Brussels I Review – Choice of Court Agreements

Among the issues raised by the Green Paper, those concerning the treatment of choice of court agreements raises are, almost certainly, the most difficult and controversial. In considering possible reforms, a balance must be struck between the advantages, both commercial and in terms of promoting legal certainty, of supporting party autonomy in matters of jurisdiction, and the wish to ensure that weaker parties (particularly consumers) are protected and that the procedural rights generated by the Brussels I Regulation are not abused.

In the Commission's view in its Green Paper:

> *Agreements on jurisdiction by the parties should be given the fullest effect, not the least because of their practical relevance in international commerce. It should therefore be considered to what extent and in which way the effect of such agreements under the Regulation may be strengthened, in particular in the event of parallel proceedings.*
>
> *One solution might be to release the court designated in an exclusive choice-of-court agreement from its obligation to stay proceedings under the lis pendens rule. A drawback of this solution is that parallel proceedings leading to irreconcilable judgments are possible.*
>
> *Another solution might be to reverse the priority rule insofar as exclusive choice of court agreements are concerned. In this option, the court designated by the agreement would have priority to determine its jurisdiction and any other court seised would stay proceedings until the jurisdiction of the chosen court is established. This solution already applies in the context of the Regulation with respect to parties none of whom is domiciled in a Member State. Such a solution would align to a large extent the internal Community rules with the international rules. A drawback of this solution may be that if the agreement is invalid, a party must seek first to establish the invalidity before the court designated in the agreement before being able to seize the otherwise competent courts.*
>
> *Alternatively, the existing lis pendens rule may be maintained, but a direct*

communication and cooperation between the two courts could be envisaged, combined, for instance, with a deadline for the court first seized to decide on the question of jurisdiction and an obligation to regularly report to the court second seized on the progress of the proceedings. In this option, it should be ensured that the claimant does not lose a legitimate forum for reasons outside his/her control.

The efficiency of jurisdiction agreements could also be strengthened by the granting of damages for breach of such agreements, arising for instance from the delay or the exercise of default clauses in loan agreements.

Another solution might also be to exclude the application of the lis pendens rule in situations where the parallel proceedings are proceedings on the merits on the one hand and proceedings for (negative) declaratory relief on the other hand or at least to ensure a suspension of the running of limitation periods with respect to the claim on the merits in case the declaratory relief fails.

Finally, the uncertainty surrounding the validity of the agreement could be addressed, for instance, by prescribing a standard choice of court clause, which could at the same time expedite the decision on the jurisdiction question by the courts . This option could be combined with some of the solutions suggested above: the acceptance of parallel proceedings or the reversal of the priority rule could be limited to those situations where the choice-of-court agreement takes the standard form prescribed by the Regulation.

As the Commission appears to acknowledge in the Report accompanying its Green Paper, the overwhelming priority in the review of the Brussels I Regulation must be to address the genuine concerns raised by business and the legal profession following the ECJ's decision in Case C-116/02, *Erich Gasser GmbH v. MISAT Srl* , confirming that the *lis alibi pendens* provisions in the Brussels I regime cannot be excluded or overridden by a choice of court agreement. In particular, as the English High Court decision in the *Primacom* case demonstrates, *Gasser* has crystallised a legal framework within which tactical, protective and (in some cases) abusive litigation within the EC, by parties wishing to take advantage of the priority conferred by Art. 27 of the Regulation, is a regular occurrence. This state of affairs has adverse and unintended consequences not only for the parties (as the example given in the Commission's report of protective litigation

triggering cross-default provisions in loan documentation demonstrates), but also for the reputation of the EC and its constituent legal systems as a venue for commercial dispute resolution.

There is also a wider international aspect to the problem, and the analysis of possible solutions, in that the Council has approved the signing on behalf of the European Community of the Convention on Choice of Court Agreementsconcluded at The Hague on 20 June 2005. It must be noted that the Convention contains provisions governing its relationship with other international instruments, which give priority to the Regulation's rules in certain cases (including the recognition and enforcement of judgments between Member States). Moreover, even if adopted by the EC, the Convention would exclude choice of court agreements in several situations falling within the Regulation's scope (Hague Convention, Art. 2(1)(f)-(p)) and would not (save by reciprocal declarations – Art. 22) cover non-exclusive choice of court agreements. Nevertheless, the Convention promises significant benefits for business in the EC by creating the basis for an international framework supporting the consensual judicial resolution of disputes comparable to that established for arbitral processes by the 1958 New York Convention, thereby offering greater flexibility and opportunities for Member State entities trading with their counterparts in other Contracting States.

It is to be hoped that the Community will take the opportunity to accede to the Convention at the earliest possible opportunity, and will make a declaration extending its application in the Member States to non-exclusive jurisdiction agreements. If that view is accepted then, in considering possible reform of the Brussels I Regulation, it would appear desirable to promote a solution in which, so far as possible, the rules to be applied by Member State courts to determine the validity and effect of a choice of court agreement in "Convention cases" are compatible with those to be applied under the Regulation in "non-Convention cases".

Accordingly, the following proposals are designed to ensure greater consistency between the two regimes:

a. The law of the court (putatively) chosen should be expressed to apply in all cases to determine questions of consent to a choice of court agreement under Art. 23 of the Regulation, as well as questions whether the dispute falls within the scope of the clause. This solution should be preferred to attempts, by legislation

or jurisprudence, to develop an autonomous EC law concept of "agreement" or to treat the presence of a written, or other instrument, which on its face meets the formal requirements in Art. 23(1) as conclusive. The provisions of Regulation should, however, continue to govern questions of formal validity, and – to preserve its effectiveness – to exclude the application of any national rule restricting the ability of contracting parties, one or more of whom is domiciled in a Member State, to make a choice of court agreement having effect Art. 23. Finally, and consistently with the decision in Case C-269/95, *Benincasa v. Dentalkit*, the Regulation should be amended to make clear that choice of court agreements must, for the purposes of Art. 23, be treated as separate from any contract arising from the instrument in which they are contained and that their validity must be considered independently of any allegation as to the validity of that contract.

b. The *lis alibi pendens* rules in Arts. 27-28 should play only a subordinate role in circumstances in which there is, or is claimed to be, a choice of court agreement satisfying the formal requirements in Art. 3(c) of the Hague Convention. Under new rules, priority would be given to the court (putatively) chosen by the parties, as follows:

i. rules no less favourable to party autonomy than those in Arts. 5 and 6 of the Hague Convention should govern Member State courts' obligations to accept or, as the case may be, decline jurisdiction based on a choice of court agreement;

ii. if one of the parties contests the validity of the choice of court agreement or denies that the claim falls within its scope, a Member State court not chosen should be required to suspend (rather than dismiss) the proceedings until the jurisdiction of the court chosen is established, unless one of the grounds set out in Art. 6 of the Hague Convention (if applicable) is established to its satisfaction;

iii. any decision by a Member State court not chosen to refuse to suspend or dismiss proceedings, including a decision based on one of the Art. 6 grounds (if applicable), should not be a "judgment" entitled to recognition under the Regulation but should have effect only within the legal order of that State;

iv. any judgment on the merits by a Member State court not chosen should be capable of being recognised and enforced under the Regulation, subject to an obligation upon Member State courts to refuse enforcement in terms

corresponding to the obligation to suspend or dismiss proceedings if another court has exclusive jurisdiction under a choice of court agreement; and

v. the *lis alibi pendens* provisions in Arts. 27-28 should continue to apply, in addition to the rules set out above, in situations in which the court chosen is first seised.

