New Canadian Reference on Conflict of Laws

Halsbury's Laws of Canada (first edition) has published a reissue (September 2016) of its volume on Conflict of Laws. It is written by Professor Janet Walker, the author of the leading Canadian textbook in the field. The reissue is highly detailed with over 260 pages of tables (cases, conventions, legislation), an index and a glossary. The substantive content runs to over 600 pages including lengthy footnotes. The reissue can be purchased as a stand-alone reference (without buying the entire Halsbury's collection) for conflict of laws in Canada (publisher information available here).

Forum Conveniens Annual Lecture, University of Edinburgh

I have been very kindly invited to be the speaker of the *Forum Conveniens* Annual Lecture at the University of Edinburgh this year. It is with great pleasure that I announce it will take place on Wednesday 23rd November 2016, under the title "Farewell, UK. Stocktaking Time for a Continental Europe's Area of Civil Justice". Start is foreseen at 6.00pm, at the following venue: LG.10, David Hume Tower, EH8 9JX.

Attendance is free, however registration is required. For more information please contact:
Professor Gerry Maher (Gerard.Maher@ed.ac.uk or Dr
Veronica Ruiz Abou Nigm (V.Ruiz.Abou-Nigm@ed.ac.uk)

Forum Conveniens is a forum based at Edinburgh Law School and dedicated to International Private Law (Private International Law). Its base in Edinburgh reflects the distinctive role of Scots law in the development of the subject but at the same time the focus of the Forum is international.

It provides a means of bringing together interested parties (including academic lawyers, practitioners, the judiciary, law reformers, and policy makers) for discussion and exchange of ideas in private international law.

Massimo Benedettelli on EU Private International Law of Companies

Professor *Massimo Benedettelli* (University of Bari "Aldo Moro") has just published a highly noteworthy article entitled "Five Lay Commandments for the EU Private International Law of Companies" in the 17th Volume of the Yearbook of Private International Law (2015/2016).

The author has kindly provided us with the following abstract:

*'While praising European company law as a "cornerstone of the internal market", the EU institutions have devoted limited attention to issues of competent jurisdiction, applicable law and recognition of judgments which necessarily arise when companies carry out their business on a cross-border basis. This is a paradox, especially if one considers that in this area the EU often follows a policy of "minimal harmonization" of the laws of the Member States and that this policy leads to the co-existence of a variety of different rules and institutions directly or indirectly impinging on the regulation of companies, thus to possible conflicts of jurisdictions and/or laws. The European Court of Justice's "*Centros *doctrine" fills this gap only partially: this is due not only to the inherent limits of its case-law origin, but also to various hidden assumptions and corollaries on which it appears to be grounded and which still need to be unearthed. Hence, time has come for a better coordination of the legal systems of the Member States in the field of company law, possibly through the enactment of an ad hoc instrument. To be*

properly carried out, however, such coordination requires a preliminary clarification of what the EU private international law of companies really is and how it should be handled at the current stage of the European integration. This article tries to contribute to such clarification by proposing five main guidelines, in the form of "commandments" for the European legislator, courts and practitioners. It is submitted that, first, one should understand the different scope of the three legal disciplines (EU law, private international law and company law) which interact in this field so as to assess when and to what extent the lack of coordination of the Member States' domestic laws may affect the achievement of the objectives pursued by the EU. As a second analytical step, the impact that the EU constitutional principles of subsidiarity and proportionality may have on the scope of the relevant regulatory powers of the EU and of the Member States should be determined. Third, the issue of "characterization" should be addressed so that the boundaries of company law vis-à-vis neighbouring disciplines (capital markets law, insolvency law, contract law, tort law) are fixed throughout the entire EU legal space in a uniform and consistent way. Fourth, the Member States' legal systems should be coordinated on the basis of the "jurisdictional approach" method (which de facto *inspires the ECJ in* Centros *and its progenies) by granting a role of prominence to the Member State under the laws of which a company has been incorporated. Fifth, any residual conflict which may still arise among different Member States in the regulation of a given company should be resolved, in principle, by respecting the will of the parties to the corporate contract and the rights "to incorporate" and "to re-incorporate" which they enjoy under EU law. In the author's opinion, an EU private international law of companies developed on the basis of these guidelines not only would achieve a fair balance between the needs of the integration and the Member States' sovereignty, but would also create a framework for a European "market of company law" where a "virtuous" forum and law shopping could be performed in a predictable and regulated way.'*

