
# "Lost in Translation": Tidbits of Comparative Law



CGC

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# Why should I care about comparison?



## *First reason*

- Globalization exerts pressure towards convergence of the legal systems … but LESS than in other sectors.

Why less? Probably law, more than other sectors, reflects, on one side, the core of the values of a society, on the other side, the countries' attention of their sovereignty. In complex, law is pretty local.

## Differences between Civil Law & Common Law – reality or myths?

(1) First difference: Civil Law countries have a code while Common law countries have a common law formed by the case law.

(2) Civil law judges do not create law, they apply rules while Common law judges create laws (case law).

(3) Common Law countries have a system of binding precedent while civil law countries do not have it.



## Answers

Number 1…

Partially a myth!

(a) Civil law countries used to have a "common law", called "*ius commune*" in the Middle Ages and after. Then there was a fracture: the enactment of the code. The English common law did not know such a fracture. It is a continuum from the past.

(b) Common law countries have statutes. When statutes are enacted, they either supplement or replace the common.

# Answers

Number 2…

Partially a myth!

- (a) Interpretation is creation. As every Civil lawyer knows, decisions of judges "substantially" create the applicable law.
- (b) Common Law is a mature system and judges are conservative people. They always link their decisions to the existing law.



# Answers

Number 3…

Partially a myth!

(a) A Common law judge can distinguish a precedent based on relevant facts

(b) A Civil law judge generally follows the interpretation given by his supreme court. Why? Because no judge likes to be overruled.

## So, are Civil Law and the Common Law the same?

- The systems are not so far apart as they used to be.
- Many solutions are similar.
- Still, there are differences and can be traps for the unwary.



## Ok, they are different and the differences can be slippery but …

- Can I rely on local counsel, can I?
- Yes, but not completely!
- WHY?

## Here comes the reasons number two to the question "why should I care"

- Duty of competence
- ABA Model Rule 1.1.
- SC Rule of Professional Conduct 1.1.
  - A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.



## Duty of competence

- "When counsel who are admitted to the Bar of this State are retained in a matter involving foreign law, they are responsible to the client for the proper conduct of the matter, and may not claim that they are not required to know the law of the foreign State." *In re Roel*, 144 N.E.2d 24, 37 (N.Y. 1957).

## Duty of competence

A lawyer might not comply with his duty of competence by simply hiring and relying upon foreign counsel ("indirect knowledge")

- Why?

There are too many hidden cultural, linguistic, legal differences, and false similarities to justify a lawyer in relying exclusively on indirect knowledge.



## Duty of competence

- DIRECT KNOWLEDGE
  - You must be *personally* aware of local issues:

**to overcome the "lost in translation" issues.**

## Lost in translation

The funny side:

http://www.youtube.com/watch?v=FiQnH450hPM&list=PLA25B4E7E39AF7F1E&index=1&feature=plpp_video

Not so funny when it happens to a lawyer!



## Duty of competence

On "lost in translation"

See, e.g., report of the lecture given on Aug. 5, 2011, by Olga M. Pina at the ABA Annual Meeting 2011 held in Toronto (available at http://www.abanow.org/2011/08/cross-cultural-legal-transactions-can-easily-get-lost-in-translation/

## Lost in translation

INDEX OF MY "LOST IN TRANSLATION" ISSUES:

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- ❑The four corners of a contract (slide 59 on)
- ❑Unenforceability of a contract (slide 67 on)
- ❑Attorney-client privilege (slide 74 on)



## First "lost in translation issue": the Code

- Word come from Latin "**codex"** "Literally, a volume or roll.
- Is a civil code the same as the US code? No!

## First "lost in translation issue": the Code

A civil law code aims at being complete, i.e. there is no common law to fill in the gaps left by the statutes.

- If there is no direct rule on a point, the judge must: (i) apply a structural approach (each rule must be read in the light of the others) (ii) use analogy "legis" and "iuris", i.e. to apply the rule provided for a similar situation or to apply a general principle.