Of the other options for reform suggested in the Green Paper, the possibility of enhanced communication between the court chosen and a court not chosen but seised first of proceedings, and a specific obligation for the latter to decide on the question of jurisdiction as a preliminary matter and within a specific timeframe merit consideration as additional or alternative measures, although improved communication on its own will not address the problems raised by the *Gasser* decision. On the other hand, the proposal to grant an EC law remedy for "breach" of choice of court agreements strays into the realm of substantive contract law and would appear outside the Community's competence under Title IV of the Treaty. It would also promote satellite litigation, increasing costs and the potential for conflict between Member State judgments.

As to the proposal to develop "standard wording" for choice of court agreements, this option may merit further consideration outside the legislative framework of the Regulation, in order to promote an increased awareness among Member State courts of these clauses and to facilitate the use of different languages in commercial contracts. However, the use of such standard wording should not attract a different jurisdictional regime from other choice of court agreements that fulfil the requirements of Art. 23, as amended. Such a distinction would unduly increase the complexity of the Regulation's rules in this area, be out of line with the Hague Convention and would encourage ancillary disputes, for example in situations in which the wording actually agreed varied slightly from the "standard". Parties who wish to confer jurisdiction on a Member State court under Art. 23 should be able to make their intention clear using their own choice of words, and they should not be required to jump through additional hoops in order for their agreement to be given full legal effect.

Finally, choice of court agreements should, under Art. 23, be put on a basis that is not less favourable than that for arbitration agreements, whether within or outside the Regulation. This point will be developed in a later post on the Regulation's approach to arbitration.

In summary, the answer to Question 3 could be that the problems raised in the functioning of the Regulation with respect to choice of court agreements should be addressed, primarily, by the Community acceding to the Hague Choice of Court Convention and by the adoption of new Regulation rules concerning the law applicable, *lis pendens* and the recognition and enforcement of judgments that are compatible with that Convention and take priority over the existing *lis pendens* regime.

Brussels I Review – The Wider International Picture

The second topic discussed in the Commission's Green Paper raises more fundamental questions concerning the treatment under EC law of situations having a material connection with one or more States outside the EC (excluding, for these purposes, the other Contracting States to the Lugano Convention) , including questions of (1) jurisdiction of a Member State court over defendants not domiciled in a Brussels I/Lugano State, and (2) the effects within the Member States of proceedings and judgments of a court in a non-Brussels I/Lugano State.

At present, the Brussels I Regulation, following the framework of its predecessor Convention, (a) largely delegates questions of jurisdiction over non-domiciled defendants to the national rules of the court seised (Art. 4 and Recital (9)), (b) provides for the recognition and enforcement of judgments against such defendants on the same terms as those against domiciled defendants (Recital (10)), and (c) recognises the possibility of conflict between Member and non-Member State judgments (Art. 34(4)), but (d) does not provide for the recognition or enforcement of judgments from outside the EC (Case C-129/02, *Owens Bank v. Bracco*) or (at least expressly) for the resolution of conflicts of jurisdiction between Member State and third country courts (cf. Case C-281/02, *Owusu v. Jackson*).

According to the Commission in its Green Paper:

The good functioning of an internal market and the Community's commercial policy both on the internal and on the international level require that equal access to justice on the basis of clear and precise rules on international jurisdiction is ensured not only for defendants but also for claimants domiciled in the Community. The jurisdictional needs of persons in the Community in their relations with third States' parties are similar. The reply to these needs should not vary from one Member State to another, taking into account, in particular, that subsidiary jurisdiction rules do not exist in all the Member States. A common approach would strengthen the legal protection of Community citizens and economic operators and guarantee the application of mandatory Community legislation.

In order to extend the personal scope of the jurisdiction rules to defendants domiciled in third States, it should be considered to what extent the special jurisdiction rules of the Regulation, with the current connecting factors, could be applied to third State defendants.

In addition, it should be reflected to what extent it is necessary and appropriate to create additional jurisdiction grounds for disputes involving third State defendants ("subsidiary jurisdiction"). The existing rules at national level pursue an important objective of ensuring access to justice; it should be reflected which uniform rules might be appropriate. In this respect, a balance should be found between ensuring access to justice on the one hand and international courtesy on the other hand. Three grounds might be considered in this respect: jurisdiction based on the carrying out of activities, provided that the dispute relates to such activities; the location of assets, provided that the claim relates to such assets; and a forum necessitatis, which would allow proceedings to be brought when there would otherwise be no access to justice .

Further, if uniform rules for claims against third State defendants are established, the risk of parallel proceedings before Member State and third State courts will increase. It must therefore be considered in which situations access to the courts of the Member States must be ensured irrespective of proceedings ongoing elsewhere and in which situations and under which conditions it may be appropriate to allow the courts to decline jurisdiction in favour of the courts of third States. This could be the case, for instance, when parties have concluded an exclusive choice of court agreement in favour of the courts of third States, when the dispute otherwise falls under the exclusive

jurisdiction of third State courts, or when parallel proceedings have already been brought in a third State .

Finally, it should be considered to what extent an extension of the scope of the jurisdiction rules should be accompanied by common rules on the effect of third State judgments. A harmonisation of the effect of third State judgments would enhance legal certainty, in particular for Community defendants who are involved in proceedings before the courts of third States. A common regime of recognition and enforcement of third State judgments would permit them to foresee under which circumstances a third State judgment could be enforced in any Member State of the Community, in particular when the judgment is in breach of mandatory Community law or Community law provides for exclusive jurisdiction of Member States' courts .

The Commission asks the following questions:

Question 2:

Do you think that the special jurisdiction rules of the Regulation could be applied to third State defendants? What additional grounds of jurisdiction against such defendants do you consider necessary?

