

CONTENTS

| | |
|---|-----------|
| <i>Preface to the Fourth Edition</i> | xv |
| <i>Table of Cases</i> | xvii |
| <i>Table of UK Legislation</i> | xxix |
| <i>Table of European Legislation</i> | xxxiii |
| <i>Table of Other Legislation</i> | xxxv |
| <i>Table of Abbreviations</i> | xxxvii |
| <i>Useful Websites</i> | xxxix |
| | |
| 1 NATURE AND SCOPE OF CONFLICT OF LAWS | 1 |
| 1.1 INTRODUCTION | 1 |
| 1.1.1 Jurisdiction | 1 |
| 1.1.2 Choice of Law | 1 |
| 1.1.3 Recognition and enforcement of foreign judgments | 2 |
| 1.2 PRELIMINARY ISSUES | 2 |
| 1.2.1 Private and public international law | 2 |
| 1.2.2 Connecting factors | 3 |
| 1.2.3 The concept of personal law | 4 |
| 1.3 THE BASES OF CONFLICT OF LAWS | 4 |
| 1.3.1 Justice | 5 |
| 1.3.2 Comity | 5 |
| 1.3.3 Public policy | 5 |
| 1.4 CLASSIFICATION OR CHARACTERISATION | 6 |
| 1.4.1 Classification of the cause of action | 7 |
| 1.4.2 Classification of a rule of law | 7 |
| 1.5 RENVOI | 8 |
| 1.5.1 Single or partial <i>renvoi</i> | 9 |
| 1.5.2 Double or total <i>renvoi</i> | 9 |
| 1.6 PROOF OF FOREIGN LAW | 9 |
| KEY ISSUES – AN OVERVIEW | 10 |
| FURTHER READING | 10 |
| | |
| 2 JURISDICTION OF THE ENGLISH COURT IN COMMERCIAL DISPUTES: THE COMMON LAW RULES | 11 |
| 2.1 INTRODUCTION | 11 |
| 2.2 DEFENDANT PRESENT WITHIN THE JURISDICTION | 11 |
| 2.2.1 Individuals | 12 |
| 2.2.2 Corporations | 12 |
| 2.2.3 Partnerships | 13 |
| 2.3 SUBMISSION TO THE JURISDICTION | 14 |

| | | |
|-------|--|----|
| 2.4 | DEFENDANT OUTSIDE THE JURISDICTION | 14 |
| 2.4.1 | General | 16 |
| 2.4.2 | Contract | 17 |
| 2.4.3 | Tort | 19 |
| 2.4.4 | Property | 21 |
| 2.4.5 | Other heads | 21 |
| 2.5 | PREVENTION OF FORUM SHOPPING AND THE STAYING OF ACTIONS | 21 |
| 2.5.1 | <i>Forum non conveniens</i> | 22 |
| 2.5.2 | The relevance of <i>lis alibi pendens</i> | 33 |
| 2.5.3 | The relevance of a foreign jurisdiction clause | 34 |
| 2.6 | PREVENTION OF FORUM SHOPPING AND ANTI-SUIT INJUNCTIONS | 38 |
| | ISSUES FOR FURTHER CONSIDERATION | 44 |
| | FURTHER READING | 45 |
| 3 | JURISDICTION OF THE ENGLISH COURT IN COMMERCIAL DISPUTES: THE EUROPEAN REGIME | 47 |
| 3.1 | INTRODUCTION AND BACKGROUND | 47 |
| 3.2 | INTERPRETATION OF THE PROVISIONS OF THE EUROPEAN REGIME | 48 |
| 3.3 | SCOPE OF THE EUROPEAN REGIME | 48 |
| 3.4 | THE PRIMARY BASIS OF JURISDICTION | 50 |
| 3.4.1 | Domicile of individuals | 50 |
| 3.4.2 | Domicile of corporations and associations | 51 |
| 3.5 | THE PRIMARY BASIS OF JURISDICTION AND THE DOCTRINE OF <i>FORUM NON CONVENIENS</i> | 53 |
| 3.6 | SPECIAL JURISDICTION | 55 |
| 3.6.1 | Contract | 55 |
| 3.6.2 | Tort | 58 |
| 3.6.3 | Restitutionary claims | 62 |
| 3.6.4 | Maintenance | 64 |
| 3.6.5 | Civil claims in criminal proceedings | 65 |
| 3.6.6 | Branch, agency or other establishment | 65 |
| 3.6.7 | Trusts | 67 |
| 3.6.8 | Salvage | 67 |
| 3.6.9 | Further alternative bases of jurisdiction | 68 |
| 3.7 | PROTECTIVE MEASURES | 68 |
| 3.7.1 | Individual contracts of employment | 69 |
| 3.7.2 | Jurisdiction in matters relating to insurance | 70 |
| 3.7.3 | Jurisdiction over consumer contracts | 72 |
| 3.8 | EXCLUSIVE JURISDICTION | 74 |

