

STUDIES IN PRIVATE INTERNATIONAL LAW

CASES AND
MATERIALS ON
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LAW

Stefania Bariatti



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Studies in Private International Law

Series Editors' Preface

For even the most dedicated private international law scholar or practitioner, it has become increasingly difficult to keep up in recent years with the tidal wave of EU legislation and judgments of the ECJ that impact upon the discipline. Ever more fields are the subject of harmonised rules of private international law in the European Union, or proposals for harmonisation. As the ambit and influence of those harmonised rules develops, so the role of national rules of private international law is diminished.

In compiling this volume, Professor Stefania Bariatti, a leading figure in the field of private international law, has performed an outstanding service for those engaged in the study and practice of private international law. Professor Bariatti has assembled and catalogued a remarkable range of cases and materials covering the panoply of private international law matters which have been subject to harmonisation at a European level. Beginning with a most interesting chapter in which Professor Bariatti charts the development of EU private international law and reflects upon its future directions, the author goes on skilfully to organise, present and analyse a vast array of materials in a format that is extremely accessible to the reader.

Professor Bariatti includes extremely helpful summaries and extracts of ECJ judgments, including the numerous rulings on the interpretation of the Brussels I Regulation, which are organised by reference to the Article or Articles to which they relate. There are also chapters covering such matters as: the law applicable to contractual obligations; the law applicable to non-contractual obligations; insolvency; companies; rights in rem, securities and intellectual property; social security; personality rights, status and family relations; succession; and judicial assistance in civil matters.

The book addresses other initiatives that may influence the application of European rules of private international law. It includes Regulations and Directives in relation to particular matters that affect the operation of European rules of private international law. It also incorporates international conventions to which Member States are parties and which affect the application of European rules of private international law. The author also considers in some detail the impact of general principles of European law, such as the concept of citizenship, the protection of fundamental rights and the role of public policy and overriding mandatory provisions.

The author has incorporated recent developments in European private international law, including, most notably, the Commission Proposal of 14 December 2010 to reform the Brussels I Regulation. The author reflects that the proposed extension of the Brussels I Regulation generally to defendants domiciled in non-Member States, coupled with the universal scope of other recent harmonisation initiatives, suggests that, in the future, all, or almost all, aspects of private international law will be the subject of European rules.

Professor Bariatti has produced an indispensable resource and we are delighted to welcome *Cases and Materials on EU Private International Law* to the Studies in Private International Law series.

Paul Beaumont (University of Aberdeen)

Jonathan Harris (University of Birmingham)

21 March 2011

Preface

This book aims primarily to provide a support for university courses on private international and EU law, as well as an instrument for practitioners who face conflicts of laws issues in their day-to-day legal practice. The development of EU legislation in this field has affected the competence of national legislatures and has substantially reduced the scope of domestic law. A considerable number of provisions have been adopted and are scattered throughout many legislative instruments based upon Article 81 TFEU or on other provisions of the Treaty (directives on consumer, labour and insurance contracts, company law, IP rights, securities, privacy, and so on). Moreover, the European Court of Justice has issued many interpretative judgments that concur with the *acquis communautaire* in this field.

The cases and materials are presented in chapters, devoted to specific issues or relationships. An introduction provides an overview of the development of the competence of the European Union, from Article 220 of the EEC Treaty to Article 81 of the Treaty on the Functioning of the European Union, and of its external dimension, as well as a preliminary tentative assessment of the principles and solutions adopted in respect of the general issues of private international law for further discussion.

I wish to express my gratitude to the team of young scholars who – after two Italian editions in 2002 and 2009 – have helped me in preparing this English edition, Professor Carola Ricci, PhD Serena Crespi, PhD Giuseppe Serranò and Dr Eva De Goetzen. Comments and suggestions by readers will be most welcome and will help in limiting errors and gaps in a new edition.

Stefania Bariatti
Milan, 20 December 2010

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