New book: Droit International Privé by Marc Fallon, Jean-Yves Carlier and Stéphanie Francq

The standard textbook of Belgian Private International Law in French has just been published in its fourth edition (by Larcier Intersentia). The great scholar François Rigaux published the first version of this *précis* in 1977-1979 (in two volumes). The second edition followed in 1987-1993, and the third in 2005. While the third edition comprised a single volume, it comes as no surprise that the number of legislative texts and court decisions have obliged the authors to return to the two-volume format. Printed in small typeset and on thin paper, the entire work surpasses 2000 pages. The book forms part of the series *Precis de la faculté de droit et de criminologie de l'UCLouvain*. The two volumes are truly a "travail de moine" (a very detailed and painstaking work that requires much time and patience).

The authors are all professors or emeritus-professors at the UCLouvain, as was the initial author François Rigaux. He involved Marc Fallon in the second and third editions, and Marc Fallon invided Jean-Yves Carlier and Stéphanie Francq to join for the latest edition.

Volume I contains the general part, discussing the history and method of private international law, as well as general approaches to jurisdiction, applicable law, recognition, enforcement and procedure. Volume II covers specific topics.

The authors aim to provide students with both solutions and tools to learn methods of finding solutions. They state this approach in their preface, and remain faithful to it. The book is not restricted to students, but aimed at practitioners, lawyers, judges, notaries, civil servants, legal advisors and researchers alike. Each of these groups will use the book with a slightly different expectation – to find the correct approach, the learn about the law as it is, where it comes from and why it is the way it is. The book offers all of this, at the same time bringing together national, EU and international law, as is indispensable in current-day private international law. The book is therefore not limited to Belgian private international law. As the authors have a deep foundation in EU law, their

discussions of private international law are grounded in this broader context. And as Marc Fallon states in the preface, EU law has become “omnipresent” next to the conventions of the Hague Conference on Private International Law. He adds that EU law is now covering a major part of private international law, and that even the parts that are not yet the subject of EU legislation are heavily influenced by primary EU law. Therefore the case law of the Court of Justice of the EU is now a major source of private international law.

The approach is not article-by-article but a coherent discussion of the legal domains of private international law. It contains a thorough explanation of the particular terminology as well as the links to substantive law. It is balanced, providing on the one hand a global analysis of the real complexities of the discipline, and on the other hand clear and precise information and illustrations from case law. Each chapter or section starts with an extensive bibliography of Belgian and international legal literature and websites, divided into the categories relevant for the chapter or section that follows.

The first volume is dedicated to the general part of private international law. Its first chapter sets private international law in the context of international law, international human rights protection, EU law, and transnational legal orders such as religious laws and acts by sports federations. The authors discuss the place of state law in this plurality of legal orders, and the method of private international law to solve system conflicts. It is didactic in its explanation of core notions such as State jurisdiction and sovereignty, spatial limits of State law, territoriality, and nationality.

A rich account of the historical foundations of private international law and different schools make up Chapter 2. The following Chapters, 3 to 7, discuss the connecting factor, its applicability, application, and operation. Chapter 6 dedicates its full 93 pages to the determination of foreign law, including internal conflicts and temporal issues. Renvoi is set out in 23 pages, which explain meticulously the various forms and effects of this technique, and offering an evaluation from various perspectives. This analysis allows the reader to understand the technique, and invites us to view it in all its nuances, for all its advantages, vices and practical value. The Chapter also reviews various methods, such as the method of recognition, and complications such as the preliminary question. It investigates how foreign law must be applied – *ex officio* or invoked by the parties, and how a court should find such foreign law. The reader

encounters again an admirable combination of theory and practice. On the fiction of *jura novit curia* the authors showcase the different approaches on determining foreign law, and they link this to the nature of the connecting factor (multilateral or unilateral).

Chapter 8 turns to the sources of international procedural law, including the methods to interpret these sources. It covers sources of the EU, international law as well as bilateral treaties. Chapter 9 is a general chapter on civil jurisdiction for international cases. Chapter 10 is the same for recognition and enforcement, called the "effect" of foreign judgments and authentic instruments. The name simultaneously indicates the breadth and depth – the authors cover the many potential effects, and again in detail. They for example delve into the evidentiary effect of foreign acts, a matter that is causing jurists and negotiators headaches during discussions of the EU's parenthood proposal that is currently on the drawing table. They discuss the external and internal effects, and the factual effects of foreign decisions and authentic acts. The lucidity they bring is welcome in current private international law. Placing this discussion in the general part of their book allows them to draw from various of the so-called third generation private international law Regulations in the EU, i.e. the Regulations that cover jurisdiction, applicable law, recognition, enforcement, and cross-border cooperation.

Volume II, the thicker of the two, approaches the various domains of private law step by step. It contains chapters on the law of persons and family (including marriage, divorce, registered partners, cohabitants, matrimonial property, filiation, the protection of children and of adults, and maintenance obligations), property law (including trusts, intellectual property, insolvency, succession), contracts (general and specific contracts), tort (general and specific). Each of these sections discuss jurisdiction, applicable law, recognition, and where relevant enforcement. The authors include the specificities of each domain of the law, covering international conventions, EU legislation and its Belgian implementation, Belgian legislation, and case law of EU and Belgian courts. They showcase where mandatory laws, EU primary law (such as free movement), public policy or other exceptions or peculiarities come at play. Old law that could still extend to current situations is also included, for instance with respect to matrimonial property.

The structure of the two books is to a large extent in line with the Belgian Private

International Law Code of 2004 (and the Swiss code). But perhaps it is the other way around: perhaps the code followed the initial Rigaux and Fallon structure, with all its didactic qualities. Yet, the Private International Law Code is now full of large holes, eaten out by EU law. The same cannot be said of this *Précis.*

My copy, which initially served for this book review, is already filled with post-its for my own teaching and research.

Thalia Kruger