

# CONTENTS

|                                                        |       |
|--------------------------------------------------------|-------|
| <i>Preface</i> .....                                   | v     |
| <i>List of Abbreviations</i> .....                     | xxv   |
| <i>Special Terminology</i> .....                       | xxvii |
| <i>List of Legislation and Other Instruments</i> ..... | xxxix |
| <i>List of Cases</i> .....                             | xxxix |

## PART I. SETTING THE STAGE

|                                                                                |    |
|--------------------------------------------------------------------------------|----|
| <b>Chapter 1. Introduction</b> .....                                           | 3  |
| 1.1. Recognizing Validity of “The Foreign” .....                               | 3  |
| 1.1.1. An Example .....                                                        | 3  |
| 1.1.2. “The Foreign” in Private International Law .....                        | 5  |
| 1.1.3. The Principle of Cross-Border Validity of Marriage .....                | 8  |
| 1.1.4. Choice-of-Law in Private International Law .....                        | 9  |
| 1.1.5. <i>Ordre Public</i> in Private International Law .....                  | 10 |
| 1.1.6. The Impact of Europeanization .....                                     | 11 |
| 1.1.6.1. Europeanization of Law .....                                          | 11 |
| 1.1.6.2. No Plans for EU Legislation .....                                     | 12 |
| 1.1.6.3. EU Primary Law .....                                                  | 13 |
| 1.1.6.4. EU Private International Law .....                                    | 13 |
| 1.2. The Essence of Cross-Border Recognition in Private International Law .... | 14 |
| 1.2.1. Formal and Substantive Validity of Status .....                         | 14 |
| 1.2.2. Limping Marriages .....                                                 | 14 |
| 1.2.3. Cross-Border Recognition of Status in Full .....                        | 15 |
| 1.2.4. Cross-Border Recognition of Status in Part .....                        | 16 |
| 1.2.5. Cross-Border Recognition “For the Sole Purpose of” .....                | 16 |
| 1.2.6. The Aim and the Research Questions .....                                | 17 |
| 1.3. Ethics and Delimitations .....                                            | 18 |
| 1.3.1. Ethical Considerations .....                                            | 18 |
| 1.3.2. Delimitations and Exclusions .....                                      | 19 |
| 1.3.2.1. Vertical Relationships Excluded .....                                 | 19 |
| 1.3.2.2. Right to Enter into Relationships Excluded .....                      | 19 |
| 1.3.2.3. Not Really a Constitutional Law Study .....                           | 20 |

|                                                                                 |                                                                                                |    |
|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|----|
| 1.3.2.4.                                                                        | Not Really a Historical Study .....                                                            | 21 |
| 1.3.2.5.                                                                        | Certain Exclusions of Technical Complexity .....                                               | 21 |
| 1.3.3.                                                                          | Choice of the Analysed States .....                                                            | 22 |
| 1.4.                                                                            | The Key Methods Used in the Book .....                                                         | 23 |
| 1.4.1.                                                                          | Beyond the Dogmatic Method .....                                                               | 23 |
| 1.4.2.                                                                          | Law-in-Context .....                                                                           | 24 |
| 1.4.2.1.                                                                        | Researcher-in-Context .....                                                                    | 24 |
| 1.4.2.2.                                                                        | Law in Legal Culture .....                                                                     | 25 |
| 1.4.2.3.                                                                        | Social Norms on Gender .....                                                                   | 26 |
| 1.4.2.4.                                                                        | Emotionality in Law .....                                                                      | 27 |
| 1.4.3.                                                                          | Why not the Method of Recognition? .....                                                       | 28 |
| 1.5.                                                                            | Language of Private International Law .....                                                    | 30 |
| 1.5.1.                                                                          | Significance of Language of Law .....                                                          | 30 |
| 1.5.2.                                                                          | Certain Terms Used in the Book .....                                                           | 31 |
| 1.5.2.1.                                                                        | Citizenship and Nationality .....                                                              | 31 |
| 1.5.2.2.                                                                        | Domicile and Habitual Residence .....                                                          | 31 |
| 1.5.2.3.                                                                        | Notaries .....                                                                                 | 32 |
| 1.5.2.4.                                                                        | Formalized Relationships .....                                                                 | 32 |
| 1.5.2.5.                                                                        | Heteronormativity .....                                                                        | 33 |
| 1.5.2.6.                                                                        | Gender, Sex and Sexual Orientation .....                                                       | 34 |
| Chapter 2. The Theory on <i>Ordre Public</i> in Private International Law ..... |                                                                                                | 35 |
| 2.1.                                                                            | Introduction to the Chapter .....                                                              | 35 |
| 2.2.                                                                            | National Use and Understanding of the <i>Ordre Public</i> Reservation .....                    | 35 |
| 2.2.1.                                                                          | The Traditional Concept of <i>Ordre Public</i> .....                                           | 35 |
| 2.2.2.                                                                          | Negative and Positive Functions of <i>Ordre Public</i> .....                                   | 36 |
| 2.2.3.                                                                          | Internal and External (International) <i>Ordre Public</i> .....                                | 37 |
| 2.2.4.                                                                          | Conditions for the National Use of the <i>Ordre Public</i><br>Reservation .....                | 38 |
| 2.2.4.1.                                                                        | Legitimate Constraints Must Apply .....                                                        | 38 |
| 2.2.4.2.                                                                        | Strong or Absolute Policy .....                                                                | 38 |
| 2.2.4.3.                                                                        | Strong Proximity .....                                                                         | 39 |
| 2.2.4.4.                                                                        | Degree of Seriousness of the Breach .....                                                      | 40 |
| 2.2.4.5.                                                                        | Restrictive Use in Respect of Closely Related States ....                                      | 40 |
| 2.2.4.6.                                                                        | Elasticity .....                                                                               | 41 |
| 2.3.                                                                            | The European Limits on the National Use of the <i>Ordre Public</i><br>Reservation .....        | 42 |
| 2.3.1.                                                                          | EU Law Sets Limits to the <i>Ordre Public</i> Reservation .....                                | 42 |
| 2.3.2.                                                                          | The Use of the <i>Ordre Public</i> is Limited by the ECHR .....                                | 42 |
| 2.3.3.                                                                          | EU Private International Law as the Limits of the National Use<br>of <i>Ordre Public</i> ..... | 43 |
| 2.3.3.1.                                                                        | Restricted EU Legislative Competence .....                                                     | 43 |

