BOOK REVIEW OF THE EUROPEAN PRIVATE INTERNATIONAL LAW OF OBLIGATIONS

EDITED

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The European Private International Law of Obligations is a practitioners' work that is evidently written at a very high standard. This is perhaps unsurprising because the authors, Mr Michael Wilderspin was a legal adviser to the European Commission, and Sir Richard Plender was an English Judge in his lifetime.

In the 6th edition of this authoritative and very illuminating book, Michael Wilderspin now assumes responsibility for its writing. The first edition of the book (in 1991) was solely written by Richard Plender, but he brought in Michael Wilderspin to work on the second edition with him. They worked together on successive editions of the book for a long time. Unfortunately, Richard Plender passed away in 2020, after the 5th edition of this book which was published in 2019.

The book is regularly cited in English courts, and it is likely that this tradition will

be maintained in the 6th edition of the book. In this new edition over 70 recently decided cases (from the UK, Court of Justice of the European Union ("CJEU") and other Member States of the EU) have been incorporated into the analysis. The new edition also incorporates many recent secondary sources in its analysis.

The book contains four main parts. Part One contains what is described as "COMMON PRINCIPLES" on Rome I and Rome II Regulations. This runs from pages 3 to 91, focusing on preliminary matters such as the history and interpretative approaches of Rome I and Rome II, and a comparison of both Regulations. Part Two contains what is described as "CONTRACT" based on Rome I. This runs from pages 95 to 488, focusing on a detailed analysis of the Articles of Rome I. Part Three contains what is described as "THE LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS." This runs from pages 491 to 860, focusing on a detailed analysis of the Articles of Rome II. Part Four contains what is described as "ROME I AND II REGULATIONS IN THE UK." This runs from pages 863 to 868, focusing on the changes brought by Brexit to Rome I and Rome II as provided in The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019.

Each chapter usually commences with a very useful legislative history. There is very impressive knowledge of Rome I and Rome II from a European comparative perspective and comparisons with other international conventions. The interaction between domestic private law in Member States and England, and law applicable to contract and torts is an underlying theme that is explored well in the book. In this regard, there is impressive knowledge of the domestic private laws and conflict of laws rules of many Member States in the EU and England, making this book genuinely European. One point worth mentioning is that the authors also note the final decision of Member State Courts that refer a matter to the CJEU on the applicable law of obligations. For example, in analysing the decision of the CJEU in *Haeger* (2015) which interprets Article 4(4) of the Rome Convention on the law applicable to contract of carriage of goods, Wilderspin also notes the final decision of the French Cour de Cassation that referred the question (see paragraph 8-016, footnote 37). Similarly, in analysing the decision of the CJEU in *Nikiforidis* (2016) which interprets Article 9 of Rome I on

overriding mandatory rules, Wilderspin also notes the final decision of the German Court that referred the question (see paragraph 12-041).

Wilderspin notes in the Preface that whilst Richard Plender did not challenge the accuracy of his views, he encouraged him to use a more polite language in writing. Indeed, Wilderspin is a bold writer. He fiercely engages with both primary and secondary sources. On some occasions, he is very blunt. For example, Recital 12 to the Rome I Regulation provides in interpreting Article 3 of Rome I that:

"An agreement between the parties to confer on one or more courts or tribunals of a Member State exclusive jurisdiction to determine disputes under the contract should be one of the factors to be taken into account in determining whether a choice of law has been clearly demonstrated."

Many French scholars like Professor Maxi Scherer (2011) are of the view that there is a requirement of corroboration with other factors in utilising an exclusive jurisdiction agreement to imply a choice of law under Article 3 of Rome I. However, Wilderspin disagrees and regards this view as a "scarcely credible claim" and "very weak." This tops my chart as one of the strongest languages used by a conflict of laws' academic to disagree with another academic.

Wilderspin now appears to have changed his view on the significance of the word "clearly demonstrated" under Article 3 of Rome I (see para 6-028 and 29-104). Wilderspin and Plender previously expressed the view that there is no significant difference between "demonstrated with reasonable certainty" under Article 3 of the Rome Convention and "clearly demonstrated" under Article 3 of Rome I, on the ground that the change was made to merely align the English and German version with the French version. This is a view that has been endorsed by English judges in *Lawlor* (at para 3) and *Aquavita International SA v Ashapura Minecham Ltd* [2014] EWHC 2806 (Comm) [20], citing inter alia, older editions of Plender and Wilderpin. Wilderspin now expresses the view that the English version of Article 3 of Rome I is "apparently stricter" than Article 3 of the Rome Convention,

and notes that “although the English version was in line with the majority of the other language versions, in particular the German, those versions have become aligned with the minority, French version” (see para 6-028 and 29-104). This change of view by Wilderspin can be attributed to the influence of the outstanding work of Mr Michael McParland (2015) on Rome I Regulation, who at paras 9.37-9.72 notes the detailed legislative history that brought about the significant change in wording under Article 3 of Rome I. Indeed, he cites McParland. However, at para 11-027, footnote 48, Wilderspin notes that the difference between the wording of Article 3 of the Rome Convention and Article 3 of Rome I is “probably more apparent than real.” I think this statement might be an error that was carried over from the last edition. I also take this view because Wilderspin refers to the old paragraph 6-024 instead of the new 6-026 of the new edition of the book.

In the light of this modified view by Wilderspin, it is open to question if English judges and other courts of Member State courts will apply a stricter approach in interpreting Article 3 of Rome I. For example, Professor Pietro Franzina also notes in a book chapter (at para 3.1.1) that the Italian Supreme Court (Cass., 10 April 2019, No. 10045, Pluris) held that while the wording of Article 3 of the Rome Convention and Rome I were not identical, “they must be understood to have, in substance, the same meaning” on tacit choice of law.

The book is a highly specialist work that is meticulously written. Nevertheless, I found what I consider to be only three minor typographical errors the author may correct for the next edition. These are odd references to “CHECK” at paragraph 9-061, “that1” at paragraph 9-064, and “pr” at paragraph 9-089.

My final verdict is that the 6th edition of this book will make an excellent Christmas and New Year’s gift in the library of any academic and/or practitioner with an interest in conflict of laws. I highly recommend it without any reservations.