How should the Regulation take into account exclusive jurisdiction of third States' courts and proceedings brought before the courts of third States?

Under which conditions should third State judgments be recognised and enforced in the Community, particularly in situations where mandatory Community law is involved or exclusive jurisdiction lays with the courts of the Member States?

In considering possible reforms in this area, it is vital that the possible impact on relations with the EC's trading partners should be assessed and taken fully into account in the development of new rules. If there is any lesson to be learned from the failed negotiations at the Hague Conference for a generally applicable international convention on jurisdiction and the recognition and enforcement of judgments, it is that the grounds for asserting jurisdiction over foreign nationals are a matter of great sensitivity. It must also be borne in mind that existing bilateral Conventions with third States, particularly those concerned with the

mutual recognition and enforcement of judgments, may significantly undermine the objective of creating common rules across the Member States. In light of these considerations, the approach to reform in this area should be incremental, rather than revolutionary.

Further, proposals of the kind suggested by the Commission in the Green Paper also raise questions concerning the Community's legislative competence in this area. Even if, in situations involving claimants or third State judgment creditors or debtors domiciled in Member States, the extension of the harmonised framework established by the Brussels I Regulation can be considered as "necessary for the proper functioning of the internal market" (EC Treaty, Art. 65), it seems legitimate to raise the question whether harmonisation would not be better pursued by other means, for example by efforts to revive the Hague Conference project or negotiations with a view to concluding bilateral agreements with key trading partners or even (with the support of the EFTA contracting states) widening the territorial reach of the Lugano Convention.

In situations in which both the claimant and defendant are domiciled outside the EC, the required link to the functioning of the internal market would appear to be entirely lacking. Indeed, if the Regulation is to be justified as an instrument supporting the internal market (as it must be), there would appear to be a strong case for limiting its application (including the rules on recognition and enforcement) to cases in which at least one of the parties is domiciled (or habitually resident) in a Member State (cf. Regulation (EC) No 861/2007 establishing a European Small Claims Procedure (OJ L199,1 [31.7.2007]), Art. 3; Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters (OJ L136, 3 [24.5.2008]), Art. 2). It must, of course, be acknowledged that such a retrenchment in the Regulation's scope at this stage is almost inconceivable, and that the ECJ could well take a more generous view of the Community's internal competence under Title IV. Even so, the limits of that competence, and the potential effects of its exercise on relations with third States, must be taken into account in deciding whether and, if so, how to proceed with reform in this area.

If, taking into account the foregoing considerations, such reform is to be attempted, the following changes to the Brussels I Regulation could be considered as the first tentative steps on a long and difficult journey:

a. Changing the requirement of domicile in Art. 4(2) of the Regulation, so that any person domiciled in an EC Member State can invoke the jurisdiction of another Member State's court on the same terms as nationals of, or persons domiciled in, that Member State.

b. Extending the rules of special jurisdiction in Arts. 5 and 6 of the Regulation to claims brought against a person not domiciled in a Member State, without prejudice to any rule of jurisdiction applicable under Art. 4(1).

c. Reversing the ECJ's decision in *Owens Bank v. Bracco* (above) so that a Member State judgment recognising a judgment of a third country may freely circulate in the EC. The case for this change would be strengthened if, as the Commission suggests elsewhere in its Green Paper, the enforceability of Member State judgments confirming arbitral awards is to be expressly acknowledged as part of reforms addressing the interface between the Regulation and arbitration (a topic to be considered in a future post).

On this view, the answer to Question 2 would be that any reform with respect to the rules concerning non-Member State courts and parties should be incremental and not overly ambitious and should take full account of the limits on Community competence in this area and the interests of third States.

Brussels I Review – Online Focus Group

Many will, by now, have had the opportunity to consider the Commission's Report and Green Paper on the review of the Brussels I Regulation, if not also the detailed Studies by Professors Hess, Pfeiffer and Schlosser and Nuyts, on which they were based. As the Commission's initial deadline for consultation concludes at the end of this month, this seems an appropriate time at which to invite conflictoflaws.net users to participate in an online discussion on the Report and Green Paper, with a view to debating some or all of the Commission's proposals.

Over the next few days, therefore, a series of posts will invite comments (see the Post a Comment box below) on particular aspects of the proposed reform of the Brussels I Regulation. These will follow the order of topics in the Green Paper, that is to say (links will be added to each topic as the relevant post is published):

- the abolition of intermediate measures to recognise and enforce foreign judgments (*exequatur*) (Question 1);
- the operation of the Regulation in the international legal order (Question 2);
- choice of court agreements (Question 3);
- industrial property (Question 4);
- *lis pendens* and related actions (Question 5);
- provisional measures (Question 6);
- the interface between the Regulation and arbitration (Question 7); and
- other issues (Question 8).

Responses (that are published as posts, rather than comments) to any or all of the initial posts:

- Jonathan Hill
- Illmer and Steinbrück on the Interface Between Brussels I and Arbitration

Each post will contain relevant extracts from the text of the Green Paper, together with a preliminary reaction and suggestions as to the way forward. This commentary (based on the author's personal views) is intended as a spur for debate of the Green Paper, rather than to define the areas for discussion or criticism of its proposals (or any counter-proposals). It is hoped that the debate will be as wide-ranging, in terms of subject matter and contributors, as possible. Comments from all site users, whether general or limited to a single point, are actively encouraged.

Before opening the discussion with the first of these posts, it seems appropriate to make a few introductory comments on the Green Paper and Report.

First, the response to the Green Paper and the Report should be only the start, and not the end, of consultation with stakeholders of these important matters. The Commission has had 18 months to consider the Studies referred to above, and to develop its own analysis and proposals. It is disappointing, therefore, that a period of only 2 months (up to 30 June 2009) has been allowed for responses to

the Green Paper, especially as an extended period over the summer vacation could not conceivably have materially delayed progress in formulating a draft updating Regulation. Mechanisms must be found, whether directly or through the Member States, to ensure that the views of individuals, interest groups and academic and practising lawyers are fully taken into account at all stages of the legislative process.

Secondly, it is vital that consideration should also be given as a matter of priority to structural changes within the European Court of Justice, so far as compatible with the EC Treaty, that will enable the Court to deal with preliminary references concerning the Regulation and other EC private international law instruments in a manner befitting their significance for the parties and the Member States' systems for dispensing civil justice. As the content of the Commission's Report demonstrates, the ECJ has regularly provided answers to questions put by Member State courts that are unsatisfactory in their reasoning or practical application, or both. In particular, the Court, particularly in its recent case law, has shown a worrying disregard of arguments founded on the commercial consequences or justice of a particular interpretation in favour of an approach driven, apparently, solely by considerations of legal certainty and the exclusion of other considerations by the text of the Regulation.