| | |
|--|------------|
| 3.9 JURISDICTION AGREEMENTS | 75 |
| 3.10 SUBMISSION | 79 |
| 3.11 <i>LIS ALIBI PENDENS</i> AND RELATED ACTIONS | 80 |
| 3.12 JURISDICTION WITHIN THE UK | 84 |
| ISSUES FOR FURTHER CONSIDERATION | 85 |
| FURTHER READING | 85 |
| 4 RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS | 87 |
| 4.1 INTRODUCTION | 87 |
| 4.2 RECOGNITION AND ENFORCEMENT AT COMMON LAW | 88 |
| 4.2.1 Requirements for recognition and enforcement | 89 |
| 4.2.2 Jurisdiction of the foreign court | 89 |
| 4.2.3 Residence | 90 |
| 4.2.4 Submission | 91 |
| 4.3 FURTHER REQUIREMENTS FOR ENFORCEMENT | 93 |
| 4.3.1 At common law | 93 |
| 4.3.2 Administration of Justice Act 1920 | 96 |
| 4.3.3 Foreign Judgments (Reciprocal Enforcement) Act 1933 | 97 |
| 4.3.4 Restrictions | 97 |
| 4.4 DEFENCES | 98 |
| 4.4.1 Fraud | 98 |
| 4.4.2 Contrary to natural justice | 99 |
| 4.4.3 Contrary to public policy | 100 |
| 4.4.4 Section 32 of the Civil Jurisdiction and Judgments Act 1982 | 100 |
| 4.4.5 Limitation of actions | 101 |
| 4.4.6 <i>Res judicata</i> | 102 |
| 4.5 EC/EFTA JUDGMENTS | 102 |
| 4.5.1 Mechanisms for enforcement | 103 |
| 4.5.2 Defences | 104 |
| 4.6 RECOGNITION AND ENFORCEMENT WITHIN THE UK | 106 |
| ISSUES FOR FURTHER CONSIDERATION | 106 |
| FURTHER READING | 106 |
| 5 CHOICE OF LAW IN CONTRACT | 107 |
| 5.1 INTRODUCTION | 107 |
| 5.2 THE CONTRACTS (APPLICABLE LAW) ACT 1990; THE ROME CONVENTION 1980 | 107 |
| 5.2.1 Scope of the Convention | 108 |
| 5.2.2 Matters excluded from the ambit of the Convention | 109 |

