The second meeting of the Special Commission charged with preparing the future Hague Convention on judgments

The Special Commission set up by the Council on General Affairs and Policy of the Hague Conference on Private International Law to prepare a preliminary draft convention on the recognition of judgments in civil and commercial matters (the Judgments Project) met for the second time between 16 and 24 February 2017.

Building on the draft text elaborated in 2016, the Special Commission completed a new draft (the February 2017 draft Convention), which should form the basis for a new round of discussions in November 2017.

Thank you, Martin, for 10 years of conflictoflaws.net!

Dear Martin, dear all,

We would like to take the opportunity and thank you, Martin, very much for setting up and taking care of the blog for more than 10 years! Under your supervision the blog has developed into one of the leading and most influential platforms in the field of conflict of laws and this is a great achievement.

We also thank you and the other editors for entrusting us with the responsibility for this blog, and we will certainly try to continue its success story in close cooperation with all editors and readers. We will keep you posted on how we will proceed in the future and hope for your continued support and input.

Giesela and Matthias

Private International Law in an Era of Globalisation (paper)

A short working paper by Veerle Van Den Eeckhout on Private International Law in an Era of Globalisation has been published on SSRN. It is written in Dutch.

The English abstract reads as follows:

In times of (discussions about) globalisation, due attention must be given to the operation of rules of private international law. Examination of the ongoing developments in private international law itself and in private international law in its interaction with other disciplines from the perspective of “protection of weak parties” and “protection of planetary common goods” allows carrying out the analysis to which current developments invite.

Conflictoflaws.net is back!

We’re very sorry for our disappearance over the last week or so, and we’re grateful to those of you who alerted members of our team to the problems in accessing the site. As it transpired, the problem was quite a serious one, and it has involved a great deal of fuss and bother to resolve it. But we are now back, and we’re back for good.

Those technical problems, however, have also highlighted the need for conflictoflaws.net to be cared for properly, which I no longer have the time to do. I created this website back in April 2006, with the simple aim of keeping up-to-date on a large and complex subject that I was researching as a postgrad. Since then, the site has grown beyond all measure, and that really is down to the core of

committed scholars who keep the content interesting and useful for us all. It is time that we allowed other colleagues to steer the future of this website, and take it forward into the next decade. I'm very pleased to say that Giesela Rühl and Matthias Weller have offered to take on that responsibility, and I wish them every success. I shall be cheering them on from the sidelines as, like all of you, I will remain an avid reader of conflictoflaws.net.

All the best, Martin George

Coming soon: "Conflict of Laws – A Comparative Approach" by Gilles Cuniberti

Professor *Gilles Cuniberti* (University of Luxembourg) has authored a casebook entitled "Conflict of Laws – A Comparative Approach" which will be released this month by Edward Elgar Publishing.

The official abstract kindly provided by the publisher reads as follows:

> "The Conflict of Laws, also known as private international law, is a field of the greatest importance in an increasingly globalized world. The analysis of any legal issue, in a case involving more than one country, must start with an assessment of which court could potentially hear the case and which law it would apply.
>
> Contrary to other manuals or casebooks, which focus on the law of one jurisdiction, this innovative casebook offers a comparative treatment of the field. On each issue, materials from several jurisdictions are discussed and compared. The approach centers on comprehending the common principles of the field, but also highlights the fundamental differences. The goal is to train lawyers who not only will know the law of their own jurisdiction, but also will

have an understanding of the key differences existing between the main models, and will thus be able to interact usefully with clients from other jurisdictions.

This casebook systematically presents and compares the laws of four jurisdictions: the United States, the European Union, France and England (where left untouched by EU harmonization). It offers additional insight into rules applicable in China and Japan and also discusses remarkable solutions adopted in a wide range of jurisdictions such as Italy, Germany, the Netherlands, Canada and Tunisia. All materials from non-English speaking jurisdictions have been translated into English.