As a result, there is (whether justified or not) a perception among legal practitioners that the ECJ in its current constitution lacks the all-round expertise to deal with references in the area of civil justice and, at least in England and Wales, that it is insensitive to the traditions and methods of the common law. It is, of course, a matter of fundamental importance that the citizens and courts of the Member States should have trust and confidence in the ECJ to exercise its overriding interpretive power responsibly. Against this background, and mindful of the possible expansion of the ECJ's caseload if the Lisbon Treaty is ratified, the creation of a specialist chamber (with its own Judges and Advocates-General) to deal with references relating to the several instruments adopted under Title IV of the EC Treaty would be a significant advance, and would appear to be within the powers conferred on the Community legislature by Art 225a of the Treaty. If this, or equivalent steps, are not taken at this stage, reform of the Brussels I Regulation in isolation is likely to be a case of "swallowing a spider to catch a fly" and to lead to further complications (and the need for further reform) as a result of the ECJ's future jurisprudence interpreting any new rules.

Thirdly, to increase the accessibility of the Regulation to non-experts, deregulation (i.e. reduction in the complexity or number of jurisdictional rules) should be preferred to increased regulation in the Brussels I reform process. Any modification of an existing instrument carries with it an inherent degree of legal uncertainty, by requiring existing case law and commentary to be re-appraised in light of the change. That effect must be taken into account in deciding which issues to tackle, and how, in the review process.

Finally, as to the Commission's comments in its Report on the functioning of the Brussels I Regulation, it seems fair to conclude that the Regulation, and its predecessor convention, have offered significant advantages for business, by promoting the free circulation of judgments in the EC and (in many situations) increasing predictability and consistency as to the criteria to be applied by Member State courts in accepting jurisdiction. There is, however, no doubt that the Commission is also correct to conclude that functioning of the Regulation is open to improvement. It would be surprising if that were not the case. Further, it may be doubted whether (as the Commission suggests) the Regulation is "highly appreciated among practitioners". Many legal practitioners, whose practices concern only domestic matters, are untroubled by the Regulation. For others, the overall impression of the Regulation is, frequently, coloured by situations in which its operation is perceived as giving rise to inconvenient or uncommercial results. For example, in the United Kingdom, widespread (adverse) publicity in the legal profession followed the English High Court's decision in *J P Morgan v. Primacom* (following the earlier ECJ decision in *Gasser v. MISAT Srl*), that proceedings brought by a borrower in Mainz, Germany with the evident intention of frustrating proceedings to enforce a loan agreement in England (the jurisdiction chosen by the parties) must take priority under Art. 27 of the Regulation. One UK legal newspaper described the Primacom case "an intercreditor nightmare" that was "playing havoc with exclusive jurisdiction clauses and is threatening to derail cross-border restructurings in Europe". Criticism in UK legal circles has also followed the recent ECJ decision in *Allianz v. West Tankers*. Commenting on that decision, the Chief Executive of the Law Society, the representative body for solicitors in England and Wales, argued that the ruling "does Europe no favours as a place to do business" (see here).

Against this background, it is vital that any reform of the Brussels I Regulation should address, and be seen to address, the problems that EC litigants and their

legal advisers actually face in practice, rather than pursuing the holy grails of "mutual recognition" and "legal certainty". Whether pragmatism will prevail over ideology remains, however, to be seen.

To conclude on a personal note, I should add that I was delighted to receive and accept an invitation to join conflictoflaws.net as a Consultant Editor. Through the breadth and quality of submissions by its editorial team and other contributors, the site has established itself as an essential point of reference for all practising and academic lawyers with an interest in private international law. I look forward to reading the reaction to this, and future posts on the site, concerning the European private international instruments and related matters.

First Issue of 2009's Revue Critique de Droit International Privé

The first issue of the *Revue Critique de Droit International Privé* was just released.

It contains two articles and several case notes.

The first article is authored by Dominique Bureau, a professor at Paris II University, and Horatia Muir Watt, a professor at Paris Institute of Political Science (commonly known as *Sciences Po*). The paper explores whether enforcing forum selection clauses when mandatory rules of the forum are applicable, desactivates the imperativity of such rules (*L'impérativité désactivitée ?*).

> *The applicability of mandatory regulation or loi de police does not prevent the enforcement of a choice of forum clause in favour of a foreign court. In France, the Cour*

de cassation has adhered in turn to a solution already prevailing in other jurisdictions and for which arbitrability of disputes involving social or economic regulation paved the way. As with arbitration, the progressive liberalisation of requirements for the cross-border movement of the chosen court's decision may empower private actors to cross jurisdictional boundaries and benefit from a quasi-immunity from the constraints of state law. One possible response to such neutralisation of mandatory rules would be to set up a regime which would be dual from the point of view of the subject-matter of the rules involved (i.e. whether they are protective of weaker parties or whether they carry public economic regulation) and transversally applicable whatever the nature of the chosen forum (i.e. similar principles would apply to choice of arbitrator or foreign court), so as to exclude weaker parties from access to jurisdictional autonomy, including as far as arbitration of their disputes is concerned, while, on the other hand, preserving freedom of choice of forum and, correlatively, a low level of control in other cases, subject of course to the procedural precautions which Community law now mandates when the dispute falls within its scope.

The second article is authored by Iraqi scholar Harith Al Dabbagh (Mossoul and Saint Etienne Universities). It discusses the issue of marriages between spouses of different religions (*Mariage mixte et conflit entre droits religieux et laique*). More specifically, the starting point of the discussion is a case of the Supreme Court of Iraq of March 27, 2007, which ruled on the divorce of a christian Iraqi women and a Turkish muslim man. Unfortunately, no abstract is provided.

The table of contents is not yet online. Articles of the *Revue Critique* cannot be downloaded.

Dirty Dancing and Stays of Proceedings

A recent judgment of the NSW Supreme Court is as noteworthy for its name and subject-matter as it is for the legal principles involved; namely stay of proceedings on the basis of a foreign exclusive jurisdiction clause.

Dance With Mr D Limited v Dirty Dancing Investments Pty Ltd [2009] NSWSC 332 concerned a dispute between producers of, and investors in, the musical "Dirty Dancing" (based on the film of the same name). The dispute turned on the interpretation of two contracts, one of which contained English choice of law and exclusive jurisdiction clauses; the other containing an Australian arbitration clause, the interpretation of which was also in dispute.

