Contractual capacity in private international law

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Propositions relating to the dissertation:
Contractual Capacity in Private International Law

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1. A wide comparative approach may lead to new insights which could be employed in the interpretation, supplementation and development of private international law rules.

2. The *lex loci contractus* should in principle apply to the contractual capacity of a natural person in addition to the relevant personal laws and the putative objective proper law of the contract provided that (a) the parties were in each other's physical presence at the time of the conclusion of the contract or (b) the contract was of a recurrent nature in respect of reasonably essential goods (par 6.2.5).

3. For the purposes of the protection of potentially incapable parties, the *Lizardi*-type exception to the additional application of the *lex loci contractus* in respect of the contractual capacity of a natural person should also be employed in the context of the proposed use of the putative objective proper law of the contract (par 6.2.6).

4. Choice of law should play no role in the determination of the contractual capacity of natural persons (par 6.2.6).

5. The consequences of the contractual incapacity of a natural person should be governed by the putative objective proper law of the contract (par 6.3).

6. Article 3 of the Hague Principles on Choice of Law in International Commercial Contracts should seriously be considered in the upcoming revision of the Rome I Regulation (*Revue européenne de droit bancaire et financier / European Banking and Financial Law Journal*, 2004, 175-179).

7. A choice of forum agreement should not be equated to a tacit choice of law (*De Jure*, 2011, 107-110).

8. The tendency in contemporary South African private international law of contract to discard the received default rule leads to a significant loss of legal certainty (*South African Mercantile Law Journal*, 2006, 80).

9. The English courts, even under the Rome I Regulation, should maintain the view that the contract between the issuing bank and the beneficiary, where a nominated or confirming bank is involved, must be governed by the law of the habitual residence of the nominated or confirming bank (*South African Mercantile Law Journal*, 2003, 219-227).

10. The proposal by Stoll and Visser (*De Jure*, 1989, 335) regarding the law applicable to the proprietary consequences of marriage, as inspired by German private international law (Art 14-15 EGBGB), should strongly be considered in the constitutionally-imperative reform of South African international family law (*Journal of South African Law*, 2015, 920-922).

11. African countries should strongly consider ratifying the Hague Convention on Choice of Court Agreements. African member countries of the Commonwealth should wait a reasonable time for the outcome of the Hague Judgments Project before considering to incorporate the envisaged Model Law on the Recognition and Enforcement of Judgments in the Commonwealth.

12. The Africa Strategy proposed by the Permanent Bureau of the Hague Conference on Private International Law in March 2015 deserves widespread support.