Key features of the casebook:
• written by a leading authority in the field
• carefully selected extracts from primary and secondary sources build a clear picture of the field
• expert analytical commentary and questions set the extracts in context
• US, EU, French and English perspectives integrated throughout the text to ensure maximum relevance and encourage students to make comparative assessments
• numerous references to Chinese and Japanese solutions
• leads students through the field from beginning to end
• perfectly pitched for international students and courses with a global outlook."

Further information, including a table of contents, is available on the publisher's website.

FOREIGN DIRECT INVESTMENT & THE RULE OF LAW: Call for

proposals

CALL FOR PROPOSALS FOR A SPECIAL ISSUE OF *ACTA JURIDICA*

The *Acta Juridica* invites proposals for its special issue: Foreign Direct Investment (FDI) & The Rule of Law. Contributors will be invited to attend a Colloquium to be held in **Cape Town** on **27 & 28 July 2017** where the research and findings will be presented with the objectives of determining the common and overlapping themes in linking FDI and the Rule of Law in specific areas of law. It is proposed that the outcomes of the colloquium be published in the 2018 Acta Juridica, to be edited by Debbie Collier, Tracy Gutuza and Silindile Buthelezi of the University of Cape Town.

Following the colloquium the contributors will submit the final papers (maximum of 5000 words) to the editors by **02 October 2017**. We are accepting **proposals in the form of 500-750 word abstracts**. The editors will prepare an introductory chapter and if necessary, commission articles to address specific issues. All the papers will be subjected to a double blind peer review process, overseen by the editors. It is expected that the finalised text would be submitted by **November 2017**.

Submission and Review Timeline

- Proposals including tentative contributor list due **03 March 2017**.
- Contributors will be contacted with final determination about submissions by **03 April 2017**.
- First draft manuscripts submissions are due **30 June 2017**.
- Colloquium to be held **27 & 28 July 2017** at the University of Cape Town, South Africa.
- Final draft manuscript submissions are due **02 October 2017**.

The *Acta Juridica* is an annual thematic journal published by Juta Law in conjunction with the Faculty of Law of the University of Cape Town. It is a peer reviewed and edited journal.

In the context of the need to grow the South African economy, the role of, and the need for, FDI as a source of capital and a contributor to economic growth is both acknowledged and contested. A recent collaborative study on the link between

FDI and the Rule of Law by, among others, the Bingham Centre for the Rule of Law and the British Institute of International and Comparative Law indicated that the Rule of Law is an important factor in the decision by corporate investors to undertake investment in a foreign jurisdiction. While the above study considered the role of the Rule of Law across a number of jurisdictions, we propose a consideration in the context of FDI in Africa, with a particular emphasis on South Africa and South African Law, in particular the impact of the Constitution, the legal framework for FDI, and related areas of law including, but not limited to, labour law, tax law, intellectual property law, technology law, international trade law, company law/corporate governance, and competition law. These themes will include the strategic and policy considerations of the particular areas in relation to FDI, the impact of the chosen policy and legislative framework on FDI, the administrative aspects (procedure) of implementing the policy and legislative framework and the impact of FDI.

It is envisaged that the colloquium will consist of three themes: **1. FDI & Economic Growth: Theoretical Perspectives; 2. FDI: International law & Investment Treaties; 3. FDI and the Regulatory Framework in South Africa.** Within these themes, we envisage the following topics (but other proposals are also welcome):

1.What is FDI and when is it desirable?

2.FDI in Africa

3.The link between FDI, the Rule of Law and Economic Development in Economic Theory

4.Bilateral Investment Treaties and FDI relationship through econometric studies: why doinvestors decide to invest

5.International Law protection of foreign investments

6.FDI and Tax Law

7.FDI and Employment Law/Labour standards

8.FDI and Intellectual Property

9.FDI and the Transfer of Technology

10.FDI and Corporate Governance

11.FDI and Regional Development

12.FDI and Transfer Pricing

13.FDI and Competition Law

14.The link between FDI, the Bilateral Investment Treaties and the financial services industry

Proposals should be submitted to the special issue editors: Debbie Collier (debbie.collier@uct.ac.za), Tracy Gutuza (tracy.gutuza@uct.ac.za) or Silindile Buthelezi (silindile.buthelezi@uct.ac.za).