In granting a stay, the judge observed that:

> *"Where parties to a contract have agreed by an exclusive foreign jurisdiction clause to submit to the exclusive jurisdiction of a foreign court, such a clause does not operate to exclude the forum court's jurisdiction. However, the courts of this country will hold the parties to their bargain, and grant a stay of proceedings, unless the party seeking that the proceedings be heard can show that there are strong reasons against doing so. In considering such an application the court should take into consideration all the circumstances of the particular case, but the application is not to be assimilated to cases where a stay is sought on the principle of forum non conveniens, nor is it a matter of mere convenience. See Huddart Parker Ltd v The Ship "Mill Hill" (1950) 81 CLR 502 at 508 – 509; Oceanic Sun Line Special Shipping Co Inc v Fay (1988) 165 CLR 197; FAI General Insurance v Ocean Marine Mutual Protection and Indemnity Association; Akai Pty Ltd v People's Insurance Co; Incitec Ltd v Alkimos Shipping Corporation and Anor; Owners of cargo on vessel Eleftheria v Owners of Ship Eleftheria [1969] 2 All ER 641 at 645."*

The Dirty Dancing decision is especially noteworthy in light of the reluctance of Australian courts to stay proceedings on forum non conveniens grounds. It also seems to stand in contrast to the apparently more tepid attitude towards the grant of stays exhibited the High Court in Akai Pty Ltd v People's Insurance Co.

The Australian newspaper has more details of the commercial and personal background of the dispute here.

Latest Issue of "Praxis des Internationalen Privat- und Verfahrensrechts" (3/2009)

Recently, the May/June issue of the German legal journal "Praxis des Internationalen Privat- und Verfahrensrechts" (**IPRax)** was released.

It contains the following **articles/case notes (including the reviewed decisions)**:

- ***Peter Kindler***: "Internationales Gesellschaftsrecht 2009: MoMiG, Trabrennbahn, Cartesio und die Folgen" – the English abstract reads as follows:

The article summarizes, in a European as well as in a German perspective, the recent developments for corporations in private international law in 2008. In German legislation, the law aiming at the modernization of the private company limited by shares ("MoMiG") has abandoned the requirement for German companies of having a real seat in Germany, introducing at the same time stricter disclosure requirements in respect of branches of foreign companies in Germany. The German Federal Court, in a ruling of October 2008 ("Trabrennbahn"), has applied the real seat doctrine to companies incorporated outside the EU – in this case in Switzerland –, thus confirming the traditional approach of German courts since the 19th century. Finally, in a European perspective, the article addresses the judgment of the EJC in case C-210/06 ("Cartesio") referring to the extent of freedom of establishment in case of transfer of a company seat to a EU Member State other than the EU Member State of incorporation. The article concludes with the statement, inter alia, that EU Member States are free to use the real seat as a connecting factor in private international company law.

- ***Marc-Philippe Weller:*** "Die Rechtsquellendogmatik des Gesellschaftskollisionsrechts" – the English abstract reads as follows:

This article deals with the International Company Law in the aftermath of the judgments "Cartesio" from the ECJ and "Trabrennbahn" from the German Federal Court of Justice. There are three different sources of International Company Law. The sources have to be applied in the specific order of precedence stated by Art. 3 EGBGB:

(1.) The European International Company Law is based on the freedom of establishment according to Art. 43, 48 EC. The freedom of establishment contains a hidden conflict of law rule known as "Incorporation Theory" for companies that relocate their real seat in another EC-member state.

(2.) As part of Public International Company Law the "Incorporation Theory" is derived from various international treaties such as the German-US-American-Friendship-Agreement.

(3.) The German Autonomous International Company Law follows the "Real Seat Theory" when it is applied in cases with third state companies (e.g. Swiss companies). Therefore, substantive German Company Law is applicable to third state companies with an inland real seat. According to the so called "Wechselbalgtheorie" (Goette), foreign corporations are converted into domestic partnerships.

The German jurisdiction is bound to the German Autonomous International Company Law (i.e. the real seat theory) to the extent of which the European and the Public International Company Law is not applicable.

- ***Alexander Schall:*** "Die neue englische floating charge im Internationalen Privat- und Verfahrensrechts" – the English abstract reads as follows:

After Inspire Art, thousands of English letter box companies have come to Germany. But may they also bring in their domestic security, the qualified floating charge? The answer depends on the classification of the floating charge under the German conflict laws. Since German law does not acknowledge global securities on undertakings, the traditional approach was to split up the floating charge and to subject its various effects (e.g. security over assets, the right to appoint a receiver/administrator) to the respective conflict rules. That

meant in particular that property in Germany could not be covered by a floating charge (lex rei sitae). This treatment seems overly complicated and not up to the needs of an efficient internal market. The better approach is to understand the floating charge as a company law tool, a kind of universal assignment. This allows valid floating charges on the assets of UK companies based in Germany. And while the new right to appoint an administrator under the Enterprise Act 2002 is part of English insolvency law, the article shows that this does not preclude the traditional right to appoint a (contractual or – rather – administrative) receiver for an English company with a CoMI in Germany.

- ***Stefan Perner:*** "Das internationale Versicherungsvertragsrecht nach Rom I" – the English abstract reads as follows:

Unlike its predecessor – the Rome Convention –, the recently adopted Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) covers the entire insurance contract law. The following article outlines the new legal framework.

- ***Jens Rogler:*** "Die Entscheidung des BVerfG vom 24.1.2007 zur Zustellung einer US-amerikanischen Klage auf Strafschadensersatz: – Ist das Ende des transatlantischen Justizkonflikts erreicht?"
  This article deals with the service of actions for punitive damages under the Hague Service Convention. The author refers first to a decision of the Higher Regional Court Koblenz of 27.06.2005: In this case, the German defendant should be ordered to pay treble damages in a class action based on the Sherman Act. Here, the Regional Court held that the Hague Service Convention was not applicable since the case did not constitute a civil or commercial matter in terms of Art. 1 (1) Hague Service Convention. The author, however, argues in favour of an autonomous interpretation of the term "civil or commercial matter" according to which class actions directed at punitive/treble damages can be regarded as civil matters in terms of Art. 1 Hague Service Convention.Further, the author turns to Art. 13 Hague Service Convention according to which the State addressed may refuse to comply with a request for service if it deems that complicance would infringe its sovereignty or security. There

have been several decisions dealing with the applicability of Art. 13 Hague Service Convention with regard to class actions aiming at punitive/treble damages. Those decisions discussed in particular whether Art. 13 corresponds to public policy. In this respect, most courts held that Art. 13 has to be interpreted more narrowly than the public policy clause. In this context, the author refers in particular to a decision of the German Federal Constitutional Court of 24 January 2007 (2 BvR 1133/04): In this decision, the Constitutional Court has held that the mere possibility of an imposition of punitive damages does not violate indispensable constitutional principles. According to the court, the service may be irreconcilable with fundamental principles of a constitutional state in case of punitive damages threatening the economic existence of the defendant or in case of class actions *if* – i.e. only then – those claims deem to be a manifest abuse of right. Thus, as the author shows, the Constitutional Court agrees with a restrictive interpretation of Art. 13 Hague Service Convention.

