# EXTENDED TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>xvii</td>
</tr>
<tr>
<td>Table of cases</td>
<td>xviii</td>
</tr>
<tr>
<td>Table of legislation</td>
<td>lv</td>
</tr>
</tbody>
</table>

## PART I  INTRODUCTION

1 Introduction

A. PRIVATE INTERNATIONAL LAW AND ITS HARMONISATION  1.01
B. HARMONISATION AT EUROPEAN UNION LEVEL  1.05
C. CIVIL JURISDICTION AND JUDGMENTS  1.14
   1. The Brussels I Regulation  1.14
   2. The Lugano Conventions  1.19
   3. The Hague Convention 2005  1.20
   4. Uncontested claims  1.21
   5. Small claims  1.23
   6. Freezing orders  1.24
D. THE LAW APPLICABLE TO CIVIL OBLIGATIONS  1.25
   1. The Rome I Regulation  1.25
   2. The Rome II Regulation  1.27
E. FAMILY MATTERS  1.28
   1. The Brussels II A Regulation  1.28
   2. The Rome III Regulation  1.31
   3. The Hague Convention 1996  1.32
   4. The Maintenance Regulation  1.34
   5. Succession on death  1.37
   6. Matrimonial property  1.38
   7. Non-molestation orders  1.41
F. INSOLVENCY PROCEEDINGS  1.43
G. PROCEDURAL CO-OPERATION  1.48
   1. Service of documents  1.48
   2. Taking evidence  1.50
H. COMPANY LAW  1.51
I. THE EUROPEAN UNION AND THE HAGUE CONFERENCE  1.61
J. REMAINING GAPS  1.72
K. WITHDRAWAL BY THE UNITED KINGDOM  1.77

## PART II  CIVIL JURISDICTION AND JUDGMENTS

2. History, outline and scope

A. HISTORY  2.01
   1. The Brussels I Regulation  2.01
   2. The Brussels Convention  2.09
   3. The Lugano Convention 2007  2.12
B. OUTLINE  2.18
C. MATERIAL SCOPE  2.31
   1. Civil and commercial matters  2.32
   2. The excluded matters  2.40
### EXTENDED TABLE OF CONTENTS