|          |                                                                                                     |    |
|----------|-----------------------------------------------------------------------------------------------------|----|
| 2.3.3.2. | Current Non-Feasibility of a Specific EU Law Instrument on Cross-Border Recognition . . . . .       | 45 |
| 2.3.3.3. | EU Regulations Replace the National Rules. . . . .                                                  | 46 |
| 2.4.     | The European <i>Ordre Public</i> . . . . .                                                          | 48 |
| 2.4.1.   | EU Primary Law. . . . .                                                                             | 48 |
| 2.4.1.1. | EU <i>Ordre Public</i> . . . . .                                                                    | 48 |
| 2.4.1.2. | EU Charter of Fundamental Rights . . . . .                                                          | 48 |
| 2.4.1.3. | Free Movement of EU Citizens . . . . .                                                              | 49 |
| 2.4.1.4. | The Concept of National Identity . . . . .                                                          | 50 |
| 2.4.2.   | The European Convention of Human Rights and the EU Charter: Profoundly Interconnected . . . . .     | 51 |
| 2.4.3.   | Scrutiny under the European Convention of Human Rights. . . . .                                     | 54 |
| 2.5.     | Delimitation from Other Significant Theoretic Concepts . . . . .                                    | 56 |
| 2.5.1.   | Qualification in Private International Law . . . . .                                                | 56 |
| 2.5.1.1. | The Concept of Qualification. . . . .                                                               | 56 |
| 2.5.1.2. | Key Approaches to Qualification and Europeanization. . . . .                                        | 57 |
| 2.5.1.3. | Qualification as “Marriage” is not Recognition. . . . .                                             | 58 |
| 2.5.1.4. | Qualification is Significant for Effects of “Unknown Institutes” of Law . . . . .                   | 59 |
| 2.5.2.   | Incidental Question in Private International Law . . . . .                                          | 61 |
| 2.5.2.1. | The Concept of the Incidental Question . . . . .                                                    | 61 |
| 2.5.2.2. | Arguably Narrower Scope of the <i>Ordre Public</i> in Analysis of the Incidental Question . . . . . | 62 |
| 2.5.3.   | Note on Contradictory Data. . . . .                                                                 | 63 |
| 2.6.     | Concluding Remarks. . . . .                                                                         | 64 |

## PART II. THE *ORDRE PUBLIC* IN THE BALTIC STATES AND POLAND

|            |                                                                                                |    |
|------------|------------------------------------------------------------------------------------------------|----|
| Chapter 3. | Cross-Border Recognition of Formalized Family Status in the Baltic States and Poland . . . . . | 67 |
| 3.1.       | Introduction to the Chapter. . . . .                                                           | 67 |
| 3.2.       | The Problem of the Halting National Law . . . . .                                              | 68 |
| 3.2.1.     | Internal Controversies has Led to “Half-Baked” Enactments . . . . .                            | 68 |
| 3.2.2.     | The Example of Estonia. . . . .                                                                | 69 |
| 3.2.3.     | The Example of Lithuania. . . . .                                                              | 71 |
| 3.2.4.     | Note on the Courts Entrusted with Constitutional Review . . . . .                              | 73 |
| 3.3.       | Interplay between Substantive Family Law and Private International Law in Estonia . . . . .    | 73 |
| 3.3.1.     | The Estonian Constitution in Relation to Private International Law . . . . .                   | 73 |
| 3.3.2.     | Substantive Family Law: The Reluctant Pioneer of the Region . . . . .                          | 74 |

|          |                                                                                           |    |
|----------|-------------------------------------------------------------------------------------------|----|
| 3.3.2.1. | Registered Partnerships .....                                                             | 74 |
| 3.3.2.2. | Marriage Law .....                                                                        | 76 |
| 3.3.3.   | Estonian Private International Law of the Family .....                                    | 76 |
| 3.3.3.1. | Background. ....                                                                          | 76 |
| 3.3.3.2. | Lack of Statutory Choice-of-Law Rules on Formalized<br>Same-Sex Relationships .....       | 78 |
| 3.3.4.   | Estonian Choice-of-Law Rules on Family Status Validity .....                              | 78 |
| 3.3.4.1. | Formal Validity is Determined by the Law<br>of Conclusion .....                           | 78 |
| 3.3.4.2. | Substantive Validity is Determined by the Law<br>of Habitual Residence .....              | 79 |
| 3.3.4.3. | Registered Partnerships: The Principle of Recognition<br>of Validity .....                | 80 |
| 3.3.5.   | The Rule on <i>Ordre Public</i> Safeguard .....                                           | 81 |
| 3.3.6.   | Termination of Formalized Same-Sex Relationships<br>in Estonia. ....                      | 82 |
| 3.3.6.1. | Marriages .....                                                                           | 82 |
| 3.3.6.2. | Registered Partnerships .....                                                             | 83 |
| 3.4.     | Interplay between Substantive Family Law and Private International<br>Law in Latvia ..... | 84 |
| 3.4.1.   | Family and Marriage in the Latvian Constitution .....                                     | 84 |
| 3.4.1.1. | The Concept of Marriage in Latvia .....                                                   | 84 |
| 3.4.1.2. | Case-Law of the Latvian Constitutional Court .....                                        | 84 |
| 3.4.2.   | Family and Marriage in the Latvian Civil Code. ....                                       | 86 |
| 3.4.2.1. | Concept of Marriage in the Civil Code. ....                                               | 86 |
| 3.4.2.2. | Gendered Provisions in Latvian Law .....                                                  | 87 |
| 3.4.3.   | Private International Law of the Family in Latvia .....                                   | 88 |
| 3.4.3.1. | Background. ....                                                                          | 88 |
| 3.4.3.2. | No Specific Rules on Formalized Same-Sex<br>Relationships .....                           | 89 |
| 3.4.4.   | Latvian Choice-of-Law Rules on Marriage Validity .....                                    | 89 |
| 3.4.4.1. | Local Marriages with Foreign Element:<br><i>Lex Fori</i> Applies .....                    | 89 |
| 3.4.4.2. | Formal Validity of Marriages Concluded Abroad:<br><i>Lex Loci Celebrationis</i> .....     | 90 |
| 3.4.4.3. | Substantive Validity of Marriages Concluded Abroad:<br>Law of Nationality .....           | 90 |
| 3.4.4.4. | Which Law to Apply to Double-Nationals? .....                                             | 91 |
| 3.4.4.5. | Which Law to Apply to Marriages of Latvian<br>“Non-Citizens”? .....                       | 92 |
| 3.4.4.6. | Validity of Registered Partnerships .....                                                 | 93 |

