

TABLE OF CONTENTS

<i>Table of Cases</i>	xvii
<i>Table of Legislation</i>	xli
<i>List of Abbreviations</i>	lxix
1. All Roads Lead to Rome	1
A. A New Roman World	1.01
B. What is an 'Applicable Law' of a Contract?	1.11
C. A New Age of International Cooperation (1945–1968)	1.17
D. From Rome to Brussels (1957–1968)	1.24
E. Harmonizing the Conflict-of-Laws Rules of Member States	1.38
F. Preliminary Work (1968–1972)	1.54
G. The 1972 Draft Convention	1.65
H. When Six became Nine (1973–1975)	1.75
I. The Return to Rome (1975–1980)	1.86
J. The Rome Convention (1980)	1.98
K. Hurry Up and Wait	1.107
L. The Contracts (Applicable Law) Act 1990	1.112
M. New Age after New Age	1.121
N. The New Imperium (1992–2003)	1.126
O. 'An Area of Freedom, Security and Justice'	1.135
P. The Rome I Regulation (2003–2009)	1.169
Q. Justification and the Principles of Subsidiarity and Proportionality	1.198
R. Ireland and the United Kingdom	1.204
S. The Treaty of Lisbon (2007)	1.206
T. Preliminary References to the CJEU under Article 267 TFEU	1.208
U. The Brussels I Regulation (Recast) (2012)	1.210
2. Application and Relationships	69
A. Application in Time (<i>Ratione Temporis</i>)	2.01
B. Territorial Application	2.02
C. Member States with Different Territorial Units	2.08
D. Direct Applicability in Member States	2.18
E. Consequential United Kingdom Legislation	2.20
F. Directly Applicable to the Courts and Tribunals of a Member State	2.26

G. Duration and Review	2.44
H. Relationship with Other Provisions of EU Law	2.47
I. Relationship with the Rome Convention	2.84
J. Relationship with Existing International Conventions	2.90
3. Classification and Interpretation	107
A. A Brave New (Roman) World	3.01
B. Classification of Obligations	3.04
C. Interpretation	3.14
D. Literal or Textual Interpretation in a Multi-Lingual Union	3.21
E. 'Autonomous' Interpretation	3.28
F. Context and Objectives	3.36
G. Using the Recitals	3.55
H. The General Objective of Legal Certainty	3.57
I. Using <i>Travaux Préparatoires</i>	3.68
J. The Court's Case Law	3.79
K. Academic Opinion	3.82
L. National Courts	3.83
4. The 'Applicable Law'	135
A. 'The Law of 'A Country''	4.01
B. States with More than One Legal System: Article 22(1)	4.05
C. 'Universal Application'	4.24
D. The Exclusion of Renvoi	4.28
E. The Use of Non-State 'Law'?	4.32
F. The Commission's Proposal: Draft Article 3(2)	4.48
G. Recital (13): Incorporation by Reference	4.67
H. Recital (14): Future Community Contract Law Instruments	4.77
I. Practical Consequences of Excluding Non-State Law	4.88
J. The Future?	4.93
5. Habitual Residence	161
A. A Key Connecting Factor	5.01
B. 'Companies and Other Bodies, Corporate or Unincorporated'	5.05
C. 'A Natural Person Acting in the Course of his Business Activity'	5.33
D. 'A Branch, Agency, or Other Establishment'	5.42
E. The Habitual Residence of a Private Individual	5.62
F. Article 19(3): The Relevant Time	5.68

6. Material Scope	181
A. Article 1(1)	6.01
B. 'In Situations Involving a Conflict of Laws'	6.02
C. 'To Contractual Obligations?'	6.07
D. Preliminary Thoughts	6.08
E. Matters Relating to Contract under the Brussels Regime	6.31
F. A Preliminary Autonomous Interpretation of 'Contractual Obligations'	6.39
G. In 'Civil and Commercial Matters'	6.54
H. 'Revenue, Customs or Administrative Matters'	6.61
7. Specific Exclusions	203
A. Definition by Exclusion	7.01
B. The Status or Legal Capacity of Natural Persons	7.03
C. Family and Comparable Relationships	7.23
D. Matrimonial and Comparable Property Regimes	7.43
E. Wills and Succession	7.57
F. Negotiable Instruments	7.74
G. Arbitration and Choice of Court Agreements	7.109
H. Questions of Internal Company Law	7.132
I. Certain Questions of Agency	7.150
J. Trusts	7.184
K. Pre-Contractual Dealings	7.193
L. Certain Insurance Contracts	7.213
8. Evidence and Procedure, Presumptions of Law, Burden and Mode of Proof	259
A. Boundary Markers	8.01
B. Substance and Procedure	8.02
C. Background and Legislative Development	8.08
D. Article 1(3): 'Evidence and Procedure'	8.24
E. Article 18: An Introduction	8.38
F. Presumptions of Law	8.42
G. Burden of Proof	8.50
H. In Practice	8.52
I. Modes of Proof: Article 18(2)	8.59
J. Proof of Foreign Law	8.73
K. Pleading and Proving Foreign Law in England & Wales	8.78

