Contents

Pr	etace			VII		
		Cases		$\mathbf{x}\mathbf{v}$		
		Legis		XXV		
Ta	ble of	Conv	entions, Treaties, etc	XXXIX		
1	Intr	oductio	on and the same of	1		
	1.1	The C	Concept, Nature and Development of Private International Law	1		
		Sources of Private International Law				
			Processes of PIL, and Standard 'Connecting Factors'	3		
			Procedural issues	3		
		1.3.2	Application of the law	4		
			1.3.2.1 Characterisation [qualification FR] of the legal question	5		
			1.3.2.2 Connecting Factor	5		
			1.3.2.3 Lex Causae	5		
	1.4	Chara	cterisation, Renvoi and the 'incidental' issue or Vorfrage	5		
	1.5	Forum	n shopping and forum non conveniens	8		
	1.6	The Impact of European Law on the Private International Law of the				
		Member States				
		1.6.1	Legal basis	9		
		1.6.2	The Development of European Private International Law Policy	13		
2	The	Core	of European Private International Law: Jurisdiction	19		
	2.1					
		2.1.1	The Brussels I Regulation	19		
		2.1.2	Scope of Application: Subject-Matter	21		
		2.1.3	Scope of Application – Ratione Personae	22		
		2.1.4	The Jurisdictional Rules of the Regulation	23		
	2.2	Detailed Review of the Regulation				
		2.2.1	Trust is Good, Control is Better	24		
		2.2.2	Scope of application: subject-matter.	25		
			2.2.2.1 The existence of an international element	25		
			2.2.2.2 Civil and commercial matters	27		
			2.2.2.3 Case 29/76 Eurocontrol	28		
			2.2.2.4 Case 814/79 Ruffer	29		
			2.2.2.5 Case C-271/00 Gemeente Steenbergen	29		
			2.2.2.6 Case C-292/05 Lechouritou	31		

	2.2.2.7	Exclusions, inter alia arbitration	32	
2.2.3	Scope o	f application - Ratione Personae	41	
	2.2.3.1	Domicile	41	
2.2.4	The Inte	ernational Impact of the Regulation	44	
2.2.5	The Juri	isdictional Rules of the Regulation	51	
	2.2.5.1	A jurisdictional matrix	51	
2.2.6	Exclusiv	ve Jurisdiction, Regardless of Domicile: Article 22	51	
2.2.7	Jurisdic	tion by appearance: Article 24	60	
2.2.8	Insuranc	ce, consumer and employment contracts: Articles 8-21	61	
	2.2.8.1	Protected categories - Generally	61	
	2.2.8.2	Consumer contracts	62	
	2.2.8.3	Contract	63	
	2.2.8.4	Consumer contract	64	
	2.2.8.5	Concluded with a consumer	64	
	2.2.8.6	Type of contract – and application in an internet context	65	
	2.2.8.7	Extended notion of 'domicile' for jurisdiction over		
		consumer contracts	72	
	2.2.8.8	Alternative fora introduced by agreement	72	
	2.2.8.9	Contracts for individual employment	74	
	2.2.8.10	Insurance Contracts	76	
2.2.9	_	ents on Jurisdiction ('choice of forum' or 'prorogation of tion'): Article 23	77	
	2.2.9.1	'In writing or evidenced in writing'	81	
	2.2.9.2	In a form which accords with practices which the parties have established between themselves	82	
	2.2.9.3	In international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned		
2.2.10	2.2.10 General Jurisdiction: Defendants Domiciled in a Member State Where a Court is Seized: Article 2			
2.2.11	-	l' Jurisdiction: Defendants Domiciled in Another Member Articles 5–7	86	
	2.2.11.1	Article 5(1): Actions Relating to a Contract – Forum Contractus	86	
	2.2.11.2	2 The Special Jurisdictional Rule for Tort: Article 5(3) JR – Forum delicti commissi	92	
2.2.12	Multipa	artite Litigation and Consolidated Claims: Articles 6 (and 7)	99	
	•	Multiple Defendants: Article 6(1)	100	
	2.2.12.1	Multiple Defendants: Article 6(1)	1	