Supreme Court of Canada Allows Courts to Sit Extraterritorially

In *Endean v British Columbia*, 2016 SCC 42 (available here) the Supreme Court of Canada has held that "In pan-national class action proceedings over which the superior court has subject-matter and personal jurisdiction, a judge of that court has the discretion to hold a hearing outside his or her territory in conjunction with other judges managing related class actions, provided that the judge will not have to resort to the court's coercive powers in order to convene or conduct the hearing and the hearing is not contrary to the law of the place in which it will be held" (quotation from the court's summary/headnote).

The qualifications on the holding are important, since some of the earlier lower court decisions had been more expansive in asserting the inherent power of the superior court to sit outside the province (for example beyond the class proceedings context). I am concerned about any extraterritorial hearings that are not expressly authorized by specific statutory provisions, but I do appreciate the utility (from an efficiency perspective) of the court's conclusion in the particular context of this dispute. It remains to be seen if attempts will be made to broaden this holding to other contexts.

The court has also held that "A video link between the out-of-province courtroom where the hearing takes place and a courtroom in the judge's home province is not a condition for a judge to be able to sit outside his or her home province. Neither the [class proceeding statutes] nor the inherent jurisdiction of the court imposes such a requirement. The open court principle is not violated when a superior court judge exercises his or her discretion to sit outside his or her home province without a video link to the home jurisdiction" (quotation from the court's summary/headnote).

This aspect of the decision concerns me, since my view is that the open court principle requires that members of the Ontario public and the media can see the proceedings of an Ontario court in an Ontario courtroom. It is a hollow claim that they can fly to another province to watch them there. The separate concurring decision appreciates this aspect of the case more than the majority decision, though it too stops short of requiring a video link. In its view, "While the court

should not presumptively order that a video link back to the home provinces be set up where the court sits extraprovincially, members of the public, the media, or counsel can request that a video link or other means be used to enhance the accessibility of the hearing. If such a request is made, or the judge considers it appropriate, a video link or other means to enhance accessibility should be ordered, subject to any countervailing considerations" (quotation from the court's summary/headnote).

European Data Science Conference in Luxembourg, 7-8 November 2016

The European Association for Data Science (EuADS) will hold the first European Data Science Conference in Luxembourg on 7-8 November 2016. This interdisciplinary event is the inaugural conference of EuADS and aims to provide a setting for fostering communication among all stakeholders of Data Science in Europe. You may download the flyer of the conference here. Conference topics include, among others, the question of trust, transparency and provenance of data including where data come from and by which mechanisms trust in data might be achieved, as well as legal aspects of data science such as data protection, data privacy and data access. The conference will feature a symposium on "Legal dimensions of Data Science" with contributions by Burkhard Hess (MPI Luxembourg), Advocate General Pedro Cruz Villalón, Gerald Spindler (University of Göttingen), Mark D. Cole (University of Luxembourg) and Jan von Hein (University of Freiburg). The full programme is available here.

EBS Law School Arbitration Day: All new and all better? From New Rules to New Courts: The Quest for Improved Systems of Arbitration

The EBS Law School in cooperation with Clifford Chance will host the EBS Law School Arbitration Day on 18 November 2016 organized by Professor Dr. Matthias Weller and Dr. Alexandra Diehl.

The event will focus on the quest for improved systems of arbitration. Topics will be:

- Dispute Resolution in Asia: Dominated by the Singaporean Merlion?
- The Iran-United States Claims Tribunal: a role model for international arbitration?
- TTIP and CETA: On a Road to Nowhere or to Success?

The speakers are:

- Claudia Annacker, Cleary Gottlieb, Paris
- Simon Greenberg, Clifford Chance, Paris
- Elan Krishna, Clifford Chance, Singapore
- Dr. Cristina Hoss, Legal Adviser to Judge Bruno Simma, Iran-US Claims Tribunal, Den Haag
- Prof. Dr. R. Alexander Lorz, Secretary for Public Education, German State of Hesse, Wiesbaden
- Representative from US Consulate General Frankfurt
- Prof. Dr. André Schmidt, EBS Business School/University Witten-Herdecke
- Prof. Dr. Mathias Wolkewitz, General Counsel Legal, Taxes, Insurances, Wintershall AG

The lectures as well as the panel discussions will be in English. The event will

start at 1.30 p.m. in Lecture Room “Sydney” at EBS Law School in Wiesbaden.