9. Freedom of Choice	285
A. The Cornerstone Provision	9.01
B. Party Autonomy	9.02
C. 'The Law Chosen by the Parties'	9.11
D. Making a Choice	9.21
E. 'Made Expressly'	9.25
F. Or 'Clearly Demonstrated'	9.28
G. 'By the Terms of the Contract or the Circumstances of the Case'	9.73
H. <i>Dépeçage</i>	9.125
I. Article 3(2): Changing the Applicable Law	9.141
J. Article 3(3): Mandatory Rules	9.148
K. Article 3(4): EU Mandatory Rules	9.169
L. Article 3(5): The Existence and Validity of Consent	9.186
10. The Applicable Law in the Absence of Choice	335
A. 'Choosing' in the Absence of Choice	10.01
B. The Search for a Uniform Solution	10.04
C. Article 4 of the Rome Convention	10.15
D. The Rome Convention in Operation (1991 to the 2003 Green Paper)	10.60
E. The Court's Decision in <i>ICF</i>	10.67
F. The Call for Change	10.76
G. Article 4: General Observations	10.84
H. Sale of Goods	10.98
I. The Provision of Services	10.136
J. Rights <i>in Rem</i> and Tenancies of Immovable Property	10.153
K. Tenancies for Temporary Private Use	10.186
L. Franchise Contracts	10.212
M. Distribution Contracts	10.232
N. Sale of Goods by Auction	10.251
O. Contracts Concluded within a Multilateral System	10.272
P. Article 4(2)	10.319
Q. Article 4(3): the Escape Clause	10.354
R. Closest Connection	10.400
S. Intellectual Property Contracts	10.410
11. Contracts of Carriage	445
A. Carriage of Goods and Passengers	11.01
B. International Transport Conventions	11.02
C. Contracts of Carriage under the Rome Convention	11.03

D. Calls for Change?	11.18
E. The Rome I Proposal: Draft Article 4(1)(c)	11.23
F. 'Carriage of Goods'	11.31
G. The Parties to a Contract of Carriage of Goods	11.63
H. The Applicable Law under Article 5(1) for Contracts for the Carriage of Goods	11.77
I. Contracts for the Carriage of Passengers: Article 5(2)	11.114
J. Mixed Contracts of Carriage of Goods and Passengers	11.154
K. The 'Escape Clause' under Article 5(3)	11.155
L. Relationship between Rome I and International Conventions and other EU Instruments	11.160
12. Consumer Contracts	495
A. Protecting the Weaker Party	12.01
B. The 1968 Brussels Convention	12.05
C. Article 5 of the Rome Convention	12.10
D. Article 15 of the Brussels I Regulation (44/2001)	12.32
E. The Need to Revise the Rome Convention	12.42
F. Suggested Solutions	12.55
G. The Rome I Proposal: Draft Article 5	12.63
H. The Legislative Development of Article 6 of the Regulation	12.70
I. The Scope of Article 6	12.80
J. 'A Concluded Contract'	12.83
K. 'The Consumer'	12.93
L. 'The Professional'	12.126
M. The Activity Provisos	12.138
N. The Scope of Consumer Contract Protection	12.178
O. The Supply of Services Outside a Consumer's Habitual Residence	12.197
P. Contracts of Carriage Excluded	12.205
Q. The Package Travel Contract Exception	12.207
R. Contracts Relating to Immovable Property	12.216
S. The Timeshare Contracts Exception	12.220
T. The Financial Transactions/Exclusions	12.228
U. Financial Instruments	12.235
V. Transferable Securities	12.247
W. Units in Collective Investment Undertakings	12.260
X. Financial Services are not Excluded	12.269
Y. Article 6(4)(e): Multilateral Trading Systems	12.274

