convention

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

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

The Asian Principles of Private International Law (APPIL) finalized in 2017 is a project undertaken by private international law scholars of 10 East and Southeast Asian jurisdictions to harmonize the region's private international law rules or principles. Containing principles on choice of law, international jurisdiction, the recognition and enforcement of foreign judgements, and the judicial support of international commercial arbitration, they are the first harmonization effort in Asia based on comparative analyses of the private international law of the 10 participating APPIL-Jurisdictions. Being the first "voice of Asia" in private international law, they may serve as a model for national and regional instruments and thus may be used by the private international law legislators of Asian jurisdictions to interpret, supplement and enact their own private international law statutes; and may even be applied by state courts and arbitral tribunals, albeit not as legally binding instrument but as "soft law". They will mainly function as a private international law model law.

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

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

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

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

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.