|          |                                                                                                  |     |
|----------|--------------------------------------------------------------------------------------------------|-----|
| 3.4.5.   | Rule on <i>Ordre Public</i> in Latvia . . . . .                                                  | 94  |
| 3.4.6.   | Termination of Formalized Same-Sex Relationships<br>in Latvia . . . . .                          | 95  |
| 3.4.6.1. | Marriages . . . . .                                                                              | 95  |
| 3.4.6.2. | Registered Partnerships . . . . .                                                                | 95  |
| 3.5.     | Interplay between Substantive Family Law and Private International<br>Law in Lithuania . . . . . | 96  |
| 3.5.1.   | Family and Marriage in the Lithuanian Constitution . . . . .                                     | 96  |
| 3.5.1.1. | The Concept of Marriage in Lithuania . . . . .                                                   | 96  |
| 3.5.1.2. | The Concept of Family Includes Same-Sex Couples:<br>A Gradual Development . . . . .              | 96  |
| 3.5.2.   | Substantive Family Law in Lithuania . . . . .                                                    | 98  |
| 3.5.2.1. | Partnerships that Never Came to Be . . . . .                                                     | 98  |
| 3.5.2.2. | Partnerships Outside of Family Law . . . . .                                                     | 99  |
| 3.5.2.3. | Traditional Family Values: A Gradual Parallel<br>Development . . . . .                           | 100 |
| 3.5.2.4. | Prohibition of a Same-Sex Marriage<br>in the Civil Code . . . . .                                | 101 |
| 3.5.3.   | Private International Law of the Family in Lithuania . . . . .                                   | 102 |
| 3.5.3.1. | Background . . . . .                                                                             | 102 |
| 3.5.3.2. | Lack of Specific Choice-of-Law Rules on Formalized<br>Same-Sex Relationships . . . . .           | 103 |
| 3.5.4.   | Lithuanian Choice-of-Law Rules on Status Validity . . . . .                                      | 103 |
| 3.5.4.1. | Formal Validity of Marriage . . . . .                                                            | 103 |
| 3.5.4.2. | Local Marriages with Foreign Element in Lithuania . . . . .                                      | 104 |
| 3.5.4.3. | Foreign Marriages Lawfully Concluded Abroad . . . . .                                            | 105 |
| 3.5.5.   | Rule on <i>Ordre Public</i> in Lithuania . . . . .                                               | 106 |
| 3.5.6.   | Termination of Formalized Same-Sex Relationships<br>in Lithuania . . . . .                       | 106 |
| 3.5.6.1. | Marriages . . . . .                                                                              | 106 |
| 3.5.6.2. | Registered Partnerships . . . . .                                                                | 107 |
| 3.6.     | Interplay between Substantive Family Law and Private International<br>Law in Poland . . . . .    | 107 |
| 3.6.1.   | Same-Sex Couples under the Polish Substantive Law . . . . .                                      | 107 |
| 3.6.1.1. | The Concept of Marriage in Poland . . . . .                                                      | 107 |
| 3.6.1.2. | Exclusion of Same-Sex Couples in Polish Family<br>Law . . . . .                                  | 108 |
| 3.6.1.3. | (Non-Family) Rights to Same-Sex Couples<br>in Poland . . . . .                                   | 109 |
| 3.6.2.   | Private International Law in Poland . . . . .                                                    | 110 |
| 3.6.2.1. | Background . . . . .                                                                             | 110 |
| 3.6.2.2. | No Choice-of-Law Rules on Formalized Same-Sex<br>Relationships in Poland . . . . .               | 111 |

|                                                                                                                              |                                                                                                     |     |
|------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-----|
| 3.6.3.                                                                                                                       | Polish Choice-of-Law Rules on Marriage Validity.....                                                | 111 |
| 3.6.3.1.                                                                                                                     | Law Applicable to Formal Validity of Marriages.....                                                 | 111 |
| 3.6.3.2.                                                                                                                     | Law Applicable to Substantive Validity of Marriages<br>in Poland.....                               | 112 |
| 3.6.3.3.                                                                                                                     | Law Applicable to Registered Partnerships .....                                                     | 113 |
| 3.6.4.                                                                                                                       | Rule on <i>Ordre Public</i> .....                                                                   | 114 |
| 3.6.5.                                                                                                                       | Termination of Formalized Same-Sex Relationships<br>in Poland .....                                 | 115 |
| 3.6.5.1.                                                                                                                     | Marriages .....                                                                                     | 115 |
| 3.6.5.2.                                                                                                                     | Registered Partnerships .....                                                                       | 116 |
| 3.7.                                                                                                                         | Examples of Re-Interpretations of the <i>Ordre Public</i> vis-à-vis<br>Same-Sex Relationships ..... | 116 |
| 3.7.1.                                                                                                                       | A Stricter Re-Interpretation in Lithuania.....                                                      | 116 |
| 3.7.1.1.                                                                                                                     | Earlier Interpretation of <i>Ordre Public</i><br>by the Supreme Court.....                          | 116 |
| 3.7.1.2.                                                                                                                     | Re-Interpretation of the <i>Ordre Public</i> in Lithuania....                                       | 117 |
| 3.7.1.3.                                                                                                                     | The Forgotten Elements of the <i>Ordre Public</i> Analysis. .                                       | 119 |
| 3.7.2.                                                                                                                       | A Stricter Re-Interpretation in Poland .....                                                        | 120 |
| 3.7.2.1.                                                                                                                     | From Liberal to Strict Approach .....                                                               | 120 |
| 3.7.2.2.                                                                                                                     | The Formalist Argument .....                                                                        | 121 |
| 3.7.2.3.                                                                                                                     | The Heteronormative Argument.....                                                                   | 122 |
| 3.7.2.4.                                                                                                                     | Political – Institutional Reasons .....                                                             | 123 |
| 3.8.                                                                                                                         | Concluding Analysis .....                                                                           | 124 |
| 3.8.1.                                                                                                                       | General Rules on Marriage Validity in the Analysed States.....                                      | 124 |
| 3.8.2.                                                                                                                       | Validity of Registered Partnerships Concluded Abroad.....                                           | 125 |
| 3.8.3.                                                                                                                       | <i>Ordre Public</i> in Private International Law of the Analysed<br>States .....                    | 126 |
| 3.8.3.1.                                                                                                                     | Constitutional and Substantive Law in the Analysed<br>States .....                                  | 126 |
| 3.8.3.2.                                                                                                                     | The <i>Ordre Public</i> Safeguard .....                                                             | 126 |
| 3.8.3.3.                                                                                                                     | Emotional Re-Interpretation .....                                                                   | 127 |
| 3.8.4.                                                                                                                       | Termination of Formalized Same-Sex Status Acquired<br>Abroad.....                                   | 127 |
| <br>Chapter 4. Inclusion of Formalized Same-Sex Relationships into Civil<br>Registry and the Right to Enter and Reside ..... |                                                                                                     | 129 |
| 4.1.                                                                                                                         | Introduction to the Chapter.....                                                                    | 129 |
| 4.2.                                                                                                                         | The Interplay of the Chosen Topics with Private International Law ....                              | 129 |
| 4.2.1.                                                                                                                       | Why this Focus of Attention? .....                                                                  | 129 |
| 4.2.2.                                                                                                                       | The Role of Private International Law.....                                                          | 130 |
| 4.2.3.                                                                                                                       | Civil Registration of the Civil Status Acquired Abroad .....                                        | 131 |
| 4.2.4.                                                                                                                       | “Entry and Residence” with a Same-Sex Spouse or Partner.....                                        | 133 |

