Preface

The harmonisation of private international law by legislative measures adopted by or in the context of the European Union or its predecessors has advanced dramatically in the current century. Before the entry into force of the Treaty of Amsterdam in May 1999, the only such measures which had come into operation in this sphere were the Brussels Convention 1968–96 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters;¹ the Lugano Convention 1988,² which extended the Brussels Convention to EFTA countries; and the Rome Convention 1980 on the Law Applicable to Contractual Obligations.³ In addition the European Court had begun to utilise the Treaty provisions on freedom of establishment to bring about some harmonisation in the sphere of conflict rules in respect of company law.⁴

By February 2015, the Brussels Convention had been replaced by the Brussels I Regulation on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, and the original version of the Brussels I Regulation⁵ had been replaced by a revised version.⁶ The Lugano Convention 1988 had been replaced by the Lugano Convention 2007.⁷ The Rome Convention 1980 had been replaced by the Rome I Regulation on the Law Applicable to Contractual Obligations,⁸

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¹ See [1998] OJ C27/1.

² See [1988] OJ L319/9.

³ See [1998] OJ C27/34.

⁴ See Case C-212/97: *Centros* [1999] ECR I-1459.

⁵ EC Regulation 44/2001, [2001] OJ L12/1. See also EC Regulation 805/2004, creating a European Enforcement Order for Uncontested Claims, [2004] OJ L143/15; EC Regulation 1896/2006, creating a European Order for Payment Procedure, [2006] OJ L399/1; and EC Regulation 861/2007, establishing a European Small Claims Procedure, [2007] OJ L199/1.

⁶ EU Regulation 1215/2012, [2012] OJ L351/1, which became applicable on 10th January 2015.

⁷ See [2009] OJ L147/5. See also EC Decisions 2007/712 and 2009/430; [2007] OJ L339/1 and [2009] OJ L147/1.

⁸ EC Regulation 593/2008, [2008] OJ L177/6.

and supplemented by the Rome II Regulation on the Law Applicable to Non-contractual Obligations.⁹ In addition a Regulation on Insolvency Proceedings¹⁰ had been brought into operation, and a legislative procedure for its amendment was under way.¹¹ In the sphere of family law, Regulations on matrimonial proceedings and parental responsibility,¹² and on maintenance obligations,¹³ had been brought into operation; and a Regulation on succession on death had been adopted.¹⁴ Legislative proposals were also under consideration in respect of matrimonial or analogous property rights.¹⁵ In the sphere of procedure in transnational situations, Regulations had been brought into operation on the service of

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⁹ EC Regulation 864/2007, [2007] OJ L199/40.

¹⁰ EC Regulation 1346/2000, [2000] OJ L160/1.

¹¹ See the EU Commission's Proposal, COM(2012) 744 final.

¹² See EC Regulation 2201/2003 concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility, [2003] OJ L338/1; EC Decisions 2003/93 and 2008/431, on the signature and ratification of or accession to the Hague Convention 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children, [2003] OJ L48/1 and [2008] OJ L151/36; and EC Regulation 1259/2010, implementing enhanced co-operation in the area of the Law Applicable to Divorce and Legal Separation, [2010] OJ L343/10.

¹³ See EC Regulation 4/2009 on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Co-operation in Matters relating to Maintenance Obligations, [2009] OJ L7/1; EC Decision 2009/941 on the conclusion of the Hague Protocol 2007 on the Law Applicable to Maintenance Obligations, [2009] OJ L331/17; and EU Decision 2011/432 on the approval of the Hague Convention 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance, [2011] OJ L192/39.

¹⁴ EU Regulation 650/2012 on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Acceptance and Enforcement of Authentic Instruments, in matters of Succession, and on the Creation of a European Certificate of Succession, [2012] OJ L201/107. The Regulation will become applicable on 17th August 2015.

¹⁵ See the EU Commission's Proposals for a Regulation on Jurisdiction, Applicable Law, and the Recognition and Enforcement of Decisions, in Matters of Matrimonial Property Regimes, and for a Regulation on Jurisdiction, Applicable Law and the Recognition and Enforcement of Decisions regarding the Property Consequences of Registered Partnerships, COM(2011) 126 final and COM(2011) 127 final.

documents abroad,¹⁶ and on co-operation in the taking of evidence.¹⁷ Thus, by February 2015, EU legislation had taken control of a wide variety of important areas of private international law in the Member States.

Some gaps remain, but measures to fill them may be expected in the coming years. Gaps exist in respect of the law applicable to the validity of marriages and civil partnerships; the adoption of children; and the general problems of private international law (such as characterisation, renvoi, the law applicable to incidental questions, and the establishment of the content of relevant foreign rules). Perhaps surprisingly, the harmonisation of choice-of-law rules in respect of corporate matters remains addressed at EU level only by the case-law of the European Court on the interpretation of the Treaty provisions on freedom of establishment. There are also some remaining gaps within areas now largely controlled by EU legislation; for example, as regards the recognition and enforcement in the Member States of judgments given in non-member countries.

There is an element of variable geometry in the system of private international law which has been established by the EU legislation. This is mainly due to the options conceded to Denmark, Ireland and the United Kingdom. Thus in Denmark only the Brussels I Regulation, the Lugano Convention 2007, the Rome Convention 1980, and the Regulation on Service are in operation. In the United Kingdom and Ireland, the Regulation on succession on death will not be applicable; and in the United Kingdom the Hague Protocol 2007 on the Law Applicable to Maintenance Obligations is not in operation. The Rome III Regulation on the law applicable to the grounds for divorce and legal separation was adopted under the enhanced co-operation procedure, and thus is in operation only in the 15 Member States which have chosen to participate in this measure. Conversely, the Lugano Convention 2007 has effectively extended the Brussels I Regulation (in its original version) to Switzerland, Norway and Iceland.

In view of the breadth of the potential subject-matter, the current volume focuses on issues selected as matters of particular interest or importance by the contributors, who are academics working in England,

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¹⁶ See EC Regulation 1393/2007, on the Service in the Member States of Judicial and Extrajudicial Documents in Civil or Commercial Matters, [2007] OJ L324/79.

¹⁷ EC Regulation 1206/2001, on Co-operation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters, [2001] OJ L174/1.

Scotland, Ireland, France, the Netherlands and Turkey. The first chapter considers the various problems which may arise under the EU regulations in relation to transactions or activities involving the use of the Internet.

Chapters 2–5 address various aspects of the Brussels I Regulation on civil jurisdiction and judgments. They deal with its provisions on jurisdiction clauses; with the exclusion of arbitration from the scope of the Regulation, and the implications of the exclusion for the use of anti-suit injunctions in respect of litigation brought in defiance of arbitration clauses; and jurisdiction in relation to claims based on intellectual property rights.

Chapters 6–9 focus on the Rome I Regulation on choice of law in respect of contracts. They deal with the meaning of the default rules which apply in the absence of choice by the parties; the operation of the Regulation, as well as the Vienna Convention and the UNIDROIT Principles, in relation to contracts for the sale of goods; the relevance under the Regulation of non-state law; and the interaction between the Regulation and mandatory substantive rules laid down by other EU legislation.

Chapters 10 and 11 deal with the Rome II Regulation on choice of law in respect of non-contractual obligations. Chapter 10 addresses various provisions of the Regulation, and Chapter 11 focuses on the exclusion from the Regulation of claims in respect of defamation or invasion of privacy. Finally, Chapter 12 considers the need for further harmonisation with regard to the concepts of corporate domicile and residence.

Peter Stone and Youseph Farah
Colchester, England
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