- ***Christian Heinze*:** "Der europäische Deliktsgerichtsstand bei Lauterkeitsverstößen"
  The article examines the impact of the new choice of law rule on unfair competition and acts restricting free competition (Art. 6 Rome II Regulation) on Art. 5 No. 3 Brussels I Regulation: The author argues that it should be adhered to the principle of ubiquity according to which the claimant has a choice between the courts at the place where the damage occurred and the courts of the place of the event giving rise to it. In view of Art. 6 Rome II Regulation he suggests, however, to locate the place where the damage occurred with regard to Art. 5 No. 3 Brussels I Regulation in case of obligations arising out of an act of unfair competition at the place where the competitive relations are impaired or where the collective interests of consumers are affected – if the respective measure had intended effects there. In case an act of unfair competition affects exclusively the interests of a specific competitor, the place should be determined where the damaging effects occur, which is usually the place where the affected establishment has its seat. With regard to the determination of the place of the event giving rise to the damage, the author suggests to apply a centralised concept according to which the place of the event giving rise to the damage is, as a rule, the place where

the infringing party has its seat.

- ***Peter Mankowski:*** "Neues zum 'Ausrichten' unternehmerischer Tätigkeit unter Art. 15 Abs. 1 lit. c EuGVVO" – the English abstract reads as follows:

"Targeted activity" in Art. 15 (1) lit. c Brussels I Regulation and in Art. 6 (1) lit. b Rome I Regulation aims at extending consumer protection. Accordingly, it at least comprises the ground which was already covered by "advertising" under Arts. 13 (1) pt. 3 lit. a Brussels Convention; 5 (2) 1st indent Rome Convention. "Targeted activity" is a technologically neutral criterion. Any distinction between active of passive websites has to be opposed for the purposes of international consumer protection since it would fit ill with the paramount importance of the commercial goal pursued by the marketer's activities. Any kind of more or less unreflected import of concepts from the United States should be denied in particular. Any switch in the mode of communication does not play a significant role, either.

Activities by other persons ought to be deemed to be the marketer's activities insofar as he has ordered or enticed such activities. In principle, registration in lists for mere communication purposes do not fall within this category. If only part of the overall programme of an enterprise is advertised "targeted activity" does not exclude contracts for other parts of that programme if and insofar as such advertising has prompted the consumer to get into contact with the professional.

- ***Dirk Looschelders:*** "Begrenzung des ordre public durch den Willen des Erblassers" – the English abstract reads as follows:

When applying the Islamic law of succession, in many cases conflicts occur with the fundamental principles of German law, especially with the German fundamental rights. In particular problems arise in view of the Islamic rule that the right of succession is excluded when the potential heir and the deceased belong to different religions. The Higher Regional Court of Berlin ascertains that such a rule is basically inconsistent with the German "ordre public", regulated in Article 6 EGBGB. In this particular case, however, the court refused the recourse to Article 6 EGBGB, because the consequence of the application of the Egypt law and the will of the deceased – the exclusion of the

illegitimate son of Christian faith from the succession – comply with each other. In the present case, this conclusion is strengthened by the fact that the deceased has manifested his will in a holographic will, which is effective under German law. Nevertheless, with regard to the testamentary freedom (Art. 14 Abs. 1 S. 1 GG), the same conclusion would be necessary, if a corresponding will of the deceased could be discovered in any other way. Insofar, the "ordre public" is limited by the will of the deceased.

- ***Boris Kasolowsky/Magdalene Steup:*** "Ordre-public-Widrigkeit kartellrechtlicher Schiedssprüche – der flagrante, effective et concrète -Test der französischen Cour de cassation" – the English abstract reads as follows:

The Cour de Cassation decision in SNF v. Cytec is the first case in which a final appeal court of an EU Member State dealt with the enforcement of an arbitration award allegedly in breach of EC competition law. On the basis of the breach of EC competition law, one of the parties argued that the enforcement of the award would – pursuant to Eco Swiss – be contrary to public policy within the meaning of Article V. 2 (b) of the New York Convention.

The Cour de Cassation considered in particular the intensity of the courts' review when dealing with a party resisting enforcement of an award for being contrary to competition law and public policy. In its decision it reconfirmed the view of the Cour d'appel that the review out to be rather limited.

The article suggests by reference to the Cour de Cassation in SNF v Cytec, but also to the decisions rendered in other jurisdictions, that (i) a rather limited standard level of review of arbitration awards for breach of EC competition law giving rise to a breach of public policy is being developed and (ii) only the most obvious breaches may result in a challenge succeeding or enforcement being refused. Consequently, there should (increasingly) be a level playing field within Europe. Further, given the rather limited review – which is now becoming accepted – there should in most cases also be no significant additional risks in enforcing arbitration awards in EU Member State jurisdictions rather than in non-EU Member State jurisdictions.

- ***Sebastian Mock:*** "Spruchverfahren im europäischen Zivilverfahrensrecht" – the English abstract reads as follows:

Austrian and German corporate law provide a special proceeding for minority shareholders to review the

appraisal granted by the majority shareholder on certain occasions (Spruchverfahren). This proceeding stands separate from other proceedings regarding the squeeze out of the minority shareholders and does not legally affect the validity of the decision. In contrast to Austrian and German civil procedure law the application of the Brussels regulation does not generally lead to jurisdiction of the court of the state where the seat of the company is located. Neither the rule on exclusive jurisdiction of Art. 22 no. 2 Brussels regulation nor the rules on special jurisdiction of Art. 5 no. 5 Brussels regulation apply for the Spruchverfahren. As the consequence the international jurisdiction under the Brussels regulation is only determined by the domicile respectively the seat of the defendant in the procedure (Art. 2 Brussels regulation). However, a corporation can ensure the concentration of all proceedings in the Member state of their seat by implementing a prorogation of jurisdiction according to Art. 23 Brussels regulation in their corporate charter.

- ***Arno Wohlgemuth**:* "Internationales Erbrecht Turkmenistans" – the English abstract reads as follows:

The law governing intestate and testamentary succession in Turkmenistan is dispersed in different bodies of law such as the Turkmenistan Civil Code of 1998, the rules surviving as ratio scripta of the abrogated Civil Code of the Turkmen SSR of 1963, the Law on Public Notary of 1999, and the Minsk CIS Convention on legal assistance and legal relations in civil, family and criminal matters of 1993, as amended. Whereas in principle movables are distributed as provided by the law in force at the place where the decedent was domiciled at the time of his death, immovable property will pass in accordance with the law prevailing at the place where it is located.