For further information and registration see here.

Foreign Sovereign Immunity at the U.S. Supreme Court

Helmerich & Payne International v. Venezuela

On Wednesday, November 2, 2016, the Supreme Court will hear oral arguments in the case of *Helmerich & Payne International v. Venezuela*. The Court granted certiorari to resolve a circuit split regarding the proper pleading standard needed to allege an expropriation claim for purposes of the Foreign Sovereign Immunities Act’s (FSIA) expropriation exception. The FSIA provides that a foreign state and its agencies and instrumentalities “shall be immune from the jurisdiction” of federal and state courts except as provided by international agreements and by exceptions contained in the statute. 28 U.S.C. § 1604; see 28 U.S.C. § 1605-§ 1607. The exception involved here is the expropriation exception. That exception provides that a “foreign state shall not be immune from the jurisdiction of the courts of the United States or of the States in any case . . . in which rights in property taken in violation of international law are in issue” and there is a specified commercial-activity nexus to the United States. 28 U.S.C. § 1605(a)(3). The Court will resolve whether a plaintiff needs only to plead some non-frivolous facts that could show an expropriation to survive a motion to dismiss or does a plaintiff need to plausibly allege that an expropriation occurred in violation of international law.

Venezuela, the Petitioner, and the United States, as amicus curiae in support of Venezuela, argue that for a case to come within the scope of Section 1605(a)(3), the complaint must assert a claim that is legally sufficient to satisfy the provision’s substantive requirements. According to the United States, “[w]hen the foreign state challenges the legal sufficiency of the complaint’s jurisdictional allegations under Federal Rule of Civil Procedure 12(b)(1), the district court must

determine whether the plaintiff's allegations, if true, actually describe a 'tak[ing] in violation of international law'—that is, conduct that is prohibited by international expropriation law—and identify 'rights in property' that were impaired as a result of the foreign state's conduct. If those substantive requirements are not satisfied, the foreign state is immune from suit both federal and state courts, the district court lacks subject-matter jurisdiction, and the claim must be dismissed." Brief of the United States as Amicus Curiae at 7-8.

Helmerich, the Respondent, argues that "nothing in the FSIA displaces the longstanding, widespread practice that the possibility a claim might fail on its merits does not defeat the court's jurisdiction to decide the merits, at least where the claim is not 'clearly . . . immaterial and made solely for the purpose of obtaining jurisdiction' or 'wholly insubstantial and frivolous.'" Brief of Respondent at 14.

This case has the potential to be a blockbuster, as it will define when suits against foreign governments get through the courthouse door. The Court's interpretation of the pleading standard for the expropriation exception will also impact the pleading standards for the FSIA's other exceptions, such as the commercial activity exception and noncommercial tort exceptions. The fact that the U.S. Government will participate in oral argument as amicus curiae in support of Venezuela will also be noteworthy, given that the Obama Administration recently suffered its first override of a presidential veto when the House and Senate voted against the President's objection to a bill that amended the FSIA to allow family members to sue Saudi Arabia over claims it aided or financed the Sept. 11 terrorist attacks.

Conference: Family law and Moroccan nationals living abroad

On 2 December a Conference on Family law and Moroccan nationals living abroad will take place in Brussels. This conference will be in French.

Here is the background:
In 2004 Morocco adopted a new Family Code (MFC). On the occasion of the 10th anniversary of the entry into force of the MFC (2004-2014) a comparative research on the application of the MFC in Europe and Morocco has been undertaken under the direction of Professor Marie-Claire Foblets (Max Planck Institute Halle and KULeuven). For five European countries with the largest population of Moroccan residents (Belgium, France,
Italy, the Netherlands and Spain) an in-depth analysis of the case law available since 2004 has been made. This analysis provides a more concrete idea of the problems raised by the application of the MFC since 2004 and especially of the legal problems affecting the family lives of Morrocan nationals living abroad (MNAs). Besides the analysis of the case law of the European countries, a study of the Moroccan case law concerning MNAs and a field study at three Moroccan consulates in Europe have been undertaken.