| 3. Family matters | 2.44 |
| 4. Succession on death | 2.48 |
| 5. Insolvency proceedings | 2.51 |
| 6. Social security | 2.64 |
| 7. Arbitration | 2.65 |
| (a) The New York Convention 1958 | 2.66 |
| (b) The test of principal subject-matter | 2.69 |
| (c) Judicial proceedings principally concerned with an arbitration agreement | 2.74 |
| (d) Judicial proceedings brought in defiance of an arbitration agreement | 2.76 |
| (e) Anti-suit injunctions | 2.80 |
| (f) Recognition and enforcement of arbitral awards | 2.86 |
| 8. External judgments | 2.88 |
| D. SPECIALISED CONVENTIONS AND EUROPEAN UNION MEASURES | 2.89 |
| 1. Specialised conventions | 2.89 |
| 2. Specialised European Union instruments | 2.100 |
| E. TEMPORAL SCOPE | 2.104 |
| 3 Domicile | 3.01 |
| A. THE GENERAL RULES | 3.06 |
| B. LOCAL DEFENDANTS | 3.08 |
| 1. Internal allocation | 3.10 |
| 2. Forum non conveniens | 3.16 |
| 3. Reflexive effect | 3.31 |
| C. OTHER EUROPEAN DEFENDANTS | 3.47 |
| 1. Service in another Member State | 3.47 |
| D. EXTERNAL DEFENDANTS | 3.47 |
| 1. Service abroad | 3.47 |
| E. THE CONCEPT OF DOMICILE | 3.47 |
| 1. Individuals | 3.47 |
| 2. Corporations and associations | 3.55 |
| 4 Alternative jurisdiction | 4.01 |
| A. INTRODUCTION | 4.09 |
| 1. Establishing jurisdiction | 4.14 |
| B. ORDINARY CONTRACTS | 4.14 |
| 1. Introduction | 4.16 |
| 2. Contractual matters | 4.25 |
| 3. The relation between the claim and the contract | 4.29 |
| 4. The obligation in question | 4.32 |
| 5. Contracts for the sale of goods | 4.42 |
| 6. Contracts for the provision of services | 4.54 |
| 7. The Convention approach | 4.65 |
| C. TORTS | 4.66 |
| 1. Tortious matters | 4.77 |
| 2. Harmful events | 4.77 |
| (a) The general principles | 4.84 |
| (b) Product liability | 4.86 |
| (c) Defamation and privacy | 4.91 |
| (d) Economic torts | 4.94 |
| (e) Infringement of specific intellectual property rights | 4.102 |
| (f) Unfair competition | 4.103 |
| (g) Anti-competitive practices | 4.106 |
| (h) Torts involving company law | 4.108 |
| (i) Contribution between tortfeasors | 4.109 |
| (j) Equitable wrongs | 4.111 |
| (k) Restitutionary claims | 4.112 |
| 3. Criminal proceedings | 4.114 |
| D. OWNERSHIP OF CULTURAL OBJECTS | 4.114 |
| E. SECONDARY ESTABLISHMENTS | 4.115 |
## EXTENDED TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. A branch, agency or other establishment</td>
<td>4.116</td>
</tr>
<tr>
<td>2. Operations</td>
<td>4.118</td>
</tr>
<tr>
<td>F. TRUSTS</td>
<td>4.122</td>
</tr>
<tr>
<td>G. ADMIRALTY</td>
<td>4.129</td>
</tr>
<tr>
<td>5 Ancillary jurisdiction</td>
<td>5.04</td>
</tr>
<tr>
<td>A. CO-DEFENDANTS</td>
<td>5.21</td>
</tr>
<tr>
<td>B. THIRD-PARTY PROCEEDINGS</td>
<td>5.28</td>
</tr>
<tr>
<td>C. COUNTERCLAIMS</td>
<td>5.31</td>
</tr>
<tr>
<td>6 Protected contracts</td>
<td>6.01</td>
</tr>
<tr>
<td>A. INTRODUCTION</td>
<td>6.05</td>
</tr>
<tr>
<td>B. INSURANCE</td>
<td>6.05</td>
</tr>
<tr>
<td>2. Actions against an insurer</td>
<td>6.08</td>
</tr>
<tr>
<td>3. Actions brought by an insurer</td>
<td>6.17</td>
</tr>
<tr>
<td>4. Agreements on jurisdiction</td>
<td>6.20</td>
</tr>
<tr>
<td>C. CONSUMER CONTRACTS</td>
<td>6.26</td>
</tr>
<tr>
<td>1. Scope</td>
<td>6.26</td>
</tr>
<tr>
<td>(a) Substantive requirements</td>
<td>6.27</td>
</tr>
<tr>
<td>(b) Territorial requirements</td>
<td>6.37</td>
</tr>
<tr>
<td>2. Actions against a supplier</td>
<td>6.45</td>
</tr>
<tr>
<td>3. Actions against a consumer</td>
<td>6.48</td>
</tr>
<tr>
<td>4. Agreements on jurisdiction</td>
<td>6.50</td>
</tr>
<tr>
<td>D. EMPLOYMENT</td>
<td>6.53</td>
</tr>
<tr>
<td>1. Scope</td>
<td>6.53</td>
</tr>
<tr>
<td>2. Actions against an employer</td>
<td>6.61</td>
</tr>
<tr>
<td>3. Actions against an employee</td>
<td>6.70</td>
</tr>
<tr>
<td>4. Agreements on jurisdiction</td>
<td>6.71</td>
</tr>
<tr>
<td>7 Exclusive jurisdiction</td>
<td>7.01</td>
</tr>
<tr>
<td>A. OVERRIDING CHARACTER</td>
<td>7.04</td>
</tr>
<tr>
<td>B. PROPRIETARY RIGHTS IN LAND</td>
<td>7.11</td>
</tr>
<tr>
<td>C. TENANCIES OF LAND</td>
<td>7.16</td>
</tr>
<tr>
<td>D. COMPANY LAW</td>
<td>7.25</td>
</tr>
<tr>
<td>E. PUBLIC REGISTERS</td>
<td>7.26</td>
</tr>
<tr>
<td>F. INTELLECTUAL PROPERTY</td>
<td>7.36</td>
</tr>
<tr>
<td>1. National intellectual property rights</td>
<td>7.43</td>
</tr>
<tr>
<td>2. European patents</td>
<td>7.49</td>
</tr>
<tr>
<td>3. Unitary patents and the Unified Patent Court</td>
<td>7.56</td>
</tr>
<tr>
<td>(a) The unitary patent</td>
<td>7.65</td>
</tr>
<tr>
<td>(b) The Unified Patent Court</td>
<td>7.74</td>
</tr>
<tr>
<td>4. EU trade marks</td>
<td>7.82</td>
</tr>
<tr>
<td>5. Community plant variety rights</td>
<td>7.102</td>
</tr>
<tr>
<td>6. Community designs</td>
<td>7.107</td>
</tr>
<tr>
<td>G. ENFORCEMENT OF JUDGMENTS</td>
<td>7.115</td>
</tr>
<tr>
<td>8 Submission</td>
<td>8.01</td>
</tr>
<tr>
<td>A. INTRODUCTION</td>
<td>8.03</td>
</tr>
<tr>
<td>B. SUBMISSION BY AGREEMENT</td>
<td>8.05</td>
</tr>
<tr>
<td>1. Introduction</td>
<td>8.06</td>
</tr>
<tr>
<td>2. Formal validity</td>
<td>8.10</td>
</tr>
<tr>
<td>(a) Agreements concluded in writing</td>
<td></td>
</tr>
<tr>
<td>(b) Agreements evidenced in writing</td>
<td></td>
</tr>
</tbody>
</table>
### 9 Concurrent proceedings

