

# Kruger on Rome III and Parties' Choice

Thalia Kruger (University of Antwerp) has posted Rome III and Parties' Choice on SSRN.

*This paper focusses on the possibility spouses have under the new Rome III Regulation (EC Regulation 1259/2010) to choose the law applicable to their divorce. It discusses the limits and exceptions of this freedom to choose.*

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## Yearbook of Private International Law, Vol. XIII (2011)

The latest issue of the Yearbook of Private International Law (Volume XIII - 2011) has recently been published. Edited by *Andrea Bonomi*, Professor at the University of Lausanne, and *Gian Paolo Romano*, Professor at the University of Geneva, the volume focuses, among others, on recent developments in European private international law.



The official announcement reads as follows:

*The current volume of the “Yearbook of Private International Law” includes three special sections: The first one is devoted to the recent European developments in the area of family law like the proposal on the matrimonial*

*property régimes in its relation with other EU instruments, such as Brussels IIbis or Rome III. Another special section deals with the very hotly debated question of the treatment of and access to foreign law. The third one presents some recent reforms of national Private International Law systems. National reports and court decisions complete the book.*

*Recent highlights include:*

- *multiple nationalities in EU Private International Law*
- *the European Court of Human Rights and Private International Law*
- *parallel litigation in Europe and the US*
- *arbitration and the powers of English courts*
- *conflict of laws in emission trading*
- *res judicata effects of arbitral awards*

The *Yearbook* includes the following contributions:

### **Doctrine**

- Stefania Bariatti, Multiple Nationalities and EU Private International Law - Many Questions and Some Tentative Answers
- George A. Bermann, Parallel Litigation: Is Convergence Possible?
- Patrick Kinsch, Private International Law Topics Before the European Court of Human Rights - Selected Judgments and Decisions (2010-2011)
- Jonathan Hill, The Powers of the English Court to Support an Arbitration in “Foreign Seat” and “No Seat” Cases
- Christa Roodt, Border Skirmishes between Courts and Arbitral Tribunals in the EU: Finality in Conflicts of Competence
- Koji Takahashi, Conflict of Laws in Emissions Trading
- Thomas Kadner Graziano, The CISG Before the Courts of Non-Contracting States? Take Foreign Sales Law as You Find It

### **European Family Private International Law**

- Cristina González Beilfuss, The Proposal for a Council Regulation on the Property Consequences of Registered Partnerships
- Ilaria Viarengo, The EU Proposal on Matrimonial Property Regimes -

### Some General Remarks

- Andrea Bonomi, The Interaction among the Future EU Instruments on Matrimonial Property, Registered Partnerships and Successions
- Beatriz Campuzano Díaz, The Coordination of the EU Regulations on Divorce and Legal Separation with the Proposal on Matrimonial Property Regimes
- Simone Marinai, Matrimonial Matters and the Harmonization of Conflict of Laws: A Way to Reduce the Role of Public Policy as a Ground for Non-Recognition of Judgments

### **Application of Foreign Law**

- Carlos Esplugues Mota, Harmonization of Private International Law in Europe and Application of Foreign Law: The “Madrid Principles” of 2010
- Shaheez Lalani, A Proposed Model to Facilitate Access to Foreign Law

### **News from Brussels**

- Mel Kenny / Lorna Gillies / James Devenney, The EU Optional Instrument: Absorbing the Private International Law Implications of a Common European Sales Law

### **News from Rome**

- Alessandra Zanobetti, UNIDROIT’s Recent Work: An Appraisal

### **National Reports**

- Yasuhiro Okuda, New Provisions on International Jurisdiction of Japanese Courts
- Tomasz Pajor†, Introduction to the New Polish Act on Private International Law of 4 February 2011
- Mathijs H. ten Wolde, Codification and Consolidation of Dutch Private International Law: The Book 10 Civil Code of the Netherlands
- Seyed N. Ebrahimi, An Overview of the Private International Law of Iran: Theory and Practice (Part Two)
- Nikolay Natov / Boriana Musseva / Teodora Tsenova / Dafina Sarbinova / Zahari Yanakiev / Vasil Pandov, Application of the EU Private

International Law  
Instruments in Bulgaria

- William Easun / Géraldine Gazo, Trusts and the Principality of Monaco

## Court Decisions

- Michael Bogdan, Defamation on the Internet, *forum delicti* and the E-Commerce Directive:  
Some Comments on the ECJ Judgment in the *eDate* Case
- Michel Reymond, The ECJ *eDate* Decision: A Case Comment
- Matthias Lehmann, Exclusive Jurisdiction under Art. 22(2) of the Brussels I Regulation:  
The ECJ Decision *Berliner Verkehrsbetriebe v JPMorgan Chase Bank* (C-144/10)
- Jan von Hein, Medical Malpractice and Conflict of Laws: Two Recent Judgments by the German Federal Court of Justice
- Kun Fan, The Risks of Apparent Bias when an Arbitrator Acts as a Mediator - Remarks on Hong Kong Court's Decision in *Gao Haiyan*