## First "lost in translation issue": the Code

MOST FAMOUS

- French Civil Code ("Code Civil" or "Code Napoleon"). 1804.
- Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch –ABGB). 1811
- Codigo Civil (Spain) – originally approved with R.D. July 24 1889, last modified 2005.
- German Civil Code (Bürgerlichen Gesetzbuches - BGB). 1900
- Italian Civil Code (Codice Civile). 1942.
- Swiss Civil Code (*Zivilgesetzbuch – ZGB*). 1907/1912

## So, is it enough once I have read the code of the relevant country?

- Not really.
- You should consider:
- International treaties
- lex specialis
- Administrative regulations
- Courts' interpretation
  - **Some international treaties to which civil law countries and USA are bound …**



## International treaties: CISG

- United Nations Convention On Contracts For The International Sale Of Goods (1980)
  - Developed by UNCITRAL (United Nations Commission on international Trade Law and signed in Vienna in 1980 (aka Vienna Convention).
  - Text at http://www.unilex.info
    List of States http://www.cisg.law.pace.edu/cisg/countries/cntries.html

## International treaties: Hague Service of Process

- Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters
  - Text at http://www.hcch.net/index_en.php?act=conventions.text&cid=17



## International treaties: Hague Evidence Convention

- 1970 Le Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters
  - Based on this Convention, evidence *would* be discoverable. However,
  - (i) Reservation under Article 23 to limit the scope of the reserving State's duties under the Convention to avoid responding to certain requests from abroad (see pretrial discovery)

## International treaties: Hague Evidence Convention

- (ii)) Blocking statutes enacted in many civil law countries forbid discovery requests made on their citizens or residents (e.g., France, Germany, Italy, the Netherlands, Norway, Sweden, and UK);
- (iii) Privacy laws (see e.g., Directive 95/46/EC) criminalize the unauthorized transfer of third party personal data.



## Second "lost in translation" issue: Forum selection clause

- FSC = Contractual provision by which the parties establish the place … for specified litigation between them. [Adapted from BLACK'S LAW DICTIONARY 681 (8th ed. 2004)]
- Theoretically same functions in both systems:
  - consent to the jurisdiction of the chosen forum
  - could bar litigation elsewhere ("exclusive" FSC)

• **BUT …**

## Second "lost in translation" issue: Forum selection clause

- ✧In the US, a FSC in a contract, which does not not specify that it is exclusive, does not bar litigation elsewhere ➔ PERMISSIVE FSC
- ✧In a civil law country, a FSC in a contract, which does not not specify that it is exclusive, generally bars elsewhere ➔ EXCLUSIVE FSC



## Second "lost in translation" issue: Forum selection clause

- In the US historically, exclusive FSC were unenforceable because they violated public policy, namely they "ousted" courts of jurisdiction to decide the dispute. See *Carbon Black Export, Inc. v. The Monrosa.* 359 U.S. 180 (1959). (dismissal of certiorari as improvidently granted).

## Second "lost in translation" issue: Forum selection clause

- *Bremen v. Zapata Off-Shore Company*, 407 U.S. 1 (1972).
  - In a freely negotiated agreement, FSC is "prima facie valid and should be enforced unless enforcement is shown by the resisting party to be 'unreasonable' under the circumstances."
- *Carnival Cruise Lines, Inc. v. Shute*, 499 U. S. 585 (1991).
  - FSC is allowed also in an adhesion contract but a fairness prong is added (whether the selected forum was chosen in bad faith to discourage plaintiffs from bringing legitimate claims.)



## Second "lost in translation" issue: Forum selection clause

- Today, American courts today generally enforce FSC but the vagueness of *Bremen* standards (and of Carnival Cruise, when applicable) leaves leeway for a party to resist enforcement.
- FSC is interpreted as **permissive**, unless clearly says otherwise.

## Second "lost in translation" issue: Forum selection clause

- In Civil law countries (and in international documents) – we see a much more liberal approach to FSC.
- International documents:
  - "Brussels Regime" – applies when a defendant is domiciled in one of the contracting parties
  - 2005 Hague Convention on Choice of Court Agreements.