|          |                                                                                                       |     |
|----------|-------------------------------------------------------------------------------------------------------|-----|
| 4.3.     | Inclusion of Formalized Same-Sex Relationships into the Estonian Civil Registry .....                 | 134 |
| 4.3.1.   | Same-Sex Marriages Concluded Abroad .....                                                             | 134 |
| 4.3.1.1. | Inclusion of Marital Status into the Estonian Registry .....                                          | 134 |
| 4.3.1.2. | Inclusion of Status into Registry: In Practice and Literature .....                                   | 135 |
| 4.3.2.   | Lack of Registry of (Any) Registered Partnerships .....                                               | 137 |
| 4.4.     | Entry and Residence in Estonia with a Same-Sex Spouse or Partner. ....                                | 138 |
| 4.4.1.   | Entry and Residence with a Same-Sex Spouse .....                                                      | 138 |
| 4.4.2.   | Entry and Residence with Same-Sex Registered Partners .....                                           | 139 |
| 4.5.     | Inclusion of Formalized Same-Sex Relationships into the Latvian Civil Registry .....                  | 140 |
| 4.5.1.   | Inclusion of Same-Sex Marriage into the Latvian Civil Registry .....                                  | 140 |
| 4.5.2.   | Inclusion of Same-Sex Registered Partnerships into the Latvian Civil Registry .....                   | 141 |
| 4.6.     | Entry and Residence with a Same-Sex Spouse or Partner in Latvia. ....                                 | 141 |
| 4.6.1.   | Entry and Residence with a Same-Sex Spouse .....                                                      | 141 |
| 4.6.2.   | Entry and Residence with a Same-Sex Partner .....                                                     | 142 |
| 4.7.     | Inclusion of Formalized Same-Sex Relationships into the Lithuanian Civil Registry .....               | 144 |
| 4.7.1.   | Inclusion of Same-Sex Marriages Concluded Abroad into the Civil Registry .....                        | 144 |
| 4.7.1.1. | The Legal Provisions .....                                                                            | 144 |
| 4.7.1.2. | Critical Analysis .....                                                                               | 144 |
| 4.7.1.3. | A Reinterpretation of the Concept of Marriage is Due? .....                                           | 145 |
| 4.7.2.   | Inclusion of Same-Sex Partnerships Lawfully Concluded Abroad into the Lithuanian Civil Registry ..... | 146 |
| 4.8.     | Entry and Residence in Lithuania with a Same-Sex Spouse or Partner .....                              | 147 |
| 4.8.1.   | Entry and Residence with a Same-Sex Spouse .....                                                      | 147 |
| 4.8.2.   | Entry and Residence with Same-Sex Registered Partners .....                                           | 148 |
| 4.9.     | Inclusion of Formalized Same-Sex Relationships into the Polish Civil Registry .....                   | 149 |
| 4.9.1.   | Same-Sex Marriages Concluded Abroad .....                                                             | 149 |
| 4.9.1.1. | Civil Status in Polish Law .....                                                                      | 149 |
| 4.9.1.2. | Civil Status in Polish Literature and Practice .....                                                  | 150 |
| 4.9.2.   | Registered Partnerships Concluded Abroad .....                                                        | 152 |
| 4.10.    | Entry and Residence in Poland with a Same-Sex Spouse or Partner ....                                  | 153 |
| 4.10.1.  | Entry and Residence with a Same-Sex Spouse .....                                                      | 153 |
| 4.10.2.  | Entry and Residence with a Same-Sex Partner .....                                                     | 154 |

|                                                                                              |                                                                                                |     |
|----------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|-----|
| 4.11.                                                                                        | Concluding Analysis .....                                                                      | 154 |
| 4.11.1.                                                                                      | Inclusion of Formalized Same-Sex Relationships in the Registry .....                           | 154 |
| 4.11.2.                                                                                      | Entry and Residence with a Same-Sex Spouse or Partner .....                                    | 155 |
| 4.11.3.                                                                                      | Unpredictable Yet Decisive Normative Convictions? .....                                        | 156 |
| <br>PART III. THE EUROPEAN AND THE EU <i>ORDRE PUBLIC</i>                                    |                                                                                                |     |
| <br>Chapter 5. “For the Sole Purpose of” Approach to Formalized Same-Sex Relationships ..... |                                                                                                |     |
|                                                                                              |                                                                                                | 161 |
| 5.1.                                                                                         | Introduction to the Chapter .....                                                              | 161 |
| 5.1.1.                                                                                       | Two Examples: The Cases of <i>Coman</i> and <i>Orlandi</i> .....                               | 161 |
| 5.1.2.                                                                                       | “For the Sole Purpose of” Approach .....                                                       | 162 |
| 5.1.3.                                                                                       | The Impact Factor of the Case-Law .....                                                        | 163 |
| 5.1.4.                                                                                       | The Structure of the Chapter .....                                                             | 165 |
| 5.2.                                                                                         | The <i>Coman</i> Case: On the Right to Move Together with a Same-Sex Spouse or Partner. ....   | 165 |
| 5.2.1.                                                                                       | The Facts in the <i>Coman</i> Case .....                                                       | 165 |
| 5.2.2.                                                                                       | EU Secondary Law at Stake: Directive 2004/38/EC .....                                          | 166 |
| 5.2.3.                                                                                       | What the ECJ did not do .....                                                                  | 167 |
| 5.2.4.                                                                                       | A Set of (Quasi) Legal Tests .....                                                             | 168 |
| 5.2.4.1.                                                                                     | An Obstruction of Freedom of Movement? .....                                                   | 168 |
| 5.2.4.2.                                                                                     | Can a “Normal Family Life” Continue? .....                                                     | 169 |
| 5.2.4.3.                                                                                     | Did Either of the Spouses have a “Genuine Residence” in Another Member State? .....            | 170 |
| 5.2.5.                                                                                       | Public Policy Arguments .....                                                                  | 171 |
| 5.2.5.1.                                                                                     | “Objective Justifications” .....                                                               | 171 |
| 5.2.5.2.                                                                                     | “Genuine” and “Sufficiently Serious” Threat to the Fundamental Interests of Society .....      | 172 |
| 5.2.5.3.                                                                                     | The Ultimate (Formal) Test: Compatibility of the Justification with the EU Charter .....       | 174 |
| 5.3.                                                                                         | Outlook: Immigration Cases under the ECHR .....                                                | 175 |
| 5.3.1.                                                                                       | <i>Pajić v. Croatia</i> .....                                                                  | 175 |
| 5.3.2.                                                                                       | <i>Taddeucci and McCall v. Italy</i> .....                                                     | 176 |
| 5.3.3.                                                                                       | Evaluation of the ECtHR’s Case-Law on Immigration .....                                        | 176 |
| 5.3.3.1.                                                                                     | <i>De Facto</i> Same-Sex Relationships .....                                                   | 176 |
| 5.3.3.2.                                                                                     | Special Treatment of Same-Sex Relationships in Cross-Border Situations Must be Justified. .... | 177 |
| 5.4.                                                                                         | Inclusion of the Status into Civil Registry under the ECHR .....                               | 178 |
| 5.4.1.                                                                                       | Article 8 of the ECHR .....                                                                    | 178 |
| 5.4.2.                                                                                       | Protecting (Random) “Core Rights” of Same-Sex Couples .....                                    | 179 |
| 5.4.3.                                                                                       | Facts of the <i>Orlandi</i> Case .....                                                         | 181 |