Contents xi

			2.2.12.2 Warranties, Guarantees and any other Third Party			
			Proceedings: Article 6(2)	103		
			2.2.12.3 Counterclaims: Article 6(3)	103		
			2.2.12.4 Matters Relating to Rights in Rem in Immovable Property:			
			Article 6(4)	104		
		2.2.13	'Residual' Jurisdiction: Defendants not Domiciled in any Member	104		
		2 2 14	State: Article 4	104		
		2.2.14	Loss of Jurisdiction: <i>lis alibi pendens</i> ; and Related Actions: Articles 27–30	105		
			2.2.14.1 Lis alibi pendens	106		
			2.2.14.2 Identity of Parties	106		
			2.2.14.3 Identity of Object or 'Subject-Matter'	107		
			2.2.14.4 Identity of Cause of Action	107		
			2.2.14.5 Lis alibi pendens and the Forum Non Conveniens doctrine	107		
			2.2.14.6 Related Actions	111		
		2.2.15	Applications for Provisional or Protective Measures: Article 31	112		
		2.2.16	Recognition and Enforcement	115		
			2.2.16.1 Recognition	116		
			2.2.16.2 Enforcement	122		
3	The	Core o	of European Private International Law: Applicable Law –			
		tracts	Participation of the contract	125		
	3.1	Summ	ary	125		
		3.1.1	Principles	125		
		3.1.2	Scope of application	126		
		3.1.3	Basic principle: Freedom of choice	126		
		3.1.4	Applicable law in the absence of choice	126		
	3.2	Detailed review of the Regulation		127		
		3.2.1	Scope of application	127		
		3.2.2	Exclusions	129		
		3.2.3	Universal Application	131		
		3.2.4	Freedom of Choice	131		
		3.2.5	Protected Categories	134		
		3.2.6	Applicable Law in the Absence of Choice	135		
		3.2.7	Formal Validity, Consent and Capacity	139		
		3.2.8	Mandatory Law, and Public Order	142		
		3.2.9	The Relationship with Other Conventions	149		
4	The	Core	of European Private International Law: Applicable Law – Tort	151		
	4.1	4.1 Introduction				
	4.2	4.2 General Principles				

xii

	4.3	Scope	of Application	154			
		4.3.1	'Situations Involving a Conflict of Laws'	154			
		4.3.2	Only Courts and Tribunals? Application to Arbitration Tribunals	155			
		4.3.3	'Non-Contractual Obligations'	155			
		4.3.4	Excluded Matters	157			
		4.3.5	Civil and Commercial Matters	163			
	4.4	Applie	cable Law - General Rule: Lex loci damni	163			
	4.5	One General Exception to the General Rule and one Escape Clause					
		4.5.1	General Exception: Parties Habitually Resident in the Same Country	165			
		4.5.2	Escape Clause: Case Manifestly More Closely Connected with Other Country	165			
	4.6	Specif	fic Choice of Law Rules for Specific Torts - No Specific				
		Rules for 'Protected Categories'					
		4.6.1	Product Liability	166			
		4.6.2	Unfair Competition and Acts Restricting Free Competition	170			
		4.6.3	Environmental Damage	172			
		4.6.4	Damage Caused by Infringement of Intellectual Property Rights	174			
		4.6.5	Damage Caused by Industrial Action	175			
	4.7	Freedom to Choose Applicable Law					
	4.8	Scope	Scope of the Law Applicable				
	4.9	Contract-Related Tort Claims					
	4.10	'Over	riding' Mandatory Law and Public Order	181			
5	The	Insolv	ency Regulation	183			
	5.1	The o	verall nature of and core				
		approaches to insolvency and private international law					
	5.2	2 Genesis of the Insolvency Regulation					
	5.3	Scope	e of application and overall aim	185			
		5.3.1	Link with the 'bankruptcy' exception under the Jurisdiction	101			
			Regulation	185			
		5.3.2	Four cumulative conditions	188			
			5.3.2.1 Collective proceedings	188			
			5.3.2.2 Based on the debtor's insolvency	188			
			5.3.2.3 Which entail the partial or total divestment of a debtor	189			
			5.3.2.4 Which entail the appointment of a 'liquidator'	189			
			Opening by a 'court' or judicial authority?	189			
			Core aim of the Regulation	190			
	5.5	The jurisdictional model: Universal jurisdiction based on COMI, alongside limited territorial procedures					