Eleventh José María Cervelló Business Law Prize – Essays on Brexit

The José María Cervelló Chair of IE Law School and the ONTIER law firm announce the "Eleventh José María Cervelló Busines Law Prize".
The main purpose of the Prize is to promote legal study and research, and to facilitate access to the LLM courses of IE Law School for people who do not have the necessary financial resources.

The prize consists of the award of € 30,000 as follows:
€ 10,000 will be given to the author of the winning essay.
€ 20,000 will be assigned to the José María Cervelló Chair to be applied to its scholarship programme for the study of legal or tax courses at IE Law School.
Up to a maximum of two runner-up awards may be given to essays of sufficient quality to merit that distinction.

The subject of the essays opting for the "Eleventh José María Cervelló Business

Law Prize" is: "Brexit: Legal consequences of the departure of the United Kingdom from the EU for businesses. Legal framework of the withdrawal and new Legal Framework, special reference to the problems of transitory law in respect of contracts, corporate operations and litigation"

All essays must be original, unpublished works written in Spanish or English. The length is a minimum of 25 and a maximum of 35 pages. The closing date for entries is **Monday 8th May 2017 at 23:59 p.m. (Madrid, Spain time)**. The award ceremony will take place in June or July 2017, at IE Law School. All participants will be notified in due course.

All persons or Spanish or foreign nationality who are graduates in Law, holding either a pre-Bologna "licenciatura" qualification or a degree (grado) may take part.

For further details (members of the jury; essay format; presentation) click here: Cervello Prize on Brexit

---

BILETA 2017 Call for Papers

Dr. Anabela Susana de Sousa Gonçalves, Assistant Professor at the University of Minho, has provided this piece of information to be shared with CoL readers. BILETA stands for British and Irish Law Education and Technology Association.

The Law School of the University of Minho (Braga, Portugal) will be hosting the BILETA Annual Conference, held from Thursday 20th to Friday 21st of April 2017.

The theme of the conference is: International perspectives on emerging challenges in Law, Technology and Education.

Keynote speakers will be:

- Professor Joe Cannataci: UN Special Rapporteur on the right to privacy
- Professor Jose-Luis Pinar: Professor of Administrative Law, CEU

University of Madrid. Former Director of the Spanish Data Protection Agency (2002-2007). Former Vice-Chairman of the European Group of Data Protection Commissioners (Art. 29 Working Party Data Protection) (2003-2007)

- Professor Burkhard Schafer: Professor of Computational Legal Theory, The University of Edinburgh

In relation to this conference postgraduate students have the opportunity to enter two postgrad competitions. To do so they need to submit a *full paper* (6-10,000 words) by the deadline of the 31st of March. Three papers will be chosen to compete for the Google award, which will involve defending the work in a session at the conference and a public vote. The remaining papers will go forward for the BILETA award, to be selected by the BILETA Exec. Please indicate on submission of the abstract whether you aim to enter the competitions.

Abstracts of around 400-500 words are welcome on any area relating to the conference theme, with key areas including:

- Society, Business and Data Protection
- Intellectual Property Rights in the Information Society
- International challenges in IT regulation
- Private International Law solutions for the emerging challenges in Law and Technology
- E-commerce
- Public policies and governance in ICT Law
- Dispute resolution and management in virtual environments
- Technology and criminal investigation
- New technological platforms and education in law
- Smart environments in educational contexts
- Smart cities: ethical and legal challenges
- Multicultural Societies, Integration and ICT Law

The deadline for submission of abstracts has been extended to Friday **the 17th of February 2017. Abstracts should be emailed to: bileta2017@gmail.com**

Please contact Catherine Easton c.easton@lancaster.ac.uk if you have any general queries about the conference.