|                                                                                                                         |                                                                                                  |     |
|-------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|-----|
| 5.4.4.                                                                                                                  | Refusing to Engage with Private International Law .....                                          | 182 |
| 5.4.5.                                                                                                                  | Margins of Appreciation .....                                                                    | 184 |
| 5.4.6.                                                                                                                  | Inaccurate Arithmetic of Consensus .....                                                         | 185 |
| 5.4.7.                                                                                                                  | No Justification for the Legal Vacuum .....                                                      | 186 |
| 5.4.8.                                                                                                                  | Not Symbolic but “Specific Legal Framework” .....                                                | 187 |
| 5.4.9.                                                                                                                  | Grievance by Non-Recognition of the Marriage Itself .....                                        | 188 |
| 5.5.                                                                                                                    | For the Purpose of “Acceptance” of Public Documents on Family Status .....                       | 190 |
| 5.6.                                                                                                                    | Conclusions .....                                                                                | 193 |
| 5.6.1.                                                                                                                  | “For the Sole Purpose of” .....                                                                  | 193 |
| 5.6.2.                                                                                                                  | The <i>Coman</i> Case .....                                                                      | 194 |
| 5.6.3.                                                                                                                  | The <i>Orlandi</i> Case .....                                                                    | 194 |
| 5.6.4.                                                                                                                  | Acceptance of Public Documents .....                                                             | 195 |
| <br>Chapter 6. Cross-Border Recognition of the Civil Status in Previous Case-Law of European Supranational Courts ..... |                                                                                                  | 197 |
| 6.1.                                                                                                                    | Introduction to the Chapter .....                                                                | 197 |
| 6.2.                                                                                                                    | EU Primary Law .....                                                                             | 198 |
| 6.2.1.                                                                                                                  | Constitutionalist and Internationalist Approaches .....                                          | 198 |
| 6.2.2.                                                                                                                  | EU Values, Mutual Trust and Mutual Recognition .....                                             | 199 |
| 6.2.3.                                                                                                                  | EU Primary Law at Stake .....                                                                    | 200 |
| 6.2.4.                                                                                                                  | “National Identity” as a Plural Concept .....                                                    | 201 |
| 6.2.5.                                                                                                                  | The Teleological Method and Beyond .....                                                         | 203 |
| 6.3.                                                                                                                    | Fundamental Rights under the ECHR: The Key Cases .....                                           | 204 |
| 6.3.1.                                                                                                                  | Fundamental Rights as the General Principles of EU Law .....                                     | 204 |
| 6.3.2.                                                                                                                  | Family Life: <i>Schalk and Kopf v. Austria</i> .....                                             | 204 |
| 6.3.3.                                                                                                                  | Unjustified Discrimination: <i>Vallianatos v. Greece</i> .....                                   | 205 |
| 6.3.4.                                                                                                                  | Implied Same-Sex Marriage: <i>Hämäläinen v. Finland</i> .....                                    | 207 |
| 6.3.5.                                                                                                                  | Note on the Key Cases under ECHR .....                                                           | 208 |
| 6.4.                                                                                                                    | Previous Case-Law of the ECJ on Cross-Border Recognition of Civil Status .....                   | 209 |
| 6.4.1.                                                                                                                  | <i>Konstantinidis</i> and <i>Dafeki</i> : The ECJ’s Early Cases on Mutual Recognition .....      | 209 |
| 6.4.2.                                                                                                                  | ECJ’s Case-Law on Cross-Border Recognition of Surnames and Parenthood under EU Primary Law ..... | 210 |
| 6.5.                                                                                                                    | Analysis of Justifications for Non-Recognition of a Civil Status under EU Primary Law .....      | 214 |
| 6.5.1.                                                                                                                  | Immutability and Continuity of Status .....                                                      | 214 |
| 6.5.2.                                                                                                                  | Equality before the Law .....                                                                    | 216 |
| 6.5.3.                                                                                                                  | Cultural Traditions and Language .....                                                           | 216 |
| 6.5.4.                                                                                                                  | Traditional Notions of Marriage and Parenthood .....                                             | 217 |

|                                                                                                                             |                                                                                                          |            |
|-----------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|------------|
| 6.6.                                                                                                                        | Previous Case-Law of the ECtHR on Cross-Border Recognition of a Civil Status.....                        | 218        |
| 6.7.                                                                                                                        | Analysis of Justifications for Non-Recognition of a Civil Status under the ECtHR.....                    | 224        |
| 6.7.1.                                                                                                                      | Justifications under Article 8 of the ECHR.....                                                          | 224        |
| 6.7.2.                                                                                                                      | Prevention of Disorder: Not Sufficient by Itself.....                                                    | 225        |
| 6.7.3.                                                                                                                      | Protection of the Traditional Family: Not Sufficient in Itself....                                       | 226        |
| 6.7.4.                                                                                                                      | “Living Together” as Human Beings and Member States.....                                                 | 227        |
| 6.7.5.                                                                                                                      | Abuse of Rights: Exceptional Cases not Related to Sex of Spouses .....                                   | 230        |
| 6.7.6.                                                                                                                      | Rights of (Specific) Others: Might be Relevant in the Future ...                                         | 231        |
| 6.8.                                                                                                                        | How Significant are the EU Charter and EU Values?.....                                                   | 233        |
| 6.8.1.                                                                                                                      | EU Charter as the Instrument for Filtering Justifications.....                                           | 233        |
| 6.8.2.                                                                                                                      | Internationalist View of the EU Charter.....                                                             | 234        |
| 6.8.3.                                                                                                                      | Fundamental Commitment to Respect EU Values .....                                                        | 236        |
| 6.8.4.                                                                                                                      | The Ultimate (Substantive) Test: The Meaning of Equality and Non-Discrimination.....                     | 237        |
| 6.8.5.                                                                                                                      | Statuses Formalized in Evasion .....                                                                     | 239        |
| 6.9.                                                                                                                        | Conclusions .....                                                                                        | 241        |
| <br><b>Chapter 7. Supranational European Law of the Future: Cross-Border Recognition of Same-Sex Marriages in Full.....</b> |                                                                                                          | <b>243</b> |
| 7.1.                                                                                                                        | Introduction: Why Recognize a Civil Status in Full? .....                                                | 243        |
| 7.2.                                                                                                                        | Same-Sex Marriages under European Supranational Law: Cross-Border Recognition of the Status in Full..... | 244        |
| 7.2.1.                                                                                                                      | Cross-Border Recognition of Same-Sex Marriages: Future Directions under EU Primary Law .....             | 244        |
| 7.2.1.1.                                                                                                                    | “Covered by Union Law” and “Implementing Union Law”.....                                                 | 244        |
| 7.2.1.2.                                                                                                                    | Article 21 TFEU: Free Movement with the Spouse or Registered Partner.....                                | 245        |
| 7.2.1.3.                                                                                                                    | Free Movement for Nationals of Baltic States and Poland .....                                            | 247        |
| 7.2.1.4.                                                                                                                    | Article 9 of the EU Charter .....                                                                        | 248        |
| 7.2.1.5.                                                                                                                    | Article 21 of the Charter.....                                                                           | 248        |
| 7.2.2.                                                                                                                      | Cross-Border Recognition of Same-Sex Marriages: Future Directions under the ECHR.....                    | 251        |
| 7.2.2.1.                                                                                                                    | Article 12 (Right to Marry) of the ECHR.....                                                             | 251        |
| 7.2.2.2.                                                                                                                    | In Combination with Article 14 (Non-Discrimination).....                                                 | 253        |
| 7.2.2.3.                                                                                                                    | Article 8 (Possibly in Combination with Article 14) of the ECHR.....                                     | 255        |