| | | |
|-------|---|-----|
| 5.2.3 | The applicable law: express and inferred choice of law | 110 |
| 5.2.4 | Applicable law in the absence of choice | 114 |
| 5.3 | SPECIAL RULES FOR SPECIFIC CONTRACTS | 118 |
| 5.3.1 | Certain consumer contracts | 118 |
| 5.3.2 | Individual contracts of employment | 119 |
| 5.4 | SPECIFIC ISSUES | 120 |
| 5.4.1 | Material validity | 120 |
| 5.4.2 | Formal validity | 121 |
| 5.4.3 | Capacity | 123 |
| 5.5 | SCOPE OF THE APPLICABLE LAW UNDER THE CONVENTION | 123 |
| 5.6 | LIMITATIONS ON THE APPLICABLE LAW | 125 |
| 5.6.1 | Mandatory rules | 125 |
| 5.6.2 | Public policy | 127 |
| 5.7 | EXCLUSION OF RENVOI | 128 |
| 5.8 | PROPOSED REFORM | 128 |
| | ISSUES FOR FURTHER CONSIDERATION | 129 |
| | FURTHER READING | 129 |
| 6 | CHOICE OF LAW IN TORT | 131 |
| 6.1 | INTRODUCTION | 131 |
| 6.2 | THE ENGLISH APPROACH | 131 |
| 6.3 | THE COMMON LAW RULES | 132 |
| 6.3.1 | Torts committed in England | 133 |
| 6.3.2 | Torts committed abroad | 133 |
| 6.4 | PLACE OF TORT | 134 |
| 6.4.1 | Defamation | 134 |
| 6.4.2 | Negligence | 135 |
| 6.4.3 | Fraudulent misrepresentation | 136 |
| 6.4.4 | Economic torts | 136 |
| 6.5 | THE DOUBLE-ACTIONABILITY RULE | 136 |
| 6.5.1 | An exception to the rule | 137 |
| 6.5.2 | The exception in the <i>Red Sea</i> case | 138 |
| 6.6 | SCOPE OF THE DOUBLE-ACTIONABILITY RULE | 139 |
| 6.6.1 | The same defendant | 140 |
| 6.6.2 | The same claimant | 140 |
| 6.6.3 | Contractual defences to claims in tort | 140 |
| 6.7 | PROBLEMS ASSOCIATED WITH THE DOUBLE-ACTIONABILITY RULE AND THE TORT OF DEFAMATION | 141 |

| | | |
|-------|--|-----|
| 6.8 | PART III OF THE PRIVATE INTERNATIONAL LAW (MISCELLANEOUS PROVISIONS) ACT 1995 | 143 |
| 6.8.1 | The general rule | 144 |
| 6.8.2 | Exception to the general rule | 146 |
| 6.8.3 | Miscellaneous | 147 |
| 6.9 | THE ROME II PROPOSAL | 148 |
| 6.9.1 | Scope | 148 |
| 6.9.2 | Non-contractual obligations arising out of a tort or delict – the general rule | 149 |
| 6.9.3 | Non-contractual obligations arising out of a tort or delict – specific rules | 149 |
| 6.9.4 | Obligations arising out of an act other than tort or delict | 149 |
| 6.9.5 | Freedom of choice | 149 |
| 6.9.6 | Public policy and mandatory rules | 150 |
| | ISSUES FOR FURTHER CONSIDERATION | 150 |
| | FURTHER READING | 150 |
| 7 | JUDGMENTS IN FOREIGN CURRENCY | 151 |
| 7.1 | INTRODUCTION | 151 |
| 7.2 | THE CURRENT APPROACH | 151 |
| 7.2.1 | Breach of contract | 152 |
| 7.2.2 | Damages in tort | 152 |
| 7.2.3 | Restitution | 153 |
| 7.3 | ISSUES ARISING | 153 |
| 7.4 | THE LAW COMMISSION | 155 |
| 7.5 | PART I OF THE PRIVATE INTERNATIONAL LAW (MISCELLANEOUS PROVISIONS) ACT 1995 | 156 |
| | ISSUE FOR FURTHER CONSIDERATION | 157 |
| | FURTHER READING | 157 |
| 8 | LAW OF PROPERTY | 159 |
| 8.1 | THE DISTINCTION BETWEEN MOVABLES AND IMMOVABLES | 159 |
| 8.2 | IMMOVABLE PROPERTY | 159 |
| 8.2.1 | Jurisdiction under the traditional common law rules | 160 |
| 8.2.2 | Exceptions to the <i>Moçambique</i> rule | 161 |
| 8.2.3 | Jurisdiction under the Brussels/Lugano Conventions and the Brussels I Regulation | 161 |