- ***Christian Kohler*** on the meeting of the European Group for Private International Law (EGPIL) in Bergen on 19-21 September 2008: "Erstreckung der europäischen Zuständigkeitsordnung auf drittstaatsverknüpfte Streitigkeiten – Tagung der Europäischen Gruppe für Internationales Privatrecht in Bergen"

  The consultation's focus was on the proposed amendments of Regulation 44/2001 in order to apply it to external situations. The introduction of this proposal – which can be found (besides in this issue of the IPRax) also at the EGPIL's website – reads as follows:

At its meeting in Bergen, on 19-21 September 2008, the European Group for

Private International Law, giving effect to the conclusions of its meeting in Hamburg in 2007, which took into account the growth of the external powers of the Union in civil and commercial matters, considered the question of enlarging the scope of Regulation 44/2001 ("Brussels I") to cover cases having links to third countries, cases to which the common rules on jurisdiction do not apply. On this basis, it proposes, as its initial suggestion, and as one possibility among others, the amendment of the Regulation for the purpose of applying its rules of jurisdiction to all external situations. These proposals are without prejudice to the examination of other possible solutions – in particular, conventions adopted by the Hague Conference on Private International Law – or a similar analysis of other instruments, such as Regulation 2201/2003 ("Brussels II bis") or the new Lugano Convention of 30 October 2007. Other questions still remain to be considered – in particular the adaptation of Article 6 of Brussels I and the extension of Brussels I to cover the recognition and enforcement of judgments given in a third country.

- ***Erik Jayme/Michael Nehmer*** on a symposium hosted by the Law Faculty of the University of Salerno on the international aspects of intellectual property: "Urheberrecht und Kulturgüterschutz im Internationalen Privat- und Verfahrensrecht – Studientag an der Universität Salerno"

West Tankers and Indian Courts

What is the territorial scope of *West Tankers*? It certainly applies within the European Union, but does it prevent English Courts from enjoining parties to litigate outside of Europe?

In a judgment published yesterday (*Shashou & Ors v Sharma* ([2009] EWHC 957 (Comm)), Cook J. ruled that *West Tankers* is irrelevant when the injunction

enjoins the parties from litigating in India in contravention with an agreement providing for ICC arbitration in London.

> *Since India has not acceded to the EU (and is not, so far as I am aware, expected ever to do so), why was West Tankers even mentioned ?*

The case was about a shareholders agreement for a venture in India between Indian parties. It provided for the substantive law of the contract to be Indian Law.

Cook J. held:

> *23 It is common ground between the parties that the basis for this court's grant of an anti-suit injunction of the kind sought depends upon the seat of the arbitration. The significance of this has been explored in a number of authorities including in particular ABB Lummus Global v Keppel Fels Ltd [1999] 2 LLR 24, C v D [2007] EWHC 1541 (at first instance) and [2007] EWCA CIV 1282 (in the Court of Appeal), Dubai Islamic Bank PJSC v Paymentech [2001] 1 LLR 65 and Braes of Doune v Alfred McAlpine [2008] EWHC 426. The effect of my decision at paragraphs 23-29 in C v D, relying on earlier authorities and confirmed by the judgment of the Court of Appeal at paragraph 16 and 17 is that an agreement as to the seat of an arbitration brings in the law of that country as the curial law and is analogous to an exclusive jurisdiction clause. Not only is there agreement to the curial law of the seat, but also to the courts of the seat having supervisory jurisdiction over the arbitration, so that, by agreeing to the seat, the parties agree that any challenge to an interim or final award is to be made only in the courts of the place designated as the seat of the arbitration. Subject to the Front Comor argument which I consider later in this judgment, the Court of Appeal's decision in C v D is to be taken as correctly stating the law.*
>
> *...*
>
> *35 Mr Timothy Charlton QC on behalf of the defendant submitted that the landscape of anti-suit injunctions had now been changed from the position set out by the Court of Appeal in C v D by the decision of the European Court of Justice in the Front Comor – Case C185/07 ECJ [2009] 1 AER 435. There, an English anti-suit injunction to restrain an Italian action on the grounds that the dispute in those actions had to be arbitrated in London was found to be incompatible with Regulation 44/2001. Although it was conceded that the decision specifically related to countries which were subject to Community law, it was submitted that the reasoning of both the Advocate General and the court should apply to countries which were parties to a convention such as the New York Convention. Reliance was placed on paragraph 33 of the European Court's judgment where, having found that an anti-suit injunction preventing proceedings being pursued in the court of a Member State was not compatible with Regulation No 44/2001, the court went onto say that the finding*

was supported by Article II(3) of the New York Convention, according to which it is the court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an arbitration agreement, that will at the request of one of the parties refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed. The Advocate General, in her Opinion said "incidentally, it is consistent with the New York Convention for a court which has jurisdiction over the subject matter of the proceedings under Regulation No 44/2001 to examine the preliminary issue of the existence and scope of the arbitration clause itself

36. It is plain from the way in which the matter is put both by the European Court of Justice and the Advocate General, that their concern was to show that there was no incompatibility or inconsistency between the position as they stated it to be, as a matter of European Law, and the New York Convention. This does not however mean that the rationale for that decision, which is binding in Member States, applies to the position between England on the one hand and a country which is not a Member State, whether or not that State is a party to the New York Convention. An examination of the reasoning of the European Court, and the Advocate General reveals that the basis of the decision is the uniform application of the Regulation across the Member States and the mutual trust and confidence that each state should repose in the courts of the other states which are to be granted full autonomy to decide their own jurisdiction and to apply the provisions of the Regulation themselves. Articles 27 and 28 provide a code for dealing with issues of jurisdiction and the courts of one Member State must not interfere with the decisions of the court of another Member State in its application of those provisions. Thus, although the House of Lords was able to find that anti-suit injunctions were permitted because of the exception in Article 1(2)(d) of the Regulation which excludes arbitration from the scope of it, the European Court held that, even though the English proceedings did not come within the scope of the Regulation, the anti-suit injunction granted by the English court had the effect of undermining the effectiveness of the Regulation by preventing the attainment of the objects of unification of the rules of conflict of jurisdiction in civil and commercial matters and the free movement of decisions in those matters, because it had the effect of preventing a court of another member state from exercising the jurisdiction conferred on it by the Regulation (paragraph 24).