## Second "lost in translation" issue: Forum selection clause

- "Brussels Regime" consists of:
  - Convention of September 27, 1968, on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters ("Brussels Convention").
  - Convention of September 16 1988, on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, as revised by the Convention signed on October 30, 2007 ("Lugano Convention")
  - EC/Council Regulation No. 44/2001 of December 22, 2000 on Jurisdiction and Recognition and Enforcement of Judgments in Civil and Commercial Matters ("Brussels I Regulation")

## Second "lost in translation" issue: Forum selection clause

- Broad recognition. Art. 23 Brussels I Regulation:
  - If the parties, one or more of whom is domiciled in a Member State, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction.
- Only requirement: FSC must be in writing.
- FSC are interpreted as "**exclusive**" :"Such jurisdiction shall be exclusive unless the parties have agreed otherwise" (Art. 23)



## Second "lost in translation" issue: Forum selection clause

- What when Brussels Regime not applicable?
- Generally very similar broad approach in civil law countries. Example Legge 31 maggio 1995, n. 218 (It.)

## Second "lost in translation" issue: Forum selection clause

- The interpretation of a FSC as permissible might change soon in the US.
- 2005 Hague Convention on Choice of Court Agreements -
  - Article 3(b) Exclusive choice of court agreements
    - [A] choice of court agreement which designates the courts of one Contracting State or one or more specific courts of one Contracting State **shall be deemed to be exclusive** unless the parties have expressly provided otherwise



## Second "lost in translation" issue: Forum selection clause

- **Hague Convention on Choice of Court Agreements -** June 30, 2005
  - Not in force as yet
  - September 26, 2007, Mexico accessed to the Convention
  - January 19, 2009, US signed the Convention
  - April 1, 2009, EU signed the Convention,
  - Effective once two countries consent (Article 31)
  - See the for the status table: http://www.hcch.net/index_en.php?act=conventions.status&cid=98#legend.

## Second "lost in translation" issue: Forum selection clause

- For more details, see:
- Nathan M. Crystal & Francesca Giannoni-Crystal, Enforceability of Forum Selection Clause: A "Gallant Knight" Still Seeking Eldorado, forthcoming in the South Carolina Journal of International Law and Business (Summer, 2012)



## Third lost in translation issue: formalities in contracts

- Rationales for formalities is the same (see Lon L. Fuller, Consideration and Form, 41 Colum. L. Rev. 799 (1941)):
- Evidentiary
  - Provides clear evidence that transaction occurred
- Cautionary
  - Warns participants to think before engaging in transaction
- Channeling
  - Assists judicial determination by providing test for whether relationship exists

## Third lost in translation issue: formalities in contracts

- So are formalities the same in US and Civil law countries? No!
  - –At Common Law: Statute of Frauds
  - –In Civil Law countries generally much more formalities!



## Third lost in translation issue: formalities in contracts

- Statute of Frauds is a sort of "evidence limitation":
  - – Statute of Frauds does not provide writing as a formation requirement: if there is no writing, contract is not invalid, it's unenforceable against the party against whom enforcement is sought.

➢ **When?**

- Contract for sale of real estate (+ Leases lasting more that 6 months or a year in most jurisdictions)
- Contracts for sale of goods for at last $500—UCC 2-201
- Contracts that cannot be performed within 1 year
- Contracts to answer for debt of another ("suretyship" contracts), etc.

# Third lost in translation issue: formalities in contracts

➢ **What?**

- Sufficient writing
  - Writing (includes "record" to include electronic transactions) signed by "the party to be charged" (the party against whom enforcement is sought)
  - States with reasonable certainty the essential terms
  - Sufficient to indicate that contract made between parties



# Third lost in translation issue: formalities in contracts

➢ **Exceptions? Many!**

- "Part performance" exception
- Promissory estoppel (see Restatement (2d) Contracts §139)
- Goods "specially manufactured for the buyer and are not suitable for sale to others" (UCC § 2-201(3)(a))
- If the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made (UCC § 2-201(3)(b))
- Goods for which payment has been made and accepted or which have been received and accepted UCC § 2-201(3)(c)

# Third lost in translation issue: formalities in contracts

**IN CIVIL LAW:**

➢ **When?**

- Impossible to make a list. Writing requirements are scattered in many provisions of the codes and special laws.
- Examples
  - Art. 1742 Italian Civil Code **-** Agency contract must be *proved* in writing.
  - Art. 1751bis Italian Civil Code **-** Agreement that limits the competition of an agent after the termination of the (agency) contract
  - Art. 23, 1 TUIF (Securities Law) on contract for securities