## Forum

- Jeremy Heymann, The Relationship between EU Law and Private International Law Revisited: Of Diagonal Conflicts and the Means to Resolve Them
- Ilaria Pretelli, Cross-Border Credit Protection against Fraudulent Transfers of Assets - *Actio pauliana* in the Conflict of Laws

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# Rome II - Parliament Calls for Action on Defamation and Privacy

Yesterday (10 May), the European Parliament adopted an own-initiative (non-legislative) resolution on the law applicable to non-contractual obligations (Rome II) calling for action in the area of claims for violations of privacy and rights

relating to personality, including defamation. As is well known (and long debated on [this site](https://conflictoflaws.de/2010/rome-ii-and-defamation-online-symposium/) - see <https://conflictoflaws.de/2010/rome-ii-and-defamation-online-symposium/>), such claims are currently excluded from the material scope of the Rome II Regulation by Art. 1(2)(g).

In the key paragraphs of the Resolution (rapporteur: Cecilia Wikström, taking over from Diana Wallis, one of the key proponents of the original Regulation), the Parliament:

*1. Requests the Commission to submit, on the basis of point (c) of Article 81(2) of the Treaty on the Functioning of the European Union, a proposal designed to add to the Rome II Regulation a provision to govern the law applicable to a non-contractual obligation arising out of violations of privacy and rights relating to personality, including defamation, following the detailed recommendations set out in the annex hereto;*

*2. Further requests the Commission to submit, on the basis of point (d) of Article 81(2) of the Treaty on the Functioning of the European Union, a proposal for the creation of a centre for the voluntary settlement of cross-border disputes arising out of violations of privacy and rights relating to personality, including defamation, by way of alternative dispute resolution; ...*

It remains to be seen how the Commission, with limited resources in the civil justice area and an already full in-tray, will respond.

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## **2nd Annual ICQL Lecture: Assignment of Contractual Claims**

# under the Rome I-Regulation

On Thursday, 10 May 2012, 5 pm to 7 pm the British Institute for International and Comparative Law will host the 2nd Annual ICQL Lecture. The lecture will be given by Professor Trevor Hartley (Professor of Law Emeritus, London School of Economics) and it will focus on “Assignment of Contractual Claims under the Rome I Regulation: Choice of Law for Third-Party Rights”.

More information is available on the Institute’s homepage.

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## ERA Conference on Rome I and II

On 31 May and 1 June 2012, the European Academy of European Law (ERA) will host a conference on Rome I and Rome II in Trier (Germany). The conference will concentrate on day-to-day situations in cross-border context, notably consumer contracts and traffic accidents, and is supposed to provide a forum for debate between legal practitioners on the practical implementation of the two Regulations. Participants are invited to share and evaluate their own experiences in their member states.

The conference programme reads as follows:

### **THURSDAY, 31 May 2012**

- 9:00 **Arrival and Registration**
- 9:30 **Welcome**

### **I. SYNOPSIS OF ROME I & II**

- 9.35 **Scope of Application in the light of English and ECJ law,**  
*Alexander Layton*
- 10.00 **Mandatory rules and ordre public,** *Michael Hellner*
- 10.25 **Discussion**
- 10.45 **Coffee break**

## **II. ROME I: WHICH LAW APPLIES TO INTERNATIONAL CONTRACTS?**

### **1. General and Specific Rules**

- 11.15 **Choice of Law and applicable law in the absence of choice**, *Jan von Hein*
- 11.45 **Discussion**
- 12.10 **Case law on employment contracts**, *Etienne Pataut*
- 12.40 **Discussion**
- 13.00 **Lunch**

### **2. Focus on Consumer Contracts**

- 14.00 **Consumer contracts: recent developments**, *Giesela Rühl*
- 14.30 **Discussion**

### **Workshop (with coffee & tea)**

- 14.45 **Cross-border consumer contracts in judicial practice**, *John Ahern*
- 15.45 **Results of the workshop and discussion**

### **3. What's Next**

- 16.30 **Towards a revision? - Consumer contracts, insurance contracts and assignment**, *Stefania Bariatti*
- 17.00 **Discussion**
- 17.15 **End of the first conference day**
- 19.00 **Evening programme and dinner**

**FRIDAY, 1 June 2012**

## **III. ROME II: WHICH LAW APPLIES TO CROSS-BORDER TORTS?**

### **1. General and Specific Rules**

- 9.00 **Tort/delict under Rome II**, *Andrew Dickinson*
- 9.25 **Product Liability**, *Marta Requejo Isidro*
- 9.50 **Discussion**
- 10.15 **Coffee break**

## **2. Focus on Traffic Accidents**

- 10.45 **Traffic accidents in the light of Brussels I, Rome II and the Hague Convention (including a case-study)**, *Thomas Kadner Graziano*
- 12.00 **Current issues on the traffic law and compensation**, *Marie Louise Kinsier*
- 12.30 **Discussion**

## **3. What's Next**

- 12.45 **Amendment of the Rome II Regulation: a new rule on defamation?**, *Cecilia Wikström*
- 13.15 **Lunch and end of the conference**

More information is available [here](#).