In addition, BILETA 2017 will feature special panels such as a discussion on the impact of Brexit on the development of UK and EU Information Technology Law

For travelling, accommodation and further relevant details please click here.

---

24 February: Unalex conference on Open Issues in EU Private International Law

On Friday, 24 February 2017, the research project "unalex – multilingual information for the uniform interpretation of the instruments of judicial cooperation in civil matters" is organizing a workshop on European International Family Law under the title

"European Open Issues in Private International Law:

Matrimonial and Maintenance Law"

at the University of Genoa.

The unalex project is aimed at the expansion of a multilingual international source of literature on legal instruments of EU law and of international uniform law. It is based on the already existing unalex portal (http://www.unalex.eu/), a legal information system on European and international uniform law, containing a well equipped collection of international case law, structured *Compendia* and a large number of additional materials.

During the workshop *„unalex open issues"* shall be discussed as a new instrument, stimulating a scientific debate on controversial opinions from different legal systems. In addition the concept of an *Encyclopedia of European family law* will be presented, serving to document relevant legal texts of different

Member States.

A primary goal of the unalex project is to interest and to win authors from different European legal systems to create *Compendia* and commentaries and to form a network of authors.

Registration for the conference is possible by sending an e-mail to francesca.maoli@edu.unige.it.

Praxis des Internationalen Privat- und Verfahrensrechts (IPRax) 1/2017: Abstracts

The latest issue of the "Praxis des Internationalen Privat- und Verfahrensrechts (IPRax)" features the following articles:

H.-P. Mansel/K. Thorn/R. Wagner: **European conflict of laws 2016: Brexit ante portas!**
The article provides an overview of developments in Brussels in the field of judicial cooperation in civil and commercial matters from December 2015 until November 2016. It summarizes current projects and new instruments that are presently making their way through the EU legislative process. It also refers to the laws enacted at the national level in Germany as a result of new European instruments. Furthermore, the authors look at areas of law where the EU has made use of its external competence. They discuss both important decisions and pending cases before the ECJ as well as important decisions from German courts pertaining to the subject matter of the article. In addition, the article also looks at current projects and the latest developments at the Hague Conference of Private International Law.

P. Mankowski: **Modern Types of Migration in Private International Law**
Migration has become a ubiquitous phenomenon in modern times. Modern

immigration law has developed a plethora of possible reactions and has established many different types of migrants. Private international law has to respond to these developments. The decisive watershed is as to whether a migrant has acquired refugee status under the Geneva Refugees Conventions. If so, domicile substitutes for nationality. A mere petition for asylum does not trigger this. But subsidiary protection as an equivalent status introduced by EU asylum law must be placed on equal footing. Where habitual residence is at stake, it does matter whether a residence has been acquired legally or illegally under the auspices of immigration law. Yet for judging whether a habitual residence exists, the extension of permits might be a factor.

C. Mäsch/B. Gausing/M. Peters: **Pseudo-foreign Ltd., PLC and LLP: Limited in liability or rather in longevity? – The Brexit's impact on English corporations having their central administration in Germany**
On 23rd of June 2016, the people of the United Kingdom voted in a referendum against the UK staying in the European Union. If, as can be expected, the withdrawal negotiations under Art. 50 of the EU Treaty will not address the issue of pseudo-English corporations operating in the remaining Member States of the EU, the Brexit will have severe consequences for companies incorporated under English law (e.g. a Ltd., PLC or LLP) having their central administrative seat in Germany. No longer protected by the freedom of establishment within the EU (Art. 49, 54 TFEU) these legal entities will be under German PIL and the so-called Sitztheorie subjected to domestic German company law. They will thus be considered simple partnership companies (German GbR or OHG), losing from one day to the next i.a. their limited liability status – an unexpected and unjustified windfall profit for creditors, a severe blow for the company shareholders. In this paper it will be argued that the outcome can and indeed should be rectified by resorting to the legal rationale of Art. 7 para 2 EGBGB (Introductory Act to the German Civil Code). This provision preserves the legal capacity of a natural person irrespectively of whether a change in the applicable law stipulates otherwise. Extending that concept to legal entities will create a "grace period" with a fixed duration of three years during which the English law continues to apply to a "German" Ltd., PLC or LLP, giving the shareholders time to decide whether to transform or re-establish their company.