# Third lost in translation issue: formalities in contracts

– **Article 1350 Italian Civil Code**

The following must be done by a notary deed or a private deed with authenticated signature, under penalty of invalidity:

1) contracts that transfer the ownership of real estates;
2) Contracts that establish, modify or transfer the usufruct on a real estate … (and other real rights) …
3) Contracts that establish a joint tenancy on the above rights;
4) Contracts that establish or modify a servitus (and other limited rights)

…

## Third lost in translation issue: formalities in contracts

8) Lease contracts on real estates for a duration above 9 years
9) Corporation contracts or partnership contracts when … ( a right on a real estate) for more than 9 years or for an indeterminate duration is paid in

…

12) Settlements that concerns transaction on the above legal rights;
13) Others (when provided by law)



## Third lost in translation issue: formalities in contracts

➢ What?

- Formalities can be
  - evidentiary limitation (as US)
  - requirement for validity of a contract

## Third lost in translation issue: formalities in contracts

*Example*

Article 1418, 2 Italian Civil Code

" … The lack of one of the requirements of article 1325 makes the contract void."

**Article 1325** The requisites of the contract are: 1) the mutual assent; 2) the 'cause"; 3) the object; 4) the formality, when required by law under penalty of invalidity



## Third lost in translation issue: formalities in contracts

- Even when formality is an evidentiary limitation, the lack of formalities renders practically impossible for the party to sue on the contract.
  - WHY? See the Fifth lost in translation issue: the four corner of a contract

## Fourth "lost in translation" issue: notaries

- Word "notary" comes from Latin "*notarius,"* which means "rapidly written"; in the Roman Republic a transcriber who used a fast method of writing ("*notae*") was called *notarius.*
  - BUT Common Law vs. Civil law notaries



## Fourth "lost in translation" issue: notaries

- Common law notary is very different from civil law notary.
  - Program proposal for ABA Section of International Law, Spring 2013, titled "What's in a name? That which we call a Notary, is it the same? "

## Fourth "lost in translation" issue: notaries

- US notaries
  - Are not professionals.
  - Are public official delegated by the state some authentication powers
  - Predominantly lay people, who, depending on the jurisdiction, may or may not be required to attend a brief training seminar.
  - Are prohibited to practice law unless they are lawyers.



## Fourth "lost in translation" issue: notaries

Civil law notaries

- are public officials, like the US notaries,
- Are also **law-trained, highly respected legal professionals**.
- Generally distinct from lawyers (exception Germany)
- Have generally the same or greater prestige than US attorneys.

## Fourth "lost in translation" issue: notaries

Civil law notaries

- Enjoy a reputation of neutrality comparable to ADR neutral.
- Generally attend the same law school as future lawyers and judges or special law school,
- Go through a period of training and take a highly selective state examination.



## Fourth "lost in translation" issue: notaries

- Civil law notaries participate in transactions much more than US notaries. At a minimum they must be present and authenticate property transfers, formation and incorporation of companies, bank loan contracts, donations of assets, drafting of wills, and many commercial transactions

## Fourth "lost in translation" issue: notaries

- Unlike US notaries*, civil law notaries can issue **public acts** (aka "**authentic acts**").
- Authentic acts:
  - Have high probative value of the authorship of the document, of the parties' declarations, and of the other facts that the notary certifies as happening in front of notary (Article 2700 Italian Civil Code )
  - In a few countries, are the only documents that can be entered into public registries.

* [US notaries cannot issue public acts, except in Louisiana and Puerto Rico (civil law tradition) and in Florida and Alabama, which passed special statutes]



## Fourth "lost in translation" issue: notaries

- Civil law notaries can also authenticate private acts ("**authenticated acts**"), i.e.
  - written private documents that signed by authors in front of a public official (in this case a notary) who certifies identities after obtaining proper documentation
  - high probative value but only as to the identity of the signors.
  - Seems the same as a notarized document in the US but …

## Fourth "lost in translation" issue: notaries

- Because civil law notaries are custodians of the "public trust" (or "legal certainty" or "authenticity") (see, e.g., Spanish Reglamento Notarial, June 2, 1944), verification of parties' identity and of powers of attorney is generally lengthier.
- Because they are legal professionals they must give legal advice on these documents and advise must be impartial.