| | | |
|---------|---|-----|
| 8.3 | CHOICE OF LAW AND IMMOVABLE PROPERTY | 163 |
| 8.3.1 | Capacity to transfer immovables | 164 |
| 8.3.2 | Formal validity of the transfer | 164 |
| 8.3.3 | Essential validity of the transfer | 165 |
| 8.3.4 | Validity of the contract to transfer immovables | 165 |
| 8.3.5 | Formal validity | 165 |
| 8.3.6 | Essential validity | 166 |
| 8.3.7 | Capacity | 166 |
| 8.4 | CHOICE OF LAW AND TANGIBLE MOVABLES | 166 |
| 8.4.1 | The applicable law of the transfer | 167 |
| 8.4.2 | The applicable law of a series of transfers | 167 |
| 8.5 | CHOICE OF LAW AND INTANGIBLE MOVABLES | 169 |
| 8.5.1 | Validity of the contract of assignment | 169 |
| 8.5.2 | Issues on the nature of the right assigned | 170 |
| 8.5.3 | Assignability | 170 |
| 8.5.4 | Priorities | 170 |
| 8.6 | FOREIGN EXPROPRIATION DECREES | 171 |
| 8.6.1 | Where the property is in a foreign country | 171 |
| 8.6.2 | Where the property is in England | 172 |
| 8.7 | SUCCESSION | 173 |
| 8.7.1 | Intestate succession | 174 |
| 8.7.1.1 | Movables | 174 |
| 8.7.1.2 | Immovables | 174 |
| 8.7.2 | Testate succession: Movables | 174 |
| 8.7.2.1 | Capacity | 175 |
| 8.7.2.2 | Essential validity | 175 |
| 8.7.2.3 | Construction and effect | 175 |
| 8.7.2.4 | Formal validity | 176 |
| 8.7.2.5 | Revocation | 176 |
| 8.7.3 | Testate succession: Immovables | 176 |
| 8.7.4 | Reform | 177 |
| | FURTHER READING | 177 |
| 9 | DOMICILE AT COMMON LAW | 179 |
| 9.1 | INTRODUCTION | 179 |
| 9.2 | MEANING AND DEFINITION OF DOMICILE | 180 |
| 9.3 | DOMICILE OF ORIGIN | 181 |
| 9.4 | DOMICILE OF DEPENDENCY | 182 |
| 9.4.1 | Children under 16 | 182 |
| 9.4.2 | Married women | 184 |
| 9.5 | DOMICILE OF CHOICE | 185 |
| 9.5.1 | Residence | 185 |
| 9.5.2 | Intention | 186 |
| 9.5.3 | Proof of domicile of choice | 190 |

| | |
|---|-----|
| 9.6 ABANDONMENT OF DOMICILE | 191 |
| 9.7 PROPOSALS FOR REFORM | 192 |
| 9.8 HABITUAL RESDIENCE | 192 |
| 9.8.1 Residence | 193 |
| 9.8.2 Settled intention | 194 |
| ISSUES FOR FURTHER CONSIDERATION | 196 |
| FURTHER READING | 196 |
| 10 MARRIAGE | 197 |
| 10.1 MEANING OF MARRIAGE | 197 |
| 10.1.1 The definition in <i>Hyde v Hyde</i> : is it still good law? | 197 |
| 10.1.2 Voluntary union | 197 |
| 10.1.3 Union for life | 198 |
| 10.1.4 Union of one man and one woman | 198 |
| 10.1.5 Union to the exclusion of all others | 200 |
| 10.2 POLYGAMY | 200 |
| 10.2.1 Recognition in England of actual polygamous marriages | 201 |
| 10.2.2 Recognition of potentially polygamous marriages | 204 |
| 10.3 CAPACITY TO MARRY | 204 |
| 10.4 THE DUAL-DOMICILE RULE | 204 |
| 10.4.1 Consanguinity and affinity | 205 |
| 10.4.2 Re-marriage | 206 |
| 10.4.3 Polygamy | 207 |
| 10.4.4 Lack of age | 209 |
| 10.5 EXCEPTIONS TO THE DUAL-DOMICILE RULE | 210 |
| 10.6 FORMAL VALIDITY OF MARRIAGE | 212 |
| 10.6.1 Consular marriages | 214 |
| 10.6.2 Marriages of members of British forces serving abroad | 214 |
| 10.6.3 Common law marriages | 214 |
| 10.7 CHARACTERISATION | 216 |
| 10.8 PRELIMINARY ISSUE – THE INCIDENTAL QUESTION | 217 |
| 10.9 PUBLIC POLICY | 218 |
| ISSUES FOR FURTHER CONSIDERATION | 219 |
| FURTHER READING | 219 |
| 11 MATRIMONIAL CAUSES AND FINANCIAL RELIEF | 221 |
| 11.1 INTRODUCTION | 221 |

