

Conflict of Laws

PRIVATE INTERNATIONAL LAW

SEVENTH EDITION

R. H. Graveson

SWEET & MAXWELL

CONFLICT OF LAWS

PRIVATE INTERNATIONAL LAW

BY

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To

MY WIFE

PREFACE

THIS book was first published a quarter of a century ago. In the years between, no period has seen such important and fundamental changes in the conflict of laws as that since the sixth edition appeared in 1969. Foremost amongst these changes is family law, and most notably the conferment on the married woman of capacity for an independent domicile. Almost as striking is the reform of jurisdiction in matrimonial causes following the ratification of The Hague Convention on the Recognition of Divorces and Legal Separations and the consequential Act of 1971 of that name. The increasing factor of legislation in the conflict of laws, largely inspired by the Law Commission, has been integrated with surprising ease into a predominantly judge-made system. Its most notable effect has been the unprecedented quickening of the law.

Recent years have witnessed a developing and refining of the major principles of this subject by the courts. In both range of innovation and in breadth of judicial approach, English private international law can now justly claim an international appreciation of the subject.

This aspect is reinforced by the accession of the United Kingdom to the European Economic Community and the consequent obligation to negotiate Conventions on various topics relevant to the conflict of laws, including those on bankruptcy and companies. Of this group the most important is the Convention on Jurisdiction and the Enforcement of Judgments, for its acceptance will oblige the United Kingdom to change the basis of its general jurisdiction *in personam* from presence to forensic residence, with many minor consequences. Although these Conventions are not yet part of United Kingdom law, they will become so within the foreseeable future if the United Kingdom remains within the European Community. It seemed appropriate, therefore by way of anticipation, to state in brackets at the appropriate places their likely effect when in force.

Our participation in The Hague Conference of Private International Law and now in the European Economic Community at once gives validity to the term United Kingdom law and greater urgency to the problem of defining the legal unit for the purposes of this subject. But this multiple international involvement carries its own problems; for example, obligations as a member of the EEC are not necessarily compatible with those as a member of The Hague Conference of Private International Law, so that those Hague Conference members outside the EEC, such as Australia, Canada and the United States, whose common law and common language we sought hard to bring into a largely French-speaking civil law body, may well find their position prejudiced by the

special régime of the total EEC membership in The Hague Conference. However, the present time is not simply one of problems, but of exciting change; and those whose duty or interest leads them to this subject may well play a part in formulating its future. For them we offer two new ideas in this edition. They are the relativity of permanence in the factor of intention in domicile of choice (p. 202) and the third element or dimension, beyond those of space and time, of evolutionary depth or juridical suitability of the applicable law.

This book, originally written for students, has gradually evolved into a text of general use for those in practice, public office or commerce as well as for those in Universities and similar institutions. Some 300 pages of this edition have been wholly or partly re-written. Apart from general revision and some rearrangement (for example, the topic of evasion of the law has now been incorporated into Chapter 5 on the limits of application of foreign law), substantial re-writing has taken place on the domicile of married women and minors, adoption, the proper law of contract, the applicable law in tort and jurisdiction in matrimonial causes. For its possible academic interest, a comparison has been included of the Recognition of Divorces and Legal Separations Act 1971 with The Hague Convention on the Recognition of Divorces and Legal Separations which the Act carries into effect in the United Kingdom, while the transitional problem of the recognition of decrees of annulment of marriage has been reconsidered in the light of that Act. We discuss the position of the law of the European Economic Community in this subject, and refer throughout the text wherever the Community Conventions may eventually become relevant.

My friends, Dr. M. E. Bathurst, Q.C. and Dr. E. J. Cohn, LL.D., both Honorary Visiting Professors of King's College, London, have helped me to avoid some errors, but those that remain are my own. My daughter, Miss Diana Graveson, LL.M., of Gray's Inn, Barrister-at-Law, undertook the essential but unattractive task of preparing a completely new index and revising the tables of cases and statutes. Her suggestions for improving the text have been most welcome. My publishers have been particularly patient and helpful in the face of printing delays which compelled me to update the completed manuscript by seven months. I offer my sincere and grateful thanks to them all. I have tried to state English law as it stands at July 1, 1974, and so far as European law is concerned, as our law will probably stand if the United Kingdom ratifies the European Judgments Convention.

R. H. G.

5 New Square,
Lincoln's Inn,
July 10, 1974

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