Out now: Volume on Cross-border Litigation in Europe

In November 2014 scholars from all over Europe met at the University Verona to discuss the impact of the Brussels I Recast on cross-border litigation in Europe (see our previous post). The conference volume, edited by Franco Ferrari (NYU Law School/University of Verona) and Francesca Ragno (University of Verona), has now been published by Wolters Kluwer Italy (Cross-border Litigation in Europe: the Brussels I Recast Regulation as a panacea?).

The table of contents reads as follows:

Luigi FUMAGALLI, Refusal of Recognition and Enforcement of Decisions under the Brussels I Recast Regulation: where the Free Circulation meets its Limits

Francesca RAGNO, The Brussels I Recast Regulation and the Hague Convention: Convergences and Divergences in relation to the Enforcement of Choice-of-Courts Agreements

Fabrizio MARONGIU BUONAIUTI, The Brussels I Recast Regulation and the Unified Patent Court Agreement: towards an Enhanced Patent Litigation System

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EUI releases Comparative Study on the Calculation of Interest on Antitrust Damages

The following announcement has been kindly provided by Vasil Savov, CDC, Brussels.

The European University Institute (EUI) Law Department in Florence, Italy, has just released a comparative study on the calculation of interest on damages resulting from antitrust infringements. It is highly topical, as the EU Member States are in the process of implementing Directive 2014/104/EU into their national laws. This "Damages Directive" seeks to facilitate private antitrust enforcement and, in particular, to ensure full compensation for victims. Due to the duration of antitrust infringements, the accrual of interest from the occurrence of the harm is essential to achieve full compensation. This study samples thirteen national laws and assesses how far they are consistent with the requirements to be found in EU law. It has been supported by Cartel Damage Claims (CDC) SCRL, Brussels.
The first part of the study elucidates the principles and requirements of EU Law relevant to interest calculation on damages caused by antitrust infringements. It further contains a high level assessment of the compliance of the surveyed Member States' legal regimes.

It is followed by 13 country reports, written by national experts, all answering standardised questions concerning the subject of the study. The questions cover a range of material and procedural law aspects and include calculations for a hypothetical case.
The present EUI study is an in-depth and comparative treatment of this technical, yet significant, aspect of antitrust damages claims. For claimants and practitioners, the study offers a systematic and practical account of interest rules in a number of jurisdictions, for judges and lawmakers, the study provides analysis and recommendations for the proper application of interest rules and advice on principles that should inform the implementation of the Damages Directive.
The full text of the study is available here.

Security rights and the European Insolvency Regulation – A conference in Santiago de Compostela

On 15 April 2016, the Faculty of Law of the University of Santiago de Compostela will host a conference on *Security rights and the European Insolvency Regulation: From Conflicts of Laws towards Harmonization*.

Speakers include Paul Beaumont (Univ. of Aberdeen), Francisco Garcimartín Alferez (Autonomous Univ. of Madrid), Anna Gardella (European Banking Authority), Wolf-Georg Ringe (Copenhagen Business School), Françoise Pérochon (Univ. of Montpellier) and Paul Omar (Nottingham Trent University).

The conference is part of the SREIR project, coordinated by Gerard McCormack, Reinhard Bork, Laura Carballo Piñeiro, Marta Carballo Fidalgo, Renato Mangano and Tibor Tajti.

The full programme is available here.

Attendance to the conference is free, but registration prior to 10th April is required. For this, an e-mail with name and ID card must be sent to *marta.carballo@usc.es* or *laura.carballo@usc.es*.

Impact of Brexit on English Choice of Law and Jurisdiction Clauses

Karen Birch and Sarah Garvey from Allen & Overy have published two papers dealing with the likely/possible effects of the UK leaving the European Union on choice of law clauses in favor of English law and jurisdiction clauses in favor of English courts. The authors essentially argue that Brexit would not make a big difference and that commercial parties could (and should) continue to include English choice of law and jurisdiction clauses in their contracts: English courts (as well as other Member States' courts) would continue to recognize and enforce such clauses. And English judgments would continue to be enforced in EU Member States (even though the procedure might be more complex in some cases).

In essence, the authors thus argue that giving up the current unified European regime for choice of law, jurisdiction, recognition and enforcement of foreign judgments, service of process, taking of evidence would not matter too much for commercial parties. I am not convinced.