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# **Dickinson on Territory in Rome I and II**

On Monday, November 28, Andrew Dickinson will give a presentation on "Territory in the Rome I and II Regulations" at the Max Planck Institute for Comparative and Private International Law in Hamburg. More information is available on the institute's website.

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# **Galgano & Marrella, Diritto del**



# Commercio Internazionale, III ed.

✘ The Italian publisher house CEDAM has recently published the third edition of the leading textbook on International Business Law in the Italian language, “Diritto del commercio internazionale”, authored by *Prof. Francesco Galgano* (emeritus at the University of Bologna) and *Prof. Fabrizio Marrella* (“Cà Foscari” University of Venice and Université de Paris I – Panthéon Sorbonne).

A presentation has been kindly provided by the authors (the complete TOC is available here):

*The book aims at a comprehensive coverage of the legal issues global business managers face. Focusing on the trade, licensing and investment life-cycle that many domestic -new to international- and multinational organizations experience, it provides the necessary understanding of legal issues concerning import-export, market-entry strategies, protecting and licensing intellectual property to learning the special challenges of international investment operations. The third edition is updated to the most significant developments in the field such as: the Lisbon Treaty; Regulation Rome I on the law applicable to contractual obligations and Regulation Rome II on the law applicable to non contractual obligations. In addition, it offers updated information on, inter alia, the Unidroit Principles on International Commercial Contracts (2010); the new UCP 600 (the Uniform Customs and Practice for Documentary Credits, i.e. a set of rules on the issuance and use of letters of credit utilised by bankers and commercial parties in more than 175 countries in trade finance); INCOTERMS 2010; payment modalities, contracts of carriage and new ICC rules for demand guarantees. A special emphasis is given to arbitration as the main tool for dispute resolution in the international business world.*

Title: Diritto del Commercio Internazionale, III edition, by *Francesco Galgano* and *Fabrizio Marrella*, CEDAM, Padova, 2011, XXXII-986 pages.

ISBN: 978-88-13-29966-8. Price: EUR 65.

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# Pocket a Rome II Commentary

A new commentary on the Rome II Regulation has been (or will shortly be) published by Sellier European Law Publishers.

The “Rome II Regulation: Pocket Commentary” is the first in a series of books designed to appeal to brain, hand luggage and wallet alike. It has been co-authored by a team of German scholars - Dr Martin Illmer (Max Planck Institute, Hamburg), Dr Angelika Fuchs (Academy of European Law, Trier), Professor Peter Huber, Dr Ivo Bach and Markus Altenkirch (all University of Mainz) - and edited by Professor Huber.

The Rome II Pocket Commentary is priced at €49.00 and available in paperback or eBook versions. Further information is available [here](#).

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## A New Assignment for the Rome I Regulation - Update

UPDATE: THE FINAL SUBMISSION DATE FOR THE QUESTIONNAIRE HAS BEEN EXTENDED TO WEDNESDAY 15 JUNE. ALL THOSE WITH AN INTEREST IN THIS ASPECT OF THE FUNCTIONING OF THE ROME I REGULATION ARE ENCOURAGED TO RESPOND TO ANY PART OF THE QUESTIONNAIRE WHICH APPLIES TO THEM.

ALTHOUGH THE QUESTIONNAIRE IS DRAFTED WITH BUSINESSES AND LEGAL PRACTITIONERS IN MIND, OTHERS (E.G. ACADEMIC LAWYERS, GOVERNMENTAL AND NON-GOVERNMENTAL ORGANISATIONS) MAY COMPLETE PART 3 (POLICY OPTIONS) ONLY.

When the Rome I Regulation was finalised in 2008, certain questions concerning the effect of assignments upon third parties (e.g. judgment creditors, security holders, prior assignees of the same right) were left open. In this connection, the

Commission undertook to prepare and submit a report on the question of the effectiveness of an assignment or subrogation of a claim against third parties, and the priority of the assigned or subrogated claim over a right of another person (Art 27(2)).

The British Institute of International and Comparative Law (BIICL) has been “Commissioned” to undertake a study upon which this report will, in part, be based. For the purposes of this study, BIICL has prepared a questionnaire concerning the role of assignments and the surrounding legal environment in transactions with a cross-border element. Answers to this questionnaire (involving requests for information about the nature and value of transactions undertaken, practical examples of the impact of legal regulation and views on policy options for a possible new EU conflicts rule in this area) will be used by BIICL in preparing its study report and submitted to the Commission as part of its impact assessment for any future proposal. Accordingly, the process is intended to enable EU businesses and members of the legal profession to make their views known at the outset of the review process.

As a member of the BIICL team, I would encourage all of you to take part in the study by (1) downloading and completing any parts of the questionnaire which apply to you (download [here](#)) and returning the form to Dr Eva Lein at the Institute (see contact details in the questionnaire), and/or (2) by forwarding this post to any business contact whom you think may have an interest in the subject matter of the study. Please also contact Dr Lein ([e.lein@biicl.org](mailto:e.lein@biicl.org)) if you have any questions concerning the project or the questionnaire.

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