## Fourth "lost in translation" issue: notaries

- Problems can arise in:
  - (i) "inbound" transactions, i.e. when a party is required to supply a document from a civil law country to be used in a US transaction and
  - (ii) in "outbound" transactions, i.e. when a party must supply a document from the US to be used in a civil law transaction

## Fifth "lost in translation" issue: the four corners of a contract

- Question is: is there an agreement between the parties and if there is, on which terms?
- In US ➔ Parol Evidence Rule ("PER")
- In civil law countries, the "four corner" are much stricter!



## Fifth "lost in translation" issue: the four corners of a contract

➢ **When** PER in the US?

- Full integration is required:
  - Writing that parties intend to be both a final and complete expression of their agreement

➢ **What?**

- Rule prohibits introduction of evidence that contradicts or supplements the written agreement claimed to be prior or contemporaneous to the agreement.
- Rule permits introduction of evidence to explain the meaning of the agreement.

## Fifth "lost in translation" issue: the four corners of a contract

- **PER Exceptions**? Many!
- Subsequent agreements
- Agreement subject to oral condition
- Evidence offered to show agreement invalid because of fraud, duress, etc.
- Right to equitable relief, such as reformation
- "Collateral" agreements



## Fifth "lost in translation" issue: the four corners of a contract

"PER" equivalent in Civil Law

➢ **What?**

- Rule is generally **much stricter**.

- In Italy, for example, oral contracts are hardly ever provable by witness at trial and once you have a writing it is never possible to allege prior or contemporaneous agreements.

## Fifth "lost in translation" issue: the four corners of a contract

Article 2721 Italian Civil Code Admissibility [of witness] - value limits.

Witnesses are not admissible in evidence to prove contracts when their value exceeds … [EUR 2.5]. The judge, however, may allow witness beyond the above said limit, considering the type of parties, the nature of the contract and any other circumstance.

Article 2722 Additional terms or terms which contradict a written document - Witness evidence is not admissible to prove additional terms or terms which contradict a written document, if it is alleged that the agreement [on those terms] is anterior or contemporaneous [to the document].



## Fifth "lost in translation" issue: the four corners of a contract

➢ **Exceptions**? Not many!

- Article 2723 Terms subsequent to the execution of the document

  If it is alleged that after the execution of a document parties agreed on further terms or on terms which contradict the document, the judge may allow the witness only if considering the parties, the nature of the contract, and any other circumstances it looks probable that the parties made oral changes or modifications.

## Fifth "lost in translation" issue: the four corners of a contract

- Art. 2724 Exceptions to the forbiddance of witness evidence -The witness evidence is always admissible: (1) when there is some writing. "writing" is any writing coming from the person against whom the action is brought or one of his agents, that makes probable the alleged fact; OR (2) when it was morally or materially impossible for a party to acquire a written evidence; (3) when a party has, without his or her guilt, lost the document.

But …



## Fifth "lost in translation" issue: the four corners of a contract

- Exception of the exception (we get back to the no witness rule!):
- Article 2725. **Contracts that required to be proved by a writing or in which a writing formality** is requested for validity
  - When, the law or the agreement of the parties requires that a contract be proved in writing, the witness evidence is admissible only in the case provided by no. 3 of the preceding article ["lost document"] The same rule applies when the document is required for the validity (of the contract).

## Sixth "lost in translation" issue: unenforceability of a contract

- US approach
  - One party might have a defense towards the enforcement of the contract based on involuntariness of the agreement (e.g. mistake, duress, incapacity, etc.).
  - The K is valid but if the party chooses not to perform, he or she is not in breach.
  - The only case in which a contract is void is for violation of a public policy.



## Sixth "lost in translation" issue: unenforceability of a contract

- Also in civil law, there are cases in which a K is simply unenforceable at the choice of the affected party [voidable], i.e. the renegade party cannot be forced to perform but … voidness is much more frequent than in the US. Voidness is a broader concept and more frequently used by third party.