37. None of this has any application to the position as between England and India. The body of law which establishes that an agreement to the seat of an arbitration is akin to an exclusive jurisdiction clause remains good law. If the defendant is right, C v D would now have to be decided differently. Both the USA (with which C v D was concerned) and India are parties to the New York Convention, but the basis of the Convention, as explained in C v D, as applied in England in accordance with its own principles on the conflict of laws, is that the courts of the seat of arbitration are the only courts where the award can be challenged whilst, of course, under Article V of the Convention there are limited grounds upon which other contracting states can refuse to recognise or enforce the award once made.

38. The Regulation provides a detailed framework for determining the jurisdiction of member courts where

the New York Convention does not, since it is concerned with recognition and enforcement at a later stage. There are no "Convention rights" of the kind with which the European Court was concerned at issue in the present case. The defendant is not seeking to enforce any such rights but merely to outflank the agreed supervisory jurisdiction of this court. What the defendant is seeking to do in India is to challenge the award (the section 34 IACA Petition) in circumstances where he has failed in a challenge in the courts of the country which is the seat of the arbitration (the ss.68 and 69 Arbitration Act applications). Whilst of course the defendant is entitled to resist enforcement in India on any of the grounds set out in Article V of the New York Convention, what he has done so far is to seek to set aside the Costs Award and to prevent enforcement of the Costs Award in England, in relation to a charging order over a house in England, when the English courts have already decided the matters, which plainly fall within their remit. The defendant is seeking to persuade the Indian courts to interfere with the English courts' enforcement proceedings whilst at the same time arguing that the English courts should not interfere with the Indian courts, which he would like to replace the English courts as the supervisory jurisdiction to which the parties have contractually agreed.

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39. In my judgment therefore there is nothing in the European Court decision in Front Comor which impacts upon the law as developed in this country in relation to anti-suit injunctions which prevent parties from pursuing proceedings in the courts of a country which is not a Member State of the European Community, whether on the basis of an exclusive jurisdiction clause, or an agreement to arbitrate (in accordance with the decision in the Angelic Grace [1995] 1 LLR 87) or the agreement of the parties to the supervisory powers of this court by agreeing London as the seat of the arbitration (in accordance with the decision in C v D).

Hat tip: Hew Dundas, Jacob van de Velden

BIICL Seminar on West Tankers

The British Institute for International & Comparative Law are hosting a seminar on Tuesday 12th May (17.30-19.30) entitled *Enforcing Arbitration Agreements: West Tankers – Where are we? Where do we go from here?* Here's the synopsis:

> *The February 2009 West Tankers ruling of the European Court of Justice has the unintended consequence of disrupting the flow of arbitrators' powers. The precise extent to which these are affected remains unclear, however. In its ruling, the Court stated:*
>
> ***"It is incompatible with Council Regulation (EC) No 44/2001 … for a court of a Member State to make an order to restrain a person from commencing or continuing proceedings before the courts of another Member State on the ground that such proceedings would be contrary to an arbitration agreement."***
>
> *Following this ruling essentially two questions arise: "Where are we?" and*

"Where do we go from here?". The former question involves an assessment of West Tankers' immediate implications. The second turns on an emerging consensus, encompassing comments from at least Germany, France and the United Kingdom, that legislative change is needed to attend to the unsatisfactory state of the law in this context. The Heidelberg Report 2007 on the Brussels I Regulation proposes amendments bringing proceedings ancillary to arbitration within the Regulation's scope, and to confer exclusive jurisdiction on the courts of the state of the arbitration. Should this proposal be supported?

The Institute has convened leading practitioners and academics, including one of the authors of the Heidelberg Report, to rise to the challenge of answering these questions. There will be ample occasion for discussion, so those attending are encouraged to share their thoughts and ideas.

2 CPD hours may be claimed by both solicitors and barristers through attendance at this event.

Chair: The Hon Sir Anthony Colman, Essex Court Chambers

Speakers:
Alex Layton QC, 20 Essex Street; Chairman of the Board of Trustees, British Institute of International and Comparative Law
Professor Adrian Briggs, Oxford University
Professor Julian Lew QC, Head of the School of International Arbitration (Queen Mary), 20 Essex Street
Professor Thomas Pfeiffer, Heidelberg University; co-author of the Heidelberg Report 2007
Adam Johnson, Herbert Smith
Professor Jonathan Harris, Birmingham University and Brick Court Chambers

Details on prices and booking can be found on the BIICL website.

If you want to do your homework before the event, you might want to visit (or revisit) our West Tankers symposium, not least because four of the speakers at the BIICL seminar were also involved in our symposium.

New publication on Israeli PIL

Private International Law in Israel

by Prof Talia Einhorn

Visiting Professor of Law / Indiana University School of Law

Visiting Senior Research Fellow / Tel-Aviv University Faculty of Management

Kluwer Law International

2009

396 pages

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Israel's PIL is not codified, nor is it clearly traceable to any one legal system. Since the style and method of legal development in Israel has primarily followed the tradition of the common law, the author first critically analyzes the case law to draw the pertinent rules. However, the study does not confine itself to the rules already existing in Israeli PIL, but establishes rules in areas where such are missing, guided by the methods and principles which the court and legislature would have adopted had they been confronted with these problems.

Subjects covered in the book include:
– national and international sources of Israeli PIL;
– types of choice-of-law rules;
– characterization of legal matters;
– natural and legal persons;
– contractual and non-contractual obligations;
– property law (movables, immovables, trusts, cultural property)
– intellectual and industrial property rights;

– companies organized under the civil or commercial law of any state;
– insolvency;
– family law and succession;
– scope of international jurisdiction in Israeli courts;
– proof of foreign law;
– judicial assistance;
– recognition and enforcement of foreign judgements;
– international arbitration; and
– the role of literature and legal doctrine.

PIL conference at the University of Johannesburg

Comparative private international law conference; University of Johannesburg; 8-11 September 2009

Key-note speakers:
(1) Prof Dr C F Forsyth (University of Cambridge):
Reconciling classic private international law with fidelity to constitutional values

(2) Prof Dr M Martinek (University of Saarland):
The Rome I and Rome II regulations in European private international law –
a critical analysis

34 participants from 17 countries:

Cameroon (1); Canada (1); China (4); Croatia (1); Czech Republic (1); Germany (2); Israel (1); Italy (1); Japan (1); Mauritius (1); the Netherlands (2); Poland (1); Portugal (1); South Africa (7); Spain (4); United Kingdom (4); United States of America (1)

Sections on:

Private international law of obligations

Private international family law
Commercial private international law
Procedural private international law
Arbitration and private international law
Miscellaneous topics of private international law

Further information: http://www.uj.ac.za/law. Conference organiser: Prof Jan L Neels (jlneels@uj.ac.za). The provisional programme will be available shortly.