• •
X11

	5.5.1 Main incolvenous proposadinas Contro of Main Interest COMI	102			
	5.5.1 Main insolvency proceeding: Centre of Main Interest – COMI	193			
		193			
	•	194			
	Member State	197			
	5.5.1.4 When is an insolvency procedure 'opened' within the				
	meaning of the Regulation?	198			
	5.5.2 Secondary and territorial insolvency proceedings	199			
	5.5.2.1 Territorial insolvency proceedings	200			
	5.5.2.2 Secondary insolvency proceedings	201			
5.6	Applicable law	201			
	5.6.1 Exceptions	202			
5.7	Recognition and enforcement of insolvency proceedings	204			
	5.7.1 Judgments concerning the opening of insolvency proceedings	205			
	5.7.2 Other judgments in the course of insolvency proceedings	206			
	5.7.3 Defences against recognition and enforcement	206			
5.8	Powers of the liquidator	207			
5.9	Future amendment of the Regulation	207			
Free	ree Movement of Establishment. Lex Societatis and Private International				
_		211			
6.1	Daily Mail	215			
6.2	Centros	217			
6.3	Überseering	218			
6.4	Inspire Art	219			
6.5	Cartesio – and its mirror image: Vale	221			
6.6	Grid Indus	223			
Priv	ate International Law, Corporate Social Responsibility and				
		227			
7.1	The role of Private International Law in operationalizing Corporate				
	Social Responsibility	227			
7.2	The United States: Litigation Based on The Alien Tort Statute	228			
	7.2.1 Corporate Liability under ATS	230			
	7.2.2 Standard Operating Procedure or a Lack Thereof	232			
	7.2.3 International or Domestic Law	232			
	7.2.4 Obstacles to Justice	234			
	7.2.4 Obstacles to Justice 7.2.4.1 Procedural Dismissal	234234			
	7.2.4.1 Procedural Dismissal	234			
	5.7 5.8 5.9 Free Law 6.1 6.2 6.3 6.4 6.5 6.6 Privalente 7.1	5.5.1.4 When is an insolvency procedure 'opened' within the meaning of the Regulation? 5.5.2 Secondary and territorial insolvency proceedings 5.5.2.1 Territorial insolvency proceedings 5.5.2.2 Secondary insolvency proceedings 5.6.4 Applicable law 5.6.1 Exceptions 5.7 Recognition and enforcement of insolvency proceedings 5.7.1 Judgments concerning the opening of insolvency proceedings 5.7.2 Other judgments in the course of insolvency proceedings 5.7.3 Defences against recognition and enforcement 5.8 Powers of the liquidator 5.9 Future amendment of the Regulation Free Movement of Establishment, Lex Societatis and Private International Law 6.1 Daily Mail 6.2 Centros 6.3 Überseering 6.4 Inspire Art 6.5 Cartesio – and its mirror image: Vale 6.6 Grid Indus Private International Law, Corporate Social Responsibility and Extraterritoriality 7.1 The role of Private International Law in operationalizing Corporate Social Responsibility 7.2 The United States: Litigation Based on The Alien Tort Statute 7.2.1 Corporate Liability under ATS			

xiv

7.3.1	Jurisdic	risdiction 3.1.1 General jurisdictional rule: Article 2 JR	
	7.3.1.1	General jurisdictional rule: Article 2 JR	237
	7.3.1.2	Special jurisdictional rule: Article 5(5) JR: operations	
		arising out of a branch	238
	7.3.1.3	Special jurisdictional rule: Article 5(3) JR: Tort	239
	7.3.1.4	Special jurisdictional rule: Article 5(4) JR	239
	7.3.1.5	Review of the JR - The 'international dimension' of the	
		Regulation	239
7.3.2	Applica	able law	239
Annexes			241
Brussels I			241
Regulation	Regulation 1015/2012		
Rome I			296
Rome II			307
Insolvency	Regulati	ion	317
Index			335