## Sixth "lost in translation" issue: unenforceability of a contract

- **void**, *adj. 1. Of no legal effect; null. … void can be properly applied only to those provisions that are of no effect whatsoever — those that are an absolute nullity.*
- **voidable**, *adj. Valid until annulled; … capable of being affirmed or rejected at the option of one of the parties. • … a valid act that may be voided … — Also termed avoidable.*
- [Black's Law Dictionary, 9th ed. 2009]



## Sixth "lost in translation" issue: unenforceability of a contract

- Civil law approach - contracts can be void:
  - violation of a public policy
  - when the law expressly says that a certain term is void (and law says it often)
  - For lack of formality (see above)

  Consequence: a third party (with interest, which is like standing) [think Tax Agency] can ask the judge to declare the K is void even if parties do not want

## Sixth "lost in translation" issue: unenforceability of a contract

- A void contract has a lethal defect that anyone can can denounce. It does not produce legal effects, i.e. it does not give rise to rights and duties. A void contract cannot be ratified.

Vs.

- A voidable contract has a defect that only the affected party can denounce. It produces legal effects until it is pronounced void by a court upon request of the affected party.



## Sixth "lost in translation" issue: unenforceability of a contract

- And talking about PUBLIC POLICY, in Civil:
  - **ORDRE PUBLIC** (similar to public policy but much more frequently used) i.e. the core values of the system that cannot be derogated by the parties.
    - Foreign decisions inconsistent with those values could not be enforced.
  - **MANDATORY RULES** (*lois d'application immédiate*) laws of mandatory application that cannot be modified by agreement, but which are broader than the core values of society.

## Sixth "lost in translation" issue: unenforceability of a contract

Why different approach?

Common Law looks under an "action" perspective" and therefore talks of defenses or grounds for non performance, i.e. reasons why a court would not enforce an otherwise perfect contract. If a party does not perform when a defense exists, this party does not commit a breach.

- Civil Law looks under "substantive right" perspective, and talks of "voidess" and "voidability".



## Seventh "lost in translation" issue: attorney-client privilege

In the US attorney-client privilege

- indisputably belongs to the client and
- prevents the admission into evidence of any communications between lawyers and clients that are made in confidence for the purpose of seeking legal advice. See Restatement (Third) of the Law Governing Lawyers §68 (2000)
- Rationale: promotes full and frank communications

## Seventh "lost in translation" issue: attorney-client privilege

Double rationale of professional privilege in EU:

- necessity to respect and protect the right of defense, AND
- lawyer's role in the administration of justice as contributing to the maintenance of the rule of law. ECJ, *AM&S Europe v. Commission* (Case-155/79)



## Seventh "lost in translation" issue: attorney-client privilege

- Double rationale explains why the ECJ in *AM&S Europe* imposes two requirements: (1) communication must be "made for the purposes and in the interests of the client's rights of defense"
- and (2) communication must "emanate from independent lawyers, that is to say, lawyers who are not bound to the client by a relationship of employment."

## Seventh "lost in translation" issue: attorney-client privilege

- In Europe, neither the client nor the lawyer control the privilege.
- Disclosure of facts known because of the representation is a serious ethical violation for a lawyer and generally a crime. BUT
- If a lawyer -- ignoring the privilege and violating his duty of confidentiality– chooses, for example to testify, the evidence is not inadmissable.



## Seventh "lost in translation" issue: attorney-client privilege

- Communications between in-house counsel and company executives are not privileged because in-house counsel are not independent. *Akzo Nobel Chemicals Ltd. v. EU* (Case-550/07)

- In the majority of European countries , in-house counsel are not enrolled in a bar (i.e. technically not lawyers)

## Seventh "lost in translation" issue: attorney-client privilege

- Nathan M. Crystal & Francesca Giannoni-Crystal, Understanding Akzo Nobel: A Comparison of the Status of In-House Counsel, the Scope of the Attorney-Client Privilege, and Discovery in the U.S. and Europe, Global Jurist: Vol. 11: Iss. 1 (Topics) (2011), Article 1, http://www.bepress.com/gj/vol11/iss1/1
- Francesca Giannoni-Crystal, The EU Court's Decision Akzo Nobel is Not a Big, Bad Wolf, South Carolina Lawyer, 17 (January 2012)