The papers are available here and here.

University of Missouri and Marquette University Student Writing Competition

The University of Missouri and Marquette University announce a student writing competition in associated with the University of Missouri's upcoming symposium "Moving Negotiation Theory from the Tower of Babel: Toward a World of Mutual Understanding." The competition offers a $500 first prize and $250 second prize.

Submissions must relate to one or more problems with negotiation theory, broadly defined, and should suggest a solution to the problem(s). Students are encouraged to consider sources in the symposium reading list, though they are not required to discuss or cite any of these sources.

The competition is open to all persons enrolled during calendar year 2016 in a program of higher education leading to any degree in law or a graduate degree (including but not limited to the J.D., LL.B., LL.M., S.J.D., M.A. or Ph.D.). Applicants may be of any nationality and may be affiliated with a degree-providing institutions located in any country.

Papers that have been published or accepted for publication are not eligible for the writing competition.

Submission Requirements

Submissions must be in English and between fifteen (15) and twenty-five (25) pages in length, including footnotes. The text of the paper must be typed and double spaced pages in 12 point Times New Roman font (or similarly readable typeface) with 1-inch margins on all sides. Footnotes should preferably appear in Bluebook form, although papers using other established systems of legal citation will be accepted.

The title of the paper must appear on every page of the submission. The author's name must not appear anywhere on the submission itself.

A separate document should be provided including (1) the author's full name, address, telephone number and email address; (2) the degree-granting institution

where the author is or was enrolled in 2016, as well as the degree sought and the (anticipated) year of graduation; (3) the title of the submission; and (4) the date of the submission.

Failure to adhere to these requirements may lead to disqualification of the submission.

Papers must be electronically submitted to: Laura Coleman, University of Missouri School of Law, colemanl@missouri.edu

Submissions must be received no later than 11:59 p.m., Central time, on Monday, October 17, 2016.

Criteria

Submissions will be judged based on the following factors:

· Quality, thoroughness, and persuasiveness of analysis

· Value to scholars, faculty, students, and/or practitioners

· Contribution to the scholarship in the field.

Submissions may be considered for publication in the Journal of Dispute Resolution. The sponsors reserve the right not to name a winner if a suitable submission is not entered into the competition.

Questions should be directed to Professor John Lande at landej@missouri.edu. More information is available here.

UNIDROIT celebrates the 90th anniversary of its foundation

The International Institute for the Unification of Private Law (UNIDROIT) has recently announced the celebration of the 90th anniversary of its foundation.

Established in 1926 as an auxiliary organ of the League of Nations, and re-established in 1940 on the basis of a multilateral agreement, UNIDROIT has made significant contributions to the modernisation and harmonisation of substantive private, notably commercial, law, but also to the conflict of laws and international civil procedure. In all these years, UNIDROIT has collaborated and maintained close ties of cooperation and friendship with numerous partner organisations and entities. To celebrate this momentous occasion, UNIDROIT will hold a series of celebratory events in Rome from 15 to 20 April 2016 which are devoted to the role and place of private law in supporting the implementation of the international community's broader cooperation and development objectives. *Please note that all events are accessible upon invitation only.* Further information is available here.

ICC and OAS Survey on Arbitration in the Americas

As you may (or may not) already know, a team of researchers recently concluded a study for the European Parliament on arbitration across the European Union and Switzerland. As part of this study the researchers undertook a large-scale survey of arbitration practitioners across Europe, including 871 respondents from every country in the European Union and Switzerland. The results of this survey have allowed the research team to produce far more information on the practice of arbitration in Europe than has previously been available. (see, e.g. this discussion of arbitration in six southern European countries)

A new team of researchers (Tony Cole, Paolo Vargiu, Masood Ahmed at the University of Leicester; S.I. Strong at the University of Missouri, Manuel Gomez at Florida International University, Daniel Levy at Escola de Direito da Fundação Getúlio Vargas – São Paulo, and Pietro Ortolani at the Max Planck Institute Luxembourg) is now working in collaboration with the ICC International Court of Arbitration and the the Organisation of American States to deliver a survey that will generate similar information on the practice of arbitration in the Americas.

Letters of support have been received from both the ICC and the OAS. Results from the survey will be used to draft articles on arbitration in the Americas, written by the members of the research team.

