

CONTENTS

<i>Acknowledgements</i>	v
<i>List of Abbreviations</i>	xv
<i>List of Cases</i>	xvii
<i>List of Treaties and Legislation</i>	xxiii

PART I. CONCEPT AND OBJECTIVES

Chapter 1. Introduction	3
1.1. Premise.....	3
1.2. Delineation of Party Autonomy	4
1.3. Development in EU Private International Law	5
1.4. Outline of Approach.....	13
Chapter 2. Conceptualising Free Will in EU Private International Law Relating to Family Matters and Succession	15
2.1. Introduction	15
2.2. The Intrinsic Value of Free Will in the Party Autonomy Context.....	15
2.2.1. Requisite Elements of Free Will	16
2.2.2. Freedom as an Intrinsic Justification for Party Autonomy	18
2.2.3. Reconciling the Will of the Parties with the Law	20
2.3. The Value Attached to Free Will in the EU Setting.....	23
2.3.1. European Human Rights Framework	23
2.3.2. CJEU Case Law	25
2.4. Free Will in EU Cross-Border Family Matters and Succession	29
2.4.1. Restricted Character	30
2.4.2. Addressing the Needs of Specific Parties.....	32
Chapter 3. The Objectives behind the Unification of Private International Law on Family Matters and Succession	35
3.1. Introduction	35
3.2. The Europeanisation of Private International Law on Family Matters and Succession	36
3.2.1. The Changing Nature of Free Movement	36

3.2.2. The Emergence of the Area of Freedom, Security and Justice.....	38
3.2.3. The Development of a Suitable Legal Basis.....	39
3.3. Obstacle I: Legal Uncertainty	42
3.3.1. Extricating the Elements of Legal Certainty.....	42
3.3.1.1. The Rule of Law	44
3.3.1.2. Securing a Predictable Outcome	44
3.3.1.3. The Protection of Legitimate Expectations.....	45
3.3.2. Sources of Legal Uncertainty in EU Cross-Border Family Matters and Succession	47
3.3.2.1. The Complexity of the Private International Law Framework	48
3.3.2.2. The Indefinite Nature of the Private International Law Framework	49
3.3.2.3. Expectations that have Arisen under a Previously Applicable Legal System	50
3.3.2.4. Entrenched Expectations as to the Effects of a Relationship	51
3.4. Obstacle II: Lack of Affinity with the Applicable Law	54
3.4.1. The Components of Close Connection	55
3.4.1.1. Everyday Life	56
3.4.1.2. Origin and Culture	57
3.4.1.3. Situational Affinity.....	57
3.4.2. Difficulty in Securing a Law of Close Connection	58
3.5. Obstacle III: Practical Hindrances to Accessing Justice.....	59
3.5.1. Access to Justice for Parties in Cross-Border Situations	60
3.5.2. Barriers to Accessing Justice in the Private International Law Setting	61
3.5.2.1. The Necessity to Travel to Attend Proceedings	61
3.5.2.2. Complex Proceedings	61
3.5.2.3. Incompatible Interactions.....	63

PART II. PRELIMINARIES OF CHOICE

Chapter 4. Material and Personal Scope.....	69
4.1. Introduction	69
4.2. Preliminary Observations	70
4.2.1. The Autonomous Meaning of Concepts in EU Law.....	70
4.2.2. Civil Matters.....	70
4.2.3. International Character.....	71

4.3.	Matrimonial Matters	73
4.3.1.	Material Scope	74
4.3.2.	Personal Scope	76
4.4.	Property Relations between Spouses and Registered Partners	78
4.4.1.	Material Scope	78
4.4.2.	Personal Scope	82
4.5.	Maintenance Obligations.....	84
4.5.1.	Material Scope	85
4.5.2.	Personal Scope	89
4.5.2.1.	Debtor.....	90
4.5.2.2.	Creditor	90
4.6.	Parental Responsibility.....	92
4.6.1.	Material Scope	93
4.6.2.	Personal Scope	97
4.6.2.1.	Child	97
4.6.2.2.	Holders of Parental Responsibility	97
4.6.2.3.	Parties to the Proceedings	98
4.7.	Succession	100
4.7.1.	Material Scope	100
4.7.2.	Personal Scope	105
4.7.2.1.	Deceased	105
4.7.2.2.	Parties Concerned in the Estate.....	105
4.8.	Synthesis	107
4.8.1.	Overview of the Findings	107
4.8.2.	Interplay between Related Areas	110
4.8.3.	Gaps to be Addressed	112
	Chapter 5. Focus of Choice.....	113
5.1.	Introduction	113
5.2.	Court	113
5.2.1.	General Delineation.....	114
5.2.2.	Non-Judicial Authorities.....	116
5.2.3.	Procedural Guarantees and Requirements	118
5.2.4.	Religious and Other Private Authorities	120
5.2.5