| | |
|---|-----|
| 11.2 JURISDICTION: DIVORCE, ANNULMENT AND JUDICIAL SEPARATION | 221 |
| 11.2.1 Jurisdiction | 221 |
| 11.2.2 Stay of proceedings | 223 |
| 11.2.3 Mandatory stays | 224 |
| 11.2.4 Discretionary stays | 224 |
| 11.3 CHOICE OF LAW: DIVORCE AND JUDICIAL SEPARATION | 227 |
| 11.3.1 Divorce | 227 |
| 11.3.2 Judicial separation | 228 |
| 11.4 CHOICE OF LAW: NULLITY | 228 |
| 11.4.1 Void marriage | 228 |
| 11.4.2 Voidable marriage | 229 |
| 11.4.3 Choice of law | 230 |
| 11.5 RECOGNITION OF FOREIGN DIVORCES, LEGAL SEPARATIONS AND ANNULMENTS | 232 |
| 11.5.1 The Brussels II (revised) Regulation: Recognition | 232 |
| 11.5.2 The Brussels II (revised) Regulation: Non-recognition | 232 |
| 11.5.3 The 'traditional' rules: Decrees granted within the British Isles | 233 |
| 11.5.4 The 'traditional' rules: Decrees granted elsewhere by means of proceedings | 233 |
| 11.5.5 The 'traditional' rules: Recognition of extra-judicial divorces | 234 |
| 11.5.6 The 'traditional' rules: Grounds for non-recognition | 236 |
| 11.6 FINANCIAL RELIEF AFTER OVERSEAS DIVORCE | 238 |
| 11.6.1 Jurisdiction | 238 |
| 11.6.2 Choice of Law | 240 |
| 11.6.3 Recognition and enforcement of overseas maintenance orders | 240 |
| ISSUES FOR FURTHER CONSIDERATION | 241 |
| FURTHER READING | 241 |
| 12 CHILDREN | 243 |
| 12.1 INTRODUCTION | 243 |
| 12.2 LEGITIMACY | 243 |
| 12.2.1 Jurisdiction | 244 |
| 12.2.2 Choice of Law | 244 |
| 12.2.3 Recognition | 245 |
| 12.3 ADOPTION | 246 |
| 12.3.1 Jurisdiction | 246 |
| 12.3.2 Choice of Law | 247 |
| 12.3.3 Recognition of adoption orders | 247 |
| 12.3.4 Postscript | 249 |

| | |
|--|-----|
| 12.4 PARENTAL RESPONSIBILITY | 249 |
| 12.4.1 Jurisdiction | 249 |
| 12.4.1.1 The European Regime | 249 |
| 12.4.1.2 The 'traditional' rules | 254 |
| 12.4.2 Choice of Law | 255 |
| 12.4.3 Recognition and enforcement of foreign orders | 256 |
| 12.4.3.1 The Brussels II (revised) Regulation | 256 |
| 12.4.3.2 The Hague Convention 1980 | 257 |
| 12.4.3.3 The Common Law | 257 |
| ISSUES FOR FURTHER CONSIDERATION | 257 |
| FURTHER READING | 258 |
| <i>Index</i> | 259 |