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The Conflict of Laws

C. M. V. Clarkson & Jonathan Hill

Fourth Edition

THE CONFLICT OF LAWS

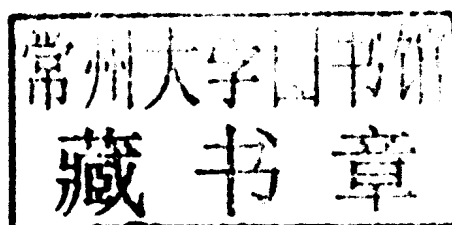
Fourth Edition

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Preface

This is the fourth edition by the current authors of a book that originally grew out of Tony Jaffey's *Introduction to the Conflict of Laws* (Butterworths, 1988). Perhaps more than most legal subjects, the conflict of laws has undergone a radical transformation over the past two decades—mainly as a result of European legislation which now dominates almost all areas of the subject. Some of these developments were covered in previous editions: the Brussels I Regulation (jurisdiction and judgments in civil and commercial matters) and the Brussels II Revised Regulation (jurisdiction and judgments in proceedings relating to matrimonial causes and matters of parental responsibility). Since the last edition, the process of Europeanisation of the subject has gathered further momentum with the replacement of the Rome Convention of 1980 by the Rome I Regulation (choice of law for contractual obligations), the Rome II Regulation (choice of law for non-contractual obligations) and the Maintenance Regulation (jurisdiction, choice of law and judgments in relation to maintenance obligations). Inevitably, in relation to all these topics there is an ever-increasing jurisprudence from the Court of Justice and the English courts. All these developments have necessitated extensive rewriting of the affected chapters.

The aim of this edition (like that of previous editions) remains to provide a clear and full account of those topics in private international law which are covered in typical undergraduate (and many postgraduate) courses. Consistent with this aim, two topics, covered in previous editions, arbitration and children, have largely been omitted from this new edition (although certain aspects of arbitration are now covered in the chapter on civil jurisdiction and the section on the domicile and habitual residence of children has been retained). These omissions have enabled more extensive coverage to be given to the core topics of civil jurisdiction and judgments, contractual and non-contractual obligations, domicile and habitual residence, marriage and matrimonial causes without any expansion to the overall length of the book.

The other main change in this edition is that the final chapter in previous editions which covered the topics of rationale of choice of law, classification, renvoi, the incidental question and exclusion of foreign law has been abandoned and these topics have been relocated in a much-expanded new introductory chapter. These topics are of such importance to a proper understanding of the book's main substantive chapters that it is better that they be covered (in as much detail as previously) at the outset.

For the sake of simplicity, throughout the text we have used 'he', 'his' and 'him' to signify 'he or she', 'his or her', and 'him or her'. We have also used 'England' and 'English law' to signify 'England and Wales' and 'the law of England and Wales'.

We continue to be grateful to Tony Jaffey for providing us with the opportunity to use his work as a point of departure for the development of this book. We are also

grateful to the various editors at Oxford University Press with whom we have worked for the care and diligence they have shown throughout the production of this book.

This is the last edition of this book with which Chris Clarkson will be involved. He leaves the book in good hands and is very appreciative of the invaluable role played by, and the support and friendship of, his co-author, Jonathan Hill over the past 14 years and four editions of this book. He is indebted to his wife, Barbara, for her support during the writing of all these editions. He would like to dedicate his share of this book to all his students—past and present—who have used this book. Jonathan Hill would like to extend his usual thanks to Sheila for her support.

As far as possible, this book has been written with reference to the law as on 1 February 2011, though we have been able to incorporate some later material

Chris Clarkson
Jonathan Hill
May 2011

New to this edition

1. The chapter on choice of law relating to non-contractual obligations has been completely re-written in light of the Rome II Regulation.
2. A substantially revised chapter on choice of law relating to contractual obligations in light of the Rome I Regulation is included.
3. Chapters on habitual residence and matrimonial causes have been revised to take account of increasing case law (both domestic and European) on the Brussels II Revised Regulation and the new Maintenance Regulation.
4. Chapters on arbitration and children have been deleted to enable the topics covered in most courses on the conflict of laws to be given expanded coverage.
5. The final chapter (in previous editions) on theoretical issues has been deleted and these topics have been integrated into an expanded introductory chapter.

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