13. Insurance and Reinsurance Contracts	577
A. A New Rule that Preserves the Status Quo	13.01
B. Choice of Law in Insurance Contracts under the Old Regime	13.06
C. Life Assurance: The Consolidated Life Assurance Directive	13.14
D. General Insurance: The Non-Life Insurance Directives	13.17
E. The 'Situation of the Risk' under the Insurance Directives	13.31
F. The Need for Change?	13.34
G. A New Insurance Provision?	13.48
H. The Legislative Development of Article 7	13.61
I. Insurance Contracts under the Rome I Regulation	13.111
J. The Applicable Law of Large Risk Insurance Contracts: Article 7(1) and (2)	13.122
K. The Applicable Law for 'All Other Insurance Contracts' situated within Member States	13.139
L. Restricted Party Autonomy for Non-Large Risks	13.148
M. The Applicable Law in the Absence of Permitted Choice: Article 7(3)	13.163
N. The Additional Rules for Included Contracts	13.167
O. Mixed Risk Contracts	13.172
P. Non-Large Risks Wholly Located outside the European Union	13.174
Q. The Position of Denmark	13.175
R. Non-Large Risks Situated in the EEA	13.177
S. Reinsurance under the Rome Convention	13.178
T. Reinsurance under the Rome I Regulation	13.181
14. Individual Employment Contracts	631
A. <i>Favor Laboratoris</i>	14.01
B. Background	14.03
C. Article 6 of the Rome Convention	14.05
D. Interpretation	14.07
E. Individual Employment Contracts	14.11
F. Article 8(1): Party Autonomy for Employment Contracts	14.39
G. The Protective Proviso: Article 8(1) and Recital (35)	14.47
H. Article 8(2): Habitual Place of Performance	14.78
I. Temporary Employment: Article 8(2) and Recital (36)	14.105
J. Article 8(3): Place of Engagement	14.122
K. Article 8(4): The Exception Clause	14.136
L. The Relationship with the Posted Workers Directive: Recital (34)	14.162

15. Overriding Mandatory Provisions & Public Policy	683
A. Two Sides of the Same Coin	15.01
B. Mandatory Rules	15.02
C. Article 7 of the Rome Convention	15.07
D. Article 9(1): The New Autonomous Definition	15.12
E. Recital (37)	15.36
F. Article 9(1): Two Key Issues	15.38
G. Article 9(2): Overriding Mandatory Rules of the Forum	15.49
H. Article 9(3) of the Rome I Regulation: Third Country Overriding Mandatory Rules	15.57
I. Article 9(3) in Practice	15.91
J. 'Effect May Be Given'	15.113
K. Article 21: Public Policy of the Forum	15.124
16. Consent, Validity, and Incapacity	717
A. Consent and Material Validity	16.01
B. Using the Putative Applicable Law	16.02
C. Article 10(1): The Existence and Validity of a Contract	16.06
D. Article 10(2): The Exception Regarding the Existence of Consent	16.11
E. Article 11: Formal Validity	16.21
F. Article 11(1): Contracts Concluded in One Country	16.41
G. Article 11(2): Contracts Concluded by Parties in Different Countries	16.49
H. General Observations: Article 11(1) & (2)	16.53
I. Article 11(3): A Unilateral Act Intended to have Legal Effect	16.56
J. Article 11(4): Consumer Contracts	16.62
K. Article 11(5): Immovable Property	16.67
L. Article 13: Incapacity under Another Law	16.78
17. The Scope of the Law Applicable	743
A. The Realm of the Applicable Law	17.01
B. Interpretation	17.04
C. Performance	17.19
D. The Consequences of Breach/Assessment of Damages	17.45
E. Extinguishing Obligations, Prescription, and Limitation of Actions	17.76
F. The Consequences of Nullity of the Contract	17.92
18. Assignment and Subrogation	773
A. Article 14	18.01
B. Assignments Generally	18.05

C. Non-application	18.12
D. The Expanded Concept of 'Assignment' in Article 14(3)	18.14
E. Article 14(1)	18.22
F. Contractual Subrogation	18.24
G. 'Relationship' vs 'Mutual Obligations'	18.29
H. 'A Claim' vs 'A Right'	18.57
I. Article 14(2)	18.62
J. Third Parties and Questions of Priority	18.67
K. Article 15: Legal Subrogation	18.105
19. Multiple Liability	807
A. The Right to Claim Recourse	19.01
B. Background	19.03
C. Article 13 of The Rome Convention	19.07
D. The Rome I Proposal	19.09
E. Legislative Development	19.13
F. Article 16 in Practice	19.25
20. Set-off	815
A. Extinguishing Reciprocal Obligations	20.01
B. European Concepts of Set-off	20.03
C. The Three Families	20.05
D. Contractual Set-off and Insolvency Set-off	20.12
E. Background	20.18
F. The Legislative Development of Article 17	20.25
G. Article 17 in Practice	20.47
21. Coda	831
Appendices	
A. The Rome I Regulation	835
B. Article 25 Conventions	849
C. The Rome I Regulation: Key Legislative Chronology & Documents	851
D. The 1972 Draft Convention	859
E. The Rome Convention 1980	867
<i>Index</i>	877