|          |                                                                                                                                             |     |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 7.2.2.4. | Consensus Analysis in Cross-Border Situations . . . . .                                                                                     | 256 |
| 7.2.2.5. | Positive or Negative Obligations in Cross-Border Situations. . . . .                                                                        | 257 |
| 7.2.2.6. | The Ultimate Test for the Future: The Social Function of Same-Sex Marriages. . . . .                                                        | 258 |
| 7.3.     | Same-Sex Registered Partnerships under European Supranational Law: Cross-Border Recognition in Full . . . . .                               | 260 |
| 7.3.1.   | Unclear Status of the Registered Partnerships under the EU Charter and ECHR. . . . .                                                        | 260 |
| 7.3.2.   | Non-Recognition of Registered Partnership as a Status could Obstruct the Essence of Rights . . . . .                                        | 261 |
| 7.3.3.   | Non-Recognition of the Status of “Registered Partner” Lawfully Acquired Abroad as an Obstruction to Freedom of Movement in the EU . . . . . | 261 |
| 7.3.3.1. | The Host Country Principle in EU Directive 2004/38/EC . . . . .                                                                             | 261 |
| 7.3.3.2. | Primary EU Law: Effectiveness of the Freedom of Movement Rights . . . . .                                                                   | 263 |
| 7.3.3.3. | What is a “Normal Family Life” without the Registered Partner? . . . . .                                                                    | 264 |
| 7.3.4.   | Discrimination of Same-Sex Registered Partners under EU Law . . . . .                                                                       | 265 |
| 7.3.4.1. | Early Cases on Registered Same-Sex Partnerships: Not Equivalent to Marriage . . . . .                                                       | 265 |
| 7.3.4.2. | Discrimination of Registered Partners . . . . .                                                                                             | 265 |
| 7.3.4.3. | Note on Discrimination of Same-Sex Registered Partners in Cross-Border Settings . . . . .                                                   | 266 |
| 7.4.     | Dissolution of Same-Sex Marriages as a “Whole Status” Approach . . . . .                                                                    | 267 |
| 7.4.1.   | Why a “Whole Status” Approach in Matrimonial Matters? . . . . .                                                                             | 267 |
| 7.4.2.   | Towards an Autonomous Interpretation of “Spouses” under EU Law: What are the Key Conditions for Autonomous Interpretation? . . . . .        | 267 |
| 7.4.3.   | Brussels II bis Regulation . . . . .                                                                                                        | 268 |
| 7.4.4.   | Rome III Regulation . . . . .                                                                                                               | 273 |
| 7.4.4.1. | Background: All Cooperation is for the Best? . . . . .                                                                                      | 273 |
| 7.4.4.2. | Rome III Cannot Render Brussels II bis Partially Ineffective . . . . .                                                                      | 274 |
| 7.4.4.3. | Rome III in Relation to Primary Law . . . . .                                                                                               | 275 |
| 7.4.5.   | Note on Cross-Border Recognition of Divorce Judgments . . . . .                                                                             | 276 |

|          |                                                                                                        |     |
|----------|--------------------------------------------------------------------------------------------------------|-----|
| 7.4.6.   | Dissolution of Formalized Same-Sex Relationships under the ECHR .....                                  | 277 |
| 7.4.6.1. | Article 6. ....                                                                                        | 277 |
| 7.4.6.2. | Article 8 of the ECHR. ....                                                                            | 278 |
| 7.4.7.   | Dissolution of Same-Sex Marriages under the ICCPR: The Issue under Prohibition of Discrimination ..... | 279 |
| 7.5.     | Conclusion .....                                                                                       | 281 |

## Chapter 8. International Treaties on Cross-Border Recognition of Marriages and Partnerships ..... 283

|          |                                                                                                     |     |
|----------|-----------------------------------------------------------------------------------------------------|-----|
| 8.1.     | Introduction .....                                                                                  | 283 |
| 8.2.     | The Importance of Treaties on Cross-Border Recognition of Civil Status .....                        | 283 |
| 8.2.1.   | Treaties as Useful Examples .....                                                                   | 283 |
| 8.2.2.   | The EU's External Competence is Exclusive. ....                                                     | 285 |
| 8.3.     | The "Old" Hague Conventions. ....                                                                   | 287 |
| 8.4.     | Treaties on Recognition of Marriages and Registered Partnerships. ....                              | 288 |
| 8.4.1.   | Hague Marriage Convention (1978) .....                                                              | 288 |
| 8.4.2.   | ICCS Conventions on Recognition of Matrimonial Bond (1967) and Registered Partnerships (2007). .... | 290 |
| 8.4.3.   | Conventions on Legal Assistance. ....                                                               | 291 |
| 8.4.3.1. | Conventions of the Analysed States .....                                                            | 291 |
| 8.4.3.2. | Conventions as Living Instruments .....                                                             | 292 |
| 8.5.     | Treaties Relevant for Effects of Marriages .....                                                    | 294 |
| 8.5.1.   | Multilateral Treaties on Effects of Marriages .....                                                 | 294 |
| 8.5.2.   | Bilateral Agreements .....                                                                          | 295 |
| 8.6.     | Other Important International Sources .....                                                         | 296 |
| 8.7.     | Concluding Remarks. ....                                                                            | 297 |

## PART IV. LEGAL EFFECTS OF FORMALIZED SAME-SEX RELATIONSHIPS: NATIONAL AND SUPRANATIONAL LAW

### Chapter 9. Granting Formalized Same-Sex Relationships Certain Legal Effects in Family Law and Beyond: Recognition in Part under Supranational European Law ..... 301

|        |                                                                                                     |     |
|--------|-----------------------------------------------------------------------------------------------------|-----|
| 9.1.   | Introduction to the Chapter. ....                                                                   | 301 |
| 9.2.   | Cross-Border Recognition of Legal Effects in Different Situations .....                             | 301 |
| 9.2.1. | If the Civil Status as Such is Recognized in Full. ....                                             | 301 |
| 9.2.2. | Granting a Certain Legal Effect: Recognition in Part .....                                          | 302 |
| 9.3.   | Granting Certain Legal Effects of Same-Sex Marriages and Registered Partnerships under EU Law ..... | 303 |

|          |                                                                                                      |     |
|----------|------------------------------------------------------------------------------------------------------|-----|
| 9.3.1.   | EU Primary Law .....                                                                                 | 303 |
| 9.3.2.   | EU Regulations on Private International Law .....                                                    | 304 |
| 9.4.     | Granting Certain Legal Effects to Same-Sex Marriages or Registered Partnerships under the ECHR ..... | 306 |
| 9.4.1.   | Generally, on the Legal Consequences of Formalized Relationships .....                               | 306 |
| 9.4.2.   | Rights Related to Succession under the ECHR .....                                                    | 307 |
| 9.4.2.1. | Previous Case-Law of the Court .....                                                                 | 307 |
| 9.4.2.2. | <i>A.M. v. Poland</i> (Pending) .....                                                                | 309 |
| 9.4.2.3. | <i>P.B. and J.S. v. Austria</i> and <i>J.M. v. the United Kingdom</i> .....                          | 310 |
| 9.4.2.4. | Global Examples .....                                                                                | 310 |
| 9.4.2.5. | Suggested Interpretation .....                                                                       | 310 |
| 9.4.3.   | Financial Consequences of Marriages under the ECHR .....                                             | 311 |
| 9.4.3.1. | Previous Cases .....                                                                                 | 311 |
| 9.4.3.2. | Suggested Interpretation .....                                                                       | 312 |
| 9.5.     | The Example of Request for Maintenance to a Spouse or Partner in Need .....                          | 313 |
| 9.5.1.   | Maintenance Regulation .....                                                                         | 313 |
| 9.5.2.   | The Hague Protocol on Maintenance .....                                                              | 314 |
| 9.5.3.   | The Hague Convention on Maintenance .....                                                            | 316 |
| 9.5.4.   | Note on Cross-Border Recognition of Maintenance Decisions .....                                      | 316 |
| 9.6.     | The Example of Succession Following the Death of a Same-Sex Spouse .....                             | 317 |
| 9.6.1.   | Scope of Applicability of the Succession Regulation .....                                            | 317 |
| 9.6.2.   | Jurisdiction under the Succession Regulation .....                                                   | 319 |
| 9.6.3.   | Applicable Law under Succession Regulation .....                                                     | 321 |
| 9.6.4.   | Formal and Substantive Validity of the Will .....                                                    | 323 |
| 9.6.5.   | The Incidental Question under Succession Regulation .....                                            | 324 |
| 9.6.6.   | Note on Cross-Border Recognition of Decisions on Succession ...                                      | 325 |
| 9.7.     | The Example of Dividing the Matrimonial Property and Registered Partnerships' Property .....         | 325 |
| 9.7.1.   | Matrimonial and Registered Partnerships' Property Regulations .....                                  | 326 |
| 9.7.1.1. | Applicability of the Regulations .....                                                               | 326 |
| 9.7.1.2. | Back to Two Separate Institutes? .....                                                               | 326 |
| 9.7.2.   | Applying Brussels I bis in Relation to Property Acquired in Formalized Same-Sex Relationships .....  | 327 |
| 9.7.3.   | Note on Cross-Border Recognition of Decisions on Property Consequences .....                         | 329 |
| 9.8.     | Concluding Remarks .....                                                                             | 329 |