L. Rademacher: **Codification of the Private International Law of Agency – On the Draft Bill Submitted by the Federal Ministry of Justice**

Based on a resolution adopted by the German Council for Private International Law, the German Federal Ministry of Justice and Consumer Protection has submitted a bill to amend the Introductory Act to the German Civil Code (EGBGB) in the to date uncodified area of agency in private international law. This paper provides an overview of the proposed Art. 8 EGBGB and identifies questions of interpretation as well as remaining gaps. The draft provision applies to agents who were authorized by the principal, i.e. neither to statutory agents nor to representatives under company law. The proposal strengthens party autonomy by allowing a choice of law. Absent a choice of law, the applicable law is determined by objective criteria depending on the type of agent. The respective connecting factors, such as the agent's or principal's habitual residence, require perceptibility for the third party. If these requirements are not met, the applicable law residually is determined by the identifiable place of the agent's acts or by the principal's habitual residence. For the most part, the proposal can be characterized as a restatement of previous case law and academic writing.

H. Roth: **Rule and exceptions regarding the review of the European Order of Payment in exceptional cases according to art.20 par. 2 of Reg. (EC) 1896/2006**

According to Art. 20 para. 2 of Reg. (EC) 1896/2006, the European Order of Payment can be reviewed in exceptional cases. This additional legal remedy is only applicable in exceptional cases such as collusion or other malicious use of process. It is not sufficient that the defendant would have been able to detect misrepresentations by the claimant.

M. Pika/M.-P. Weller: **Private Divorces and European Private International Law**

Whilst substantive German family law requires a divorce to be declared in court, the instant case addresses the effect of a private divorce previously undertaken in Latakia (Arabic Republic of Syria) under Syrian law. Although, from a German perspective, the Syrian Sharia Court's holding has been merely declaratory, the European Court of Justice considered its effect before German courts to be a matter of recognition. Accordingly, it rejected the admissibility of the questions referred to the Court concerning the Rome III Regulation. This ruling indicates the unexpected albeit preferable *obiter dictum* that the Brussels II bis Regulation applies on declaratory decisions concerning private divorces issued by Member States' authorities. Subsequently, the Higher Regional Court Munich initiated a

further, almost identical preliminary ruling concerning the Rome III Regulation. However, the key difference is that it now considered the Regulation to be adopted into national law.

A. Spickhoff: **Fraudulent Inducements to Contract in the System of Jurisdiction – Classification of (contractual or legal) basis of claims and accessory jurisdiction**

Manipulation of mileage and concealment of accidental damage belong to the classics of car law and indicate a fraud. But is it possible to qualify a fraudulent misrepresentation in this context as a question of tort with the meaning of art. 7 no. 2 Brussels I Regulation (recast)? German courts deny that with respect to decisions of the European Court of Justice. The author criticizes this rejection.

K. Siehr: **In the Labyrinth of European Private International Law. Recognition and Enforcement of a Foreign Decision on Parental Responsibility without Appointment of a Guardian of the Child Abroad**

