Review of Stone's EU Private International Law

Book review of Peter Stone, *EU Private International Law Harmonisation of Laws* [Elgar European Law, Cheltenham, 2006, *lvi*+462pp, ISBN 1-84542-015-2]. *(Reviewed by Dr Lorna Gillies, Leicester)*

This book is part of a series collection on European Law by Edward Elgar Publishing. According to the blurb, the book offers a "critical assessment of four main areas of concern: civil jurisdiction and judgments; the law applicable to civil obligations ; family law ; and insolvency." The premise of the text is the development of EU international private law rules from Article 95 EC. For the first time, principles of international private law are analysed, considered and presented in the context of EU law. This is one of the key strengths of the book. The book will be of particular interest to academics, practitioners and postgraduate students. Whilst a number of key EU proposals had yet (and still remain) to be finalised when the book was written, this book is nevertheless of significant and relevant interest to the target audience. Whilst the author admittedly does not consider in depth the proposals for the Rome I or II regulations, a further strength of the book is the inclusion of the author's proposed new articles of these instruments in, most often, his concluding analysis of current instruments. Furthermore, the book also makes reference to the EU accession to the Hague Conference on Private International Law.

The book contains detailed case tables of UK, EU Member State and ECJ cases as well as an international case section listing cases from Singapore and the United States. The table of cases also conveniently provides particular page references throughout the text. Mirroring the influence of EU policy, the book is divided into an introduction and four substantive parts comprising nineteen chapters. Part I contains the introduction which succinctly considers the basis for harmonisation of international private law rules (ie those on civil jurisdiction, choice of law, family law and insolvency) at EU level.

Part II is the largest part of the book and focuses, not surprisingly, on civil jurisdiction and judgments across nine chapters. The main focus of the text in this Chapter is, as expected, Regulation 44/2001. A historical assessment of the

changes from the Brussels Convention 1968 to the final version of the Regulation is provided. The Chapter consider the application of English cases with frequent reference to ECJ cases. At the end of Chapter Two there is a helpful table providing all of the commencement dates for the Brussels and Lugano Conventions and Regulation 44/2001. Chapter Three focuses on domicile as the connecting factor in the Brussels Convention and Regulation 44/2001. This Chapter usefully considers the concept of domicile and the application of the concept vis-à-vis local, other European and external (ie non EU) defendants. Chapter Four then considers the alternative grounds of jurisdiction in Regulation 44/2001 and assesses the changes to Article 5 in particular. The author assesses the merits of Article 5(1) and comments on the possible reform of Article 5(3). Unlike many other texts on international private law, a strength of this book is that it offers a separate chapter on the jurisdiction rules for protected contracts, namely consumer, employment and insurance contracts. The jurisdictional and governing laws of such contracts are becoming increasingly important as (the (would-be) "reasonably informed and circumspect") consumers purchase goods and services from sellers in different jurisdictions and as employees move between (an ever increasing number of) Member States to seek work. This text is different to other international private law texts as it recognises the legal and commercial importance of such (supposedly minor) contracts to EU policy and the application of international private law rules in the day-to-day lives of ordinary EU citizens. As one would expect, there are also chapters on the rules on exclusive jurisdiction, submission and concurrent proceedings. The latter contains an interesting and reflective analysis of the recent cases *Gasser v MISAT* and *Turner v Grovit*. There is also a shorter chapter on provisional measures. The final two chapters in this Part provide an assessment of the rules on recognition and enforcement and enforcement procedure. These succinct chapters provide key summaries of the relevant case law plus, in respect of enforcement an analysis of Regulation 805/2004, the European Enforcement Order for Uncontested Claims.

Part II of the book focuses on the law applicable to civil obligations. Part II contains four chapters which focus on contracts, protected contracts (mirroring Part I), torts and restitution. The main focus on Chapter Twelve is the replacement of the Rome Convention 1980. Regular reference is made in this Part to the proposals for the Rome I Regulation. The basis of the Rome Convention is considered as is its application and relationship with other conventions. The author does comment on the Green Paper which considered the replacement of

the Rome Convention with a Community Instrument. The author recommends the further clarification of the rules governing implied choice of law by the inclusion of a range of factors in Article 3(1A) with the emphasis on establishing the commercial expectations of the parties. Articles 3 and 4 of the Rome Convention are considered in depth. The case is then put by the author for possible reform thereof. Importantly, the author devotes Chapter Thirteen separately to protected contracts, in recognition of the important and difficult task in reconciling party autonomy in selecting the governing law with the overriding need to protect consumers, employees and insured parties. The author provides commentary on the replacement of the Rome Convention with the Rome I Regulation and in concluding his analysis suggests in particular, a revised Article 5. On the matter of insurance contracts, Chapter Thirteen assesses and considers possible reform of Directives 88/357 and 90/619 on non-life and life insurance contracts respectively. Chapters Fourteen and Fifteen are devoted to the proposal for the Rome II Regulation. Chapter Fourteen considers the proposed Regulation vis-à-vis torts in depth, including, *inter alia*, its scope and relationship with other international convention. This Chapter also offers critical assessment and suggested amendments to, *inter alia*, Articles 3(2) and (3) and analysis of a number of specific torts including product liability, unfair competition, intellectual property, defamation, environmental damage, industrial disputes and traffic accidents. Chapter Fifteen provides a concise analysis of the proposals in Rome II vis-à-vis claims in restitution.

Part III of the book contains three, and by comparison shorter, chapters on family matters comprising matrimonial proceedings, parental responsibility and familial maintenance and matrimonial property. Part III of the book focuses on Regulations 1347/2000 (Brussels II) and 2201/2003 (Brussels IIA). Chapter Sixteen includes a table on the transitional operation of these two regulations amongst the Member States. Chapter Seventeen examines parental responsibility and contrasts the Brussels IIA Regulation with the Hague Convention 1996 on Parental Responsibility and Measures for the Protection of Children and the 1980 Child Abduction Convention.

The final part of the book, Part IV, is on the matter of insolvency. Chapter nineteen examines the jurisdiction, choice of law and enforcement aspects of insolvency as contained in Regulation 1346/2000. A noticeable feature of this Chapter is the author’s criticism of the rational for secondary proceedings and his

suggestion for harmonisation of “the substantive laws of the Member States as regards the definition and extent of preferential rights […] by means of a directive under Article 95 EC.”

In conclusion, this book is warmly welcomed and will be an important research resource to its readership. Purchase the book from here or direct form the CONFLICT OF LAWS .NET bookshop.