|                                                                                                                 |            |
|-----------------------------------------------------------------------------------------------------------------|------------|
| <b>Chapter 10. Granting Formalized Same-Sex Relationship Effects<br/>in Family Law and Beyond: National Law</b> | <b>331</b> |
| 10.1. Introduction to the Chapter                                                                               | 331        |
| 10.2. Notaries and Courts                                                                                       | 332        |
| 10.3. Legal Effects of Family Civil Status in Estonia                                                           | 333        |
| 10.3.1. General Consequences of Status in Estonia                                                               | 333        |
| 10.3.1.1. General Consequences of Marriage                                                                      | 333        |
| 10.3.1.2. Consequences of Registered Partnership                                                                | 334        |
| 10.3.1.3. Qualification of Effects of Registered Partnership<br>in Estonia                                      | 334        |
| 10.3.2. Property Consequences of Marriage or Registered<br>Partnership                                          | 335        |
| 10.3.2.1. Matrimonial Property                                                                                  | 335        |
| 10.3.2.2. Property Consequences of Registered<br>Partnerships                                                   | 335        |
| 10.3.3. Maintenance between Spouses and Registered Partners                                                     | 336        |
| 10.3.3.1. Spousal Maintenance of Same-Sex Spouses                                                               | 336        |
| 10.3.3.2. Maintenance of Same-Sex Registered Partners                                                           | 337        |
| 10.3.4. Succession in Estonia                                                                                   | 337        |
| 10.3.4.1. Succession after Same-Sex Spouses                                                                     | 337        |
| 10.3.4.2. Succession after Registered Partners                                                                  | 338        |
| 10.4. Legal Effects of Family Civil Status in Latvia                                                            | 338        |
| 10.4.1. General Consequences of Formalized Same-Sex Family<br>Relationships in Latvia                           | 338        |
| 10.4.2. Succession after a Formalized Same-Sex Relationship<br>in Latvia                                        | 339        |
| 10.4.2.1. Succession after Same-Sex Spouses                                                                     | 339        |
| 10.4.2.2. Succession after Registered Partners                                                                  | 339        |
| 10.4.3. Maintenance between Former Spouses and Registered<br>Partners                                           | 340        |
| 10.4.3.1. Spousal Maintenance                                                                                   | 340        |
| 10.4.3.2. Maintenance Effects of the Registered Partnership                                                     | 341        |
| 10.4.4. Property Consequences of Marriage or Registered<br>Partnership                                          | 341        |
| 10.4.4.1. Matrimonial Property                                                                                  | 341        |
| 10.4.4.2. Registered Partnership                                                                                | 342        |
| 10.5. Legal Effects of Family Civil Status in Lithuania                                                         | 343        |
| 10.5.1. Property Consequences of Marriage or Registered<br>Partnership                                          | 343        |
| 10.5.1.1. Matrimonial Property                                                                                  | 343        |
| 10.5.1.2. Registered Partnership                                                                                | 344        |

|                                                                           |     |
|---------------------------------------------------------------------------|-----|
| 10.5.2. Maintenance between Spouses and Registered Partners . . . . .     | 344 |
| 10.5.2.1. Spousal Maintenance in Lithuania . . . . .                      | 344 |
| 10.5.2.2. Maintenance of a Registered Partner in Lithuania . . . .        | 345 |
| 10.5.3. Succession under Private International Law in Lithuania . . . . . | 345 |
| 10.5.3.1. Succession after Same-Sex Spouses in Lithuania. . . . .         | 345 |
| 10.5.3.2. Succession after Registered Partners. . . . .                   | 346 |
| 10.6. Legal Effects of Family Civil Status in Poland . . . . .            | 346 |
| 10.6.1. Property Consequences of Marriage or Registered Partnership. . .  | 346 |
| 10.6.1.1. Main Choice-of-Law Rules on Matrimonial Property. . .           | 346 |
| 10.6.1.2. Closest Connection Rule . . . . .                               | 347 |
| 10.6.2. Post-Divorce Spousal Maintenance. . . . .                         | 348 |
| 10.6.3. Succession under Private International Law in Poland. . . . .     | 349 |
| 10.6.3.1. Succession after a Same-Sex Spouse . . . . .                    | 349 |
| 10.6.3.2. Succession after a Same-Sex Registered Partner . . . . .        | 350 |
| 10.7. Conclusions . . . . .                                               | 350 |

## PART V. LAW IN CONTEXT

|                                                                                                           |            |
|-----------------------------------------------------------------------------------------------------------|------------|
| <b>Chapter 11. Private International Law in Context . . . . .</b>                                         | <b>355</b> |
| 11.1. Introduction to the Chapter. . . . .                                                                | 355        |
| 11.2. “Rules” and “Approaches” . . . . .                                                                  | 355        |
| 11.3. A Holistic Approach to Justice. . . . .                                                             | 356        |
| 11.4. Confluence of the “Public” and the “Private” . . . . .                                              | 357        |
| 11.5. Values in Private International Law . . . . .                                                       | 357        |
| 11.6. <i>Ordre Public</i> in Context: Fluid, Intuitive, and Emotional . . . . .                           | 359        |
| 11.7. Gender and Populism in Private International Law . . . . .                                          | 359        |
| 11.8. Concluding Remarks. . . . .                                                                         | 361        |
| <b>Chapter 12. Contextualizing Social and Legal Developments in the Baltic States and Poland. . . . .</b> | <b>363</b> |
| 12.1. Introduction to the Chapter. . . . .                                                                | 363        |
| 12.2. Exploring the National Contexts of Law . . . . .                                                    | 363        |
| 12.2.1. Understanding the Post-Communist Systems . . . . .                                                | 363        |
| 12.2.2. Formalism and Technocracy in Law . . . . .                                                        | 365        |
| 12.2.3. Ideological Style in Politics . . . . .                                                           | 366        |
| 12.2.4. Flexible Interpretation v. Formalist Interpretation . . . . .                                     | 367        |
| 12.2.5. The Role of International Law . . . . .                                                           | 367        |
| 12.3. Nationalism . . . . .                                                                               | 368        |
| 12.3.1. Rise of Official Nationalisms and Exceptionalisms . . . . .                                       | 368        |
| 12.3.2. The Problem with the Rule of Law in Poland. . . . .                                               | 370        |
| 12.3.3. Declining Populations . . . . .                                                                   | 372        |