A Hungarian woman and a German man got married. In 2010 a child was born. Two years later the marriage broke down and divorce proceedings were instituted by the wife in Hungary. The couple signed an agreement according to which the child should live with the mother and the father had visitation rights until the final divorce decree had been handed down and the right of custody had to be determined by the court. The father wrongfully retained the child in Germany after having exercised his visitation rights. The mother turned to a court in Hungary which, by provisional measures, decided that rights of custody should be exclusively exercised by the mother and the father had to return the child to Hungary. German courts of three instances recognized and enforced the Hungarian decree to return the child according to Art. 23 and 31 (2) Brussels IIbis-Regulation. The *Bundesgerichtshof* (BGH) as the final instance decided that the Hungarian court had jurisdiction under Art. 8–14 Brussels IIbis-Regulation and did not apply national remedies under Art. 20 Brussels IIbis-Regulation. In German law, the hearing of the child was neither necessary nor possible and therefore the Hungarian return order did not violate German public policy under Art. 23 (a) or (b) Brussels IIbis-Regulation.

H. Dörner: **Better too late than never – The classification of § 1371 Sect. 1 German Civil Code as relating to matrimonial property in German and European Private International Law**

After more than 40 years of discussion the German Federal Supreme Court finally (and rightly so) has classified § 1371 Sect. 1 of the German Civil Code as relating to matrimonial property. However, the judgment came too late as the European Succession Regulation No 650/2012 OJ 2012 L 201/07 started to apply on 17 August 2015 thus reopening the question of classification in a new context. The author argues that a matrimonial property classification of § 1371 Sect. 1 German Civil Code under European rules is still appropriate. He discusses two problems of assimilation resulting from such a classification considering how the instrument of assimilation has to be handled after the regulation came into force. Furthermore, he points out that a matrimonial property classification creates a set of new problems which have to be solved in the near future (e.g. documentation of the surviving spouse's share in the European Certificate of Succession, application of different matrimonial property regimes depending of the Member state in question).

H. Buxbaum: **RICO's Extraterritorial Application: RJR Nabisco, Inc. v. European Community**

In 2000, the European Community filed a lawsuit against RJR Nabisco (RJR) in U.S. federal court, alleging violations of the Racketeer Influenced and Corrupt Organizations Act (RICO). After more than fifteen years and a number of intermediate judicial decisions, the litigation came to its likely close in 2016 with the U.S. Supreme Court's ruling in *RJR Nabisco, Inc.* v. *European Community*. The Court held that RICO's private cause of action does not extend to claims based on injuries suffered outside the United States, denying the European Community any recovery. The case was the third in recent years in which the Supreme Court applied the "presumption against extraterritoriality," a tool of statutory interpretation, to determine the geographic reach of a U.S. federal law. Together, these opinions have effected a shift in the Court's jurisprudence toward more expansive application of the presumption – a shift whose effect is to constrain quite significantly the application of U.S. regulatory law in cross-border cases. The Court's opinion in RJR proceeds in two parts. The first addresses the geographic scope of RICO's substantive provisions, analyzing whether the statute's prohibition of certain forms of conduct applies to acts occurring outside the United States. The second addresses the private cause of action created by the statute, asking whether it permits a plaintiff to recover compensation for injury suffered outside the United States. After beginning with a brief overview of the lawsuit, this essay discusses each of these parts in turn.

T. Lutzi: **Special Jurisdiction in Matters Relating to Individual Contracts of Employment and Tort for Cases of Unlawful Enticement of Customers**

A claim brought against two former employees, who had allegedly misappropriated customer data of the claimant, and against a competitor, who had allegedly used said data to entice some of the claimant's customers, provided the Austrian *Oberster Gerichtshof* with an opportunity to interpret the rules on special jurisdiction for matters relating to individual contracts of employment in Art. 18–21 of the Brussels I Regulation (Art. 20–23 of the recast) and for matters relating to tort in Art. 5 No. 3 of the Brussels I Regulation (Art. 7 (2) of the recast). Regarding the former, the court defined the scope of Art. 18–21 by applying the formula developed by the European Court of Justice in *Brogsitter* concerning the distinction between Art. 5 No. 1 and 3 (Art. 7 (1) and (2) of the recast); regarding the latter, the court allowed the claim to be brought at the claimant's seat as this was the place where their capacity to do business was impaired. Both decisions should be welcomed.