International Property Law and European Legal Integration

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Broader Processes of Convergence

• Accelerating processes of internationalisation or globalisation following from –
  – rapid innovation in digital communication and computing technologies
  – expansion of international trade
• Convergence of European civil or private law systems is an example of the internationalisation of law
• Influence of European law – the world’s legal families
• When successful, harmonisation of the European civil law will in turn contribute to acceleration of these processes internationally
Broader Processes of Convergence

From harmonisation of contract law follows movable property, and securities over movables –

- International Sale of Goods (1964)
- Recognition of Trusts (1985)
- International Financial Leasing (1988)
- Illegally Exported Cultural Objects (1995)
- International Interests in Mobile Equipment (2001)
- Protocol on Aircraft Equipment (Cape Town, 2001)
- Protocol on Railway Rolling Stock (2007)
- UNIDROIT Model Law on Leasing (2008)
European Civil Law

• Historically, European systems have much more in common than separating them.

• The *ius commune* or common law of Europe, developed from rediscovery of Justinian’s works in 11th century Italy until legal nationalism of the 19th century.

• The Common Law connected at formative stages—
  - Bracton and the 13th century
  - 17th century contact with Roman-Dutch law in the United Dutch Provinces
European Civil Law

• A new *ius commune* through soft law harmonisation of European civil law?

• *Principles of European Contract Law* [PECL] (2003) developed by the Commission on European Contract Law (Lando)
  – harmonised principles for cross-border contracts within Europe; like US Restatement on Contract Law
  – preparatory for a European Code
  – stripping away differences in language, terminology and concepts to arrive at a “common core” of shared principles
European Civil Law

• Professor Gandolfi of Pavia published a Preliminary Draft of a *European Contract Code* in 2007

• *Ius Commune* casebook series –
  – *Property law* (2012)
EU Civil Law

• What can we expect of the EU in the harmonisation of European civil law?
  – EU powers limited to those specifically conferred on it
  – no relevant direct power over civil law
  – no general power to regulate the European internal market

• EU influence on civil law through exercise of other EU powers –
  – consumer and competition law: art 4 TFEU
  – judicial matters and conflict of laws: art 81 TFEU
EU Civil Law

• Power in Art 114 TFEU (Lisbon, 2007) to undertake “approximation” of the laws of member states

• Art 114 TFEU has limitations –
  – establish or maintain European internal market
  – a rigorous test, not a token: ECJ
  – subsidiarity and proportionality principles

• Effects of unharmonised law on business/the market –
  – obstacle to developing a unified trading strategy for the EU
  – adapting to 27 civil law systems is a non-tariff barrier
  – legal costs fall more heavily on consumers and SMEs
EU Civil Law

- Effects of unharmonised law on business/the market –
  - legal costs fall more heavily on consumers and SMEs
  - business expects Union involvement in contract law
  - principles of EU law be applied differently in 27 legal environments

- Existing EU property law regimes –
  - cultural objects
  - retention of title clauses – late payments
  - insolvency proceedings
  - collateral between financial institutions
  - greenhouse gas emission rights
EU Civil Law – a Civil Code?

- 1989: First call of European Parl. for work to commence on a European Civil Code – initial Commission support
- Study Group on European Civil Code (von Bar) –
  - DCFR
  - specific contracts – eg sales, agency
  - personal securities
  - tort
  - unjustified enrichment
- In Property Law, Principles of European Law –
  - lease of goods
  - transfer of title to goods
  - security over movable property (2012)
  - trusts (2012)
EU Civil Law

• More tangible future directions in EU property law (on the drawing board) –
  – succession and wills
  – matrimonial property law
Convergence in Other Areas of Property Law

- States in Transition
  - energy to produce national codes
- EuroHypothec - EuroMortgage
  - advocacy for a harmonised form of European security over land
- Trusts
  - France and Luxembourg – Hague Convention
- Land Title Systems
  - international model of the real folio land title registration system is the globalising influence
  - But, will Germany give up the Abstraction Principle?
Impact of European Legal Integration

• Influence on the world’s legal families?
  – South America – Spain and Portugal?
  – Australia and NZ – the UK?
  – welcome opportunities for reform!?

• When successful, harmonisation of the European private law will in turn contribute to acceleration of convergence processes internationally

• An exciting space to watch!