The full programme and enrolment information are available here (link at the bottom of the page).

ERA-Conference: “Freezing Bank Accounts across Europe (and Beyond)”

The Academy of European Law (ERA) will host a conference on the new Regulation (EU) 655/2014 establishing a European Account Preservation Order (EAPO), which will become operational from January 2017. The conference, which will take place on **1–2 December 2016** in **Trier (Germany)**, will focus on the practical implications of the new instrument for commercial parties, including banks.

Key topics will be:

- The EAPO and its interplay with other EU Regulations and national law

- Obligations of the banks operating in the Member States
- Scope and procedure for obtaining an EAPO
- Enforcing and resisting enforcement of an EAPO
- Maintaining surprise vs protecting the debtor
- EAPO, US and UK (worldwide) freezing orders

The conference language will be English. The event is organized by Dr *Angelika Fuchs* (ERA). The programme is available here.

The confirmed speakers are:

- **Gilles Cuniberti**, Professor at the University of Luxembourg
- **Joseph Delhaye**, Head Legal and Senior Vice President at the State and Savings Bank, Luxembourg
- **Pietro Franzina**, Associate Professor at the University of Ferrara
- **Sarah Garvey**, Counsel and Head of Litigation KnowHow and Training, Allen & Overy LLP, London
- **Burkhard Hess**, Professor and Director of the Max Planck Institute for International, European and Regulatory Procedural Law, Luxembourg
- **Clara Mara-Marhuenda**, Counsel Dispute Resolution, Arendt & Medernach, Luxembourg
- **Fernando de la Mata**, Partner, Baker & McKenzie SLP, Barcelona
- **Brandon O'Neil**, Senior Associate, Allen & Overy LLP, London
- **Philippe-Emmanuel Partsch**, Partner, Arendt & Medernach, Luxembourg
- **Katharina Raffelsieper**, *Avocate*, Thewes & Reuter – Avocats à la Cour, Luxembourg
- **Daniel Staehelin**, Professor, Attorney and Notary Public, Partner, Kellerhals Carrard, Basel
- **Heinz Weil**, *Avocat & Rechtsanwalt*, Chairman of the European Committee of the German Federal Bar (BRAK), Weil & Associés, Paris

Registrations before 1 November 2016 will benefit from an "early bird" rebate. After this deadline, however, discounts will be available for young lawyers and academics. For further information and registration, please see the conference website.

EUFam’s Project: Case-Law Database Available!

The EUFam’s Project’s Consortium is glad to announce that the first version of the EUFam’s case-law database, filled in the past months by all partners of the project, is now available for public consultation.

Currently, the database contains data concerning over 400 decisions applying the European Union Regulations on cross-border litigation in family matters, issued by the courts of Bulgaria, Croatia, Czech Republic, France, Germany, Greece, Italy, Slovakia, and Spain.

The consortium will keep the database up to date and publish new versions of the file in the upcoming months in the section ‘Public Database’ of the EUFam’s website, in order to keep it up-to-date with the new cases that all partners will classify until December 2017, date of the end of the project.

Website: www.eufams.unimi.it

Facebook page: www.facebook.com/eufams

On the project:

The Project ‘Planning the future of cross-border families: a path through coordination’ (EUFam’s – JUST/2014/JCOO/AG/CIVI/7729) aims at analysing is the practice of several Member States concerning the application of EU Regulations No 2201/2003, No 1259/2010, No 4/2009, and No 650/2012, as well as the 2007 Hague Maintenance Protocol, and the 2007 Hague Recovery Convention.

The purpose of the research activity is to identify the difficulties met by courts and practitioners in applying the rules laid down in the regulations, and to collect

and share the solutions and best practices adopted by them in order to overcome such issues.

Partners of the Project are: the University of Milan (coordinator), the University of Heidelberg, the University of Osijek, the University of Valencia, the University of Verona, the Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law, the Italian Family Lawyers Association (AIAF), the Spanish Family Lawyers Association (AEAFA), the Italian Judicial Academy (SSM), and the Croatian Judicial Academy.

The EUFam's Project is co-funded by the Directorate-General for Justice and Consumers of the European Commission, within the programme 'Projects to support judicial cooperation in civil or criminal matters' (Justice Programme).

The e-mail contact for further information is: eufams@unimi.it