**A. INTRODUCTION**

**B. SIMILAR ACTIONS**
1. The mechanism
2. The same cause of action
3. The same parties
4. The time of seisin
5. Relation with other provisions
6. Concurrent exclusive jurisdiction
7. External proceedings

**C. RELATED ACTIONS**
1. Scope
2. Mechanism
3. External proceedings

**D. ANTI-SUIT INJUNCTIONS**

### 10 Provisional measures and taking evidence

**A. INTRODUCTION**

**B. PROVISIONAL MEASURES**
1. Article 35 of the Brussels I Regulation
2. Other restrictions under European law

**C. TAKING EVIDENCE**
1. The request to take evidence
2. Performance of the request
3. Refusal
4. Taking evidence directly

### 11 Recognition and enforcement of judgments

**A. INTRODUCTION**
1. Scope
2. Judgments
3. Recognition and enforcement
4. Authentic instruments and court settlements
5. Other EU measures

**B. SUBSTANTIVE REQUIREMENTS**
1. No review of the merits
2. No review of jurisdiction (with minor exceptions)
12 Enforcement procedure
A. INTRODUCTION 12.01
B. THE ORIGINAL VERSION OF CHAPTER III 12.08
1. Introduction 12.08
2. The initial application 12.11
3. Provisional enforcement pending appeal 12.19
4. The normal appeal 12.21
5. The further appeal 12.29
6. Measures of execution 12.32
C. THE REVISED VERSION OF CHAPTER III 12.34
1. Enforcement procedure 12.34
2. Refusal procedure 12.43

13 Other legislation on judgments
A. THE UNCONTESTED CLAIMS REGULATION 13.02
1. Scope 13.05
2. Certification 13.09
3. The minimum procedural standards 13.14
4. Enforcement 13.20
5. Court settlements and authentic instruments 13.24
B. THE PAYMENT ORDER REGULATION 13.26
1. The application 13.30
2. Enforcement 13.39
3. Review in the State of origin 13.42
C. THE SMALL CLAIMS PROCEDURE 13.46
1. The European small claims procedure 13.49
2. Recognition and enforcement 13.61

PART III CHOICE OF LAW IN RESPECT OF OBLIGATIONS

14 The proper law of a contract
A. INTRODUCTION 14.01
1. The Rome I Regulation 14.01
2. Material scope 14.09
(a) Excluded transactions 14.13
(b) Excluded terms 14.18
(c) Excluded issues 14.19
3. Other EU measures 14.26
4. International conventions 14.33
5. Factual complexities 14.38
6. Outline of the Rome I Regulation 14.43
B. THE PROPER LAW – EXPRESS CHOICE 14.47
C. THE PROPER LAW – IMPLIED CHOICE 14.69
D. THE PROPER LAW – CLOSEST CONNECTION 14.81
   1. The main presumption 14.86
      (a) Identifying the characteristic performer 14.91
      (b) Identifying the relevant residence 14.98
      (c) Rebutting the presumption 14.104
   2. The minor presumptions 14.115
      (a) Contracts relating to land 14.116
      (b) Sales of goods by auction 14.118
      (c) Contracts concluded within a multilateral market in financial instruments 14.119
      (d) Contracts for the carriage of goods 14.120