|                                                                                                          |     |
|----------------------------------------------------------------------------------------------------------|-----|
| 12.4. Deep Cultural Traumas.....                                                                         | 373 |
| 12.4.1. Occupations, Genocides and “Equality” by Oppression.....                                         | 373 |
| 12.4.2. Longing for the National Identity .....                                                          | 375 |
| 12.4.3. Bold-Line Policies on Forgetting .....                                                           | 376 |
| 12.4.4. A Search for New Values: Survival, Religion and Men.....                                         | 377 |
| 12.4.5. New “Threats” of Internationalism and Gender Equality.....                                       | 379 |
| 12.5. Borrowing from Russia: “Survival of the State Depends on Cleansing<br>it from Homosexuality” ..... | 382 |
| 12.5.1. Transnational Anti-LGBT Movement.....                                                            | 382 |
| 12.5.2. The Impact of Russia in the Region.....                                                          | 383 |
| 12.5.3. Europe as “Gayropa” .....                                                                        | 384 |
| 12.5.4. Same-Sex Marriages in Russian Private International Law .....                                    | 385 |
| 12.5.5. Amendments of the Constitution of Russia in 2020 .....                                           | 388 |
| 12.5.6. Ban of “Homosexual Propaganda”.....                                                              | 389 |
| 12.6. The Baltic States and Poland: Both Homogenous and Diverse Societies .....                          | 391 |
| 12.6.1. Who Gets to be a Citizen?.....                                                                   | 391 |
| 12.6.1.1. Soviet-Era Settlers in the Baltic States.....                                                  | 391 |
| 12.6.1.2. “Non-Citizenship” .....                                                                        | 392 |
| 12.6.1.3. Dual Citizenship .....                                                                         | 393 |
| 12.6.2. Ethnic and Religious Composition of the Analysed States.....                                     | 394 |
| 12.6.2.1. Estonia.....                                                                                   | 394 |
| 12.6.2.2. Latvia.....                                                                                    | 395 |
| 12.6.2.3. Lithuania.....                                                                                 | 396 |
| 12.6.2.4. Poland .....                                                                                   | 397 |
| 12.6.3. Views on Same-Sex Relationships .....                                                            | 398 |
| 12.7. Polarization within the Branches of State Power.....                                               | 400 |
| 12.7.1. Gender Equality v. Traditional Gender Roles.....                                                 | 400 |
| 12.7.2. Elected Politicians v. Legal Professionals .....                                                 | 401 |
| 12.8. Conclusions .....                                                                                  | 404 |
| <br>Chapter 13. Protection against and Re-Cognition of “Foreign” Realities....                           | 407 |
| 13.1. Introduction .....                                                                                 | 407 |
| 13.1.1. Realities of Human Beings: Whose Sensitivity?.....                                               | 407 |
| 13.1.2. Concept of Re-Cognition .....                                                                    | 407 |
| 13.2. What Happens with or without “Re-Cognition”?.....                                                  | 408 |
| 13.2.1. Significance of the Political “Re-Cognition”.....                                                | 408 |
| 13.2.2. Psycho-Medical Aspects of “Re-Cognition”.....                                                    | 409 |
| 13.2.3. The Meaning of “Non-Humanity” or “Inexistence” .....                                             | 410 |
| 13.2.4. The Meaning of the “Social Function” of Formalized<br>Same-Sex Relationships.....                | 412 |

|                                                                                                                                            |     |
|--------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 13.3. Realities of “Re-Cognition” under the European <i>Ordre Public</i> . . . . .                                                         | 413 |
| 13.3.1. Social Realities of Same-Sex Relationships under the ECHR . . .                                                                    | 413 |
| 13.3.1.1. Frustrated Realities: “What’s Love Got to Do<br>With This” . . . . .                                                             | 413 |
| 13.3.1.2. Reproduction of Normativity . . . . .                                                                                            | 415 |
| 13.3.2. Social Realities of Same-Sex Relationships under EU Law . . . .                                                                    | 417 |
| 13.3.2.1. “Normal” for the Sole Purpose of Residence<br>Permits? . . . . .                                                                 | 417 |
| 13.3.2.2. “All are Equal but” Privileges May Apply . . . . .                                                                               | 418 |
| 13.3.2.3. Intersectionality . . . . .                                                                                                      | 419 |
| 13.4. Suggestions of Ethical Stances on <i>Ordre Public</i> vis-à-vis Formalized<br>Same-Sex Couples’ Statuses . . . . .                   | 420 |
| 13.4.1. Thick Veil of “As If” Neutrality . . . . .                                                                                         | 420 |
| 13.4.2. Search for Virtues in Private International Law . . . . .                                                                          | 421 |
| 13.5. Concluding Remarks on Re-Cognition . . . . .                                                                                         | 422 |
| <br>Chapter 14. Conclusions . . . . .                                                                                                      | 425 |
| 14.1. Cross-Border Recognition of Formalized Same-Sex Relationships:<br>Choice-of-Law Method Remains Relevant . . . . .                    | 425 |
| 14.2. Substantive Validity of Legally Concluded Same-Sex Family Relationships<br>in the Baltic States and Poland . . . . .                 | 426 |
| 14.2.1. Formalist and Technocratic Approach to Law in Ideological<br>Political Contexts . . . . .                                          | 426 |
| 14.2.2. Different Private International Law Solutions . . . . .                                                                            | 427 |
| 14.2.3. Cross-Border Recognition of Formalized Same-Sex<br>Relationships is not against the Law in Any of the<br>Analysed States . . . . . | 428 |
| 14.2.4. Differences in Strength of “Anti-Homosexual” Policies<br>in the Baltic States and Poland . . . . .                                 | 429 |
| 14.3. The Suggested Approach in Europe . . . . .                                                                                           | 430 |
| 14.3.1. Significance of Private International Law . . . . .                                                                                | 430 |
| 14.3.2. “Whole Status” Approach: Recognition in Full . . . . .                                                                             | 431 |
| 14.3.3. Recognition in Part for the Purposes of Legal Effects . . . . .                                                                    | 431 |
| 14.4. <i>Ordre Public</i> in Context . . . . .                                                                                             | 432 |
| 14.4.1. A Holistic <i>Ordre Public</i> is Emerging . . . . .                                                                               | 432 |
| 14.4.2. The National Political Context: Making the Status Limp . . . . .                                                                   | 433 |
| 14.4.3. The European Context: Scrutinizing the National Justification . . .                                                                | 433 |
| 14.4.4. The Human Context: Law as a Tool for Re-Cognition . . . . .                                                                        | 435 |
| <br><i>Bibliography</i> . . . . .                                                                                                          | 437 |
| <i>Index</i> . . . . .                                                                                                                     | 461 |