The survey consists almost entirely of multiple-choice questions, and only takes approximately half an hour to complete. Moreover, it need not be completed in a single sitting, and if respondents return to the survey on the same computer and with the same browser, they can resume where they left off. The survey team will keep responses confidential and will not divulge any respondent's identity at any time without his or her explicit consent.

All response data from the survey will be stored securely under password on SurveyMonkey. All research records will be retained for a period of 7 years following the completion of the study. Responses by an individual can, however, be deleted at any time upon request of that individual. Responding to the survey will be taken as consenting to the use of the information provided, for the purposes of drafting the articles deriving from this project.

The survey will remain open until July 11, 2016. The survey is available here.

Junior fellowships (PhD) at Erasmus School of Law

The Erasmus Graduate School of Law (EGSL) of the Erasmus University Rotterdam has two junior fellowships available for PhD candidates from universities outside the Netherlands, including candidates working in the field of private international law and European/international civil procedure, to visit the Erasmus School of Law for a period of three months. During this stay, the Junior Fellows will be able to discuss their research with senior staff members and interact with other PhD candidates in the framework of EGSL activities. Information about the Junior Fellowship programme can be found on this webpage.

Erasmus School of Law is also currently recruiting PhD Candidates, and also welcomes high quality proposals in the area of private international law and European, international or comparative civil procedure, in particular those that would fit into the multidisciplinairy and empirical research program Behavioural Approaches to Contract and Tort.

Job Opening at the University of Halle-Wittenberg (Germany): Native English Speaker

The following announcement has been kindly provided by Professor Dr. Christoph Kumpan, University of Halle-Wittenberg:

Professor Dr. Christoph Kumpan, University of Halle-Wittenberg, is looking to hire a highly skilled and motivated individual to work as a part-time (50%) research assistant beginning June 2016 or sooner. Applications should be submitted no later than April 15, 2016.

The position will entail close collaboration on a number of new and ongoing projects, focusing primarily on research on financial regulation.
The duties include reviewing English articles, editing English texts and the support in research and teaching, as well as teaching your own classes in English (2 hours per week), preferably in the areas of private law business/financial law.

This position is expected to last two years. The work location is Halle, Germany, a city close to Berlin, Germany.

Education:

- a university degree, preferably in law (JD)
- preferably, knowledge of financial law / securities regulation

Competencies:

knowledge of English (native speaker or equivalent language skills)
experience with reviewing and editing legal texts
interest in business law
ability to work in a team as well as independently

Hours/week: 20
Pay Frequency: Monthly
Payment: around 1.700 Euro (approx. 1.200 Euro net) per month
Possibility to obtain a doctoral degree (if faculty's requirements are met)

Required Job Seeker Documents: Resume, Cover Letter, complete transcripts.
The cover letter should include: A brief description of your career/study goals. A description of your experience with reviewing/editing legal texts. A brief description of any prior research assistance experience, or any other experience with legal research (e.g., thesis).

The University is committed to a policy of equal opportunity. Candidates with disabilities will be preferred in cases where they have the same qualifications as others.

If you are interested in this position, please send your application with the reference no. "Reg.-Nr. 3-1109/16-H" by April 15, 2016, preferably, via email to sekretariat.kumpan@jura.uni-halle.de

or to:
Martin-Luther-Universität Halle-Wittenberg, Juristische und Wirtschaftswissenschaftliche Fakultät, Juristischer Bereich, Lehrstuhl für Bürgerliches Recht, Wirtschaftsrecht, Internationales Privatrecht und Rechtsvergleichung, Universitätsplatz 3-5, 06099 Halle (Saale).

For more information (in German) see http://www.verwaltung.uni-halle.de/dezern3/Ausschr/16_308.pdf.
For further enquiries, please contact Professor Dr. Kumpan: sekretariat.kumpan@jura.uni-halle.de

New Cases at the U.S. Supreme Court: CVSG Orders Concerning Private International Law, Sovereign Immunity and International Arbitration

As explained in a previous post from a few years back, if the Justices of the United States Supreme Court are considering whether to grant a petition for certiorari and review a decision from the Courts of Appeals, and they think the case raises issues on which the views of the federal government might be relevant—but the government is not a party—they will order a CVSG brief. "CVSG" means "Call for the Views of the Solicitor General." In the past two months, the Court ordered CVSG briefs in two new cases concerning matters of private international law, sovereign immunity and international arbitration.

If the issues are interesting to the Justices of the Supreme Court, and are about to be addressed by the U.S. Executive branch, then they should, *ipso facto*, be interesting to the practicing bar as well. The fact that each of these cases involve claims being made against foreign sovereigns makes them even more interesting for international dispute resolution lawyers steeped in the crossroads of litigation, commercial and investment arbitration. Below is a brief review of these two cases and the interesting issues being raised.

The first case is *Belize Social Development Ltd. v. Government of Belize*. It involves the relatively uncommon juxtaposition of arbitration award enforcement and the doctrine of *forum non conveniens*. In that case, a private company had a contractual dispute with the government of Belize, and obtained an arbitration award of $38 million. It then sought to confirm the award in the United States. Belize defended on numerous grounds, including by arguing that the arbitration exception to the Foreign Sovereign Immunities Act did not apply because the contract was entered without proper legal authority in Belize, and by asserting that the New York Convention does not mandate recognition and enforcement where, as here, the dispute was not purely a "commercial" one, but rather

promised favorable tax treatments. These defenses were dismissed by the D.C. Circuit; Ted Folkman has discussed that decision on Letters Blogatory.

The other unsuccessful defense raised by the debtor is now the subject of a petition for certiorari before the Supreme Court. The basic question is whether a party may dismiss a petition to recognize and enforce an arbitration award under the doctrine of *forum non conveniens*. The District Circuit held that a foreign forum is *per se* inadequate—and thus ineligible as a *forum conveniens*—because the focus of a recognition and enforcement action (*viz*. U.S.-based assets) cannot be reached by a foreign court. The D.C. Circuit affirmed this holding without any explication. This holding plainly splits from the Second Circuit, which has affirmed the *forum non conveniens* dismissal of recognition and enforcement actions when the alternative forum has some assets of the debtor, and thus offers the possibility of a remedy. This case is complicated by the fact that the Belize Supreme Court has issued an injunction against enforcement proceedings, and the Caribbean Court of Justice has held that the Award convenes public policy.

The decision below and the parties' briefs before the Court can be found here.

The second case is *Helmerich & Payne Int'l Drilling Co. et al v. Bolivarian Republic of Venezuela*. This case concerns the a lawsuit by a U.S. company regarding breaches of contract by PdVSA and the expropriation of its assets in Venezuela. The claims were brought under both the expropriation and commercial activity exceptions to the FSIA; the District Court permitted the claims to proceed under the latter but not the former. The D.C. Circuit flipped those conclusions, allowing the expropriation but not the contract claims to proceed, and remanded the case. Both sides have filed crossing petitions for a writ of certiorari, presenting the following questions.

> *(1) Whether, under the third clause of the Foreign Sovereign Immunities Act of 1976, a breach-of-contract action is "based … upon" any act necessary to establish an element of the claim, including acts of contract formation or performance, or solely those acts that breached the contract;*
>
> *(2) whether, under Republic of Argentina v. Weltover, a breaching party's failure to make contractually required payments in the United States causes a "direct effect" in the United States triggering the commercial activity exception where the parties' expectations and course of dealing have established the*

United States as the place of payment, or only where payment in the United States is unconditionally required by contract.

(3) Whether, for purposes of determining if a plaintiff has pleaded that a foreign state has taken property "in violation of international law," the Foreign Sovereign Immunities Act recognizes a discrimination exception to the domestic-takings rule, which holds that a foreign sovereign's taking of the property of its own national is not a violation of international law;

(4) whether, for purposes of determining if a plaintiff has pleaded that "rights in property taken in violation of international law are in issue," the FSIA allows a shareholder to claim property rights in the assets of a still-existing corporation; and

(5) whether the pleading standard for alleging that a case falls within the FSIA's expropriation exception is more demanding than the standard for pleading jurisdiction under the federal-question statute, which allows a jurisdictional dismissal only if the federal claim is wholly insubstantial and frivolous.

The decision below and the parties briefs before the Court can be found here and here.

What the Solicitor General says about these issues and whether the Court takes the cases will not be known until the next Term, which begins in October.