15 Contractual issues and exceptions
   A. PARTICULAR ISSUES 15.01
      1. Interpretation, performance and discharge 15.03
      2. Essential validity and formation 15.07
      3. Formal validity 15.16
      4. Capacity 15.21
      5. Representation
         (a) The scope of the exclusion 15.25
         (b) Actual authority 15.27
         (c) Other authority 15.28
      6. Procedure 15.30
      7. Remedies 15.31
      8. Time-limitation 15.34
      9. The consequences of nullity 15.35
     10. Voluntary assignment and contractual subrogation 15.40
         (a) Assignment and garnishment 15.48
         (b) Assignment and insolvency proceedings 15.52
         (c) Block assignments and indirectly held securities 15.53
     11. Legal subrogation 15.55
     12. Recourse between debtors 15.57
     13. Set-off 15.59
   B. PUBLIC POLICY AND OVERRIDING INTERESTS 15.61
      1. Public policy of the forum country 15.64
      2. Overriding interests of the forum country 15.70
      3. Overriding interests of a third country 15.77

16 Protected contracts
   A. INTRODUCTION 16.01
   B. CONSUMER CONTRACTS 16.02
      1. Scope 16.02
         (a) Financial services 16.07
         (b) The territorial requirement 16.12
      2. The protective regime 16.18
      3. The Directives on substantive consumer law 16.23
   C. CARRIAGE OF PASSENGERS 16.28
   D. EMPLOYMENT CONTRACTS 16.32
      1. Scope 16.32
      2. The protective regime 16.37
      3. The Directive on the posting of workers 16.47
   E. INSURANCE CONTRACTS 16.50
      1. The Rome Convention and the insurance Directives 16.50
      2. The scope of the Rome I Regulation 16.52
      3. The effect of the Rome I Regulation 16.56
      4. Large risks and mass risks 16.60
      5. The law governing large risks 16.64
      6. The law governing mass risks 16.68
      7. Compulsory insurance 16.78
EXTENDED TABLE OF CONTENTS

17 Torts
A. INTRODUCTION 17.01
   1. The Rome II Regulation 17.01
   2. Material scope 17.05
   3. Territorial scope 17.20
   4. Other EU Legislation 17.22
   5. Existing international conventions 17.27
B. THE MAIN RULES 17.29
   1. Introduction 17.29
   2. The law of the common habitual residence 17.36
   3. The law of the place of direct injury 17.48
   4. The law of the manifestly closer connection 17.54
   5. Agreements choosing the applicable law 17.69
   6. Public policy and overriding rules 17.73
C. VARIOUS ISSUES 17.76
   1. Liability 17.77
   2. Damages and other remedies 17.81
   3. Some collateral matters 17.91

18 Some particular torts
A. PRODUCT LIABILITY 18.02
   1. The scope of Article 5 18.05
   2. The cascade of rules 18.09
B. UNFAIR COMPETITION 18.39
C. RESTRICTIONS OF COMPETITION 18.44
D. INTELLECTUAL PROPERTY 18.47
E. ENVIRONMENTAL DAMAGE 18.51
F. INDUSTRIAL DISPUTES 18.54

19 Restitution
A. INTRODUCTION 19.01
B. UNJUST ENRICHMENT 19.07
   1. Existing relationships 19.09
   2. Stand-alone claims 19.15
C. UNAUTHORISED AGENCY 19.17
D. PRE-CONTRACTUAL DEALINGS 19.19

PART IV FAMILY MATTERS

20 Matrimonial proceedings
A. INTRODUCTION 20.01
   1. The Brussels IIA Regulation 20.01
   2. The Rome III Regulation 20.05
   3. External agreements on family matters 20.07
   4. Scope 20.10
B. DIRECT JURISDICTION 20.14
   1. The unified grounds 20.16
      (a) Habitual residence 20.17
      (b) Nationality or domicile 20.25
      (c) Extended jurisdiction 20.28
   2. Residual grounds 20.29
   3. Exercise of jurisdiction
      (a) Declining jurisdiction of the court’s own motion 20.35
      (b) Concurrent proceedings 20.36
      (c) External proceedings 20.43
      (d) Provisional measures 20.44
   4. Choice of law 20.46
C. RECOGNITION OF MATRIMONIAL DECREES 20.55  
1. Transitional provisions 20.63  
D. NON-MOLESTATION ORDERS 20.76

21 Parental responsibility

A. INTRODUCTION 21.01  
1. The Brussels IIA Regulation 21.01  
2. The Hague Convention 1996 21.06  
3. Other international conventions 21.09  
B. DIRECT JURISDICTION 21.24  
1. Structure 21.24  
2. The child’s habitual residence 21.28  
3. Modification of access orders 21.51  
4. Jurisdiction after abduction 21.52  
5. Jurisdiction by agreement 21.57  
6. The child’s presence 21.66  
7. Residual grounds 21.68  
8. Transfer between courts 21.70  
9. Examination as to jurisdiction or admissibility 21.82  
10. Concurrent proceedings 21.84  
11. External proceedings 21.90  
12. Provisional measures 21.92  
C. RECOGNITION AND ENFORCEMENT OF CUSTODY ORDERS 21.126  
1. Scope 21.126  
2. Grounds for refusal of recognition and enforcement 21.135  
3. Access orders and orders for return 21.151  
4. Transitional provisions 21.161

22 Maintenance and property

A. INTRODUCTION 22.01  
B. MAINTENANCE OBLIGATIONS 22.04  
1. The legislation 22.04  
2. Scope 22.09  
3. Existing international conventions 22.16  
4. Transitional provisions 22.17  
5. Direct jurisdiction 22.19  
6. Choice of law 22.37  
7. Recognition and enforcement 22.48  
8. Recognition and enforcement under Section 1 22.53  
9. Recognition and enforcement under Section 2 22.64  
10. Public bodies as applicants for enforcement 22.70  
C. MATRIMONIAL AND PARTNERSHIP PROPERTY 22.71  
1. The legislation 22.71  
2. Scope 22.74  
3. Direct jurisdiction 22.79  
4. Choice of law 22.97  
5. Recognition and enforcement of decisions 22.114  
6. Authentic instruments and court settlements 22.116
23 Succession on death
A. INTRODUCTION
  1. Material scope
  2. Other legislation
B. CHOICE OF LAW
  1. The main choice of law rules
  2. Habitual residence and closest connection
  3. Nationality and choice
  4. The scope of the lex successionis
  5. Testamentary dispositions
  6. Formal validity of testamentary dispositions
  7. Declarations as to acceptance, waiver or limitation
  8. Renvoi
C. JUDICIAL JURISDICTION
  1. The main rules
  2. The exception for nationality and choice
  3. External assets
  4. Exercise of jurisdiction
D. RECOGNITION AND ENFORCEMENT
E. THE EUROPEAN CERTIFICATE OF SUCCESSION

PART V INSOLVENCY
24 Main insolvency proceedings
A. INTRODUCTION
B. SCOPE
  1. Types of proceeding covered
     (a) The original Regulation
     (b) The new Regulation
  2. Excluded debtors
     (a) The original Regulation
     (b) The new Regulation
     (c) Insurance undertakings and credit institutions
  3. External debtors
  4. Transitional provisions
     (a) The original Regulation
     (b) The new Regulation
C. JURISDICTION OVER MAIN PROCEEDINGS
  1. Corporate debtors
  2. Individual debtors
  3. Opening of proceedings and concurrent proceedings
  4. Derivative actions
D. CHOICE OF LAW
  1. The general rule
  2. Some substantive rules
  3. Forestalling secondary proceedings
  4. Various exceptions
     (a) Rights in rem
     (b) Immovable or registered property
     (c) Reservation of title to goods
     (d) Certain existing contracts
     (e) Set-off
     (f) Payment systems and financial markets
     (g) Invalidation of detrimental acts
     (h) Pending actions
EXTENDED TABLE OF CONTENTS

E. JUDGMENTS IN MAIN PROCEEDINGS 24.100
   1. The principle and the exceptions 24.100
   2. The position of the liquidator or insolvency practitioner 24.109
   3. Related judgments 24.113

25 Other insolvency proceedings
   A. SECONDARY PROCEEDINGS 25.02
      1. The opening of a secondary proceeding 25.02
      2. The effects of a secondary proceeding 25.13
   B. INDEPENDENT TERRITORIAL PROCEEDINGS 25.26
   C. CORPORATE GROUPS 25.33
      1. Co-operation and communication 25.35
      2. Group co-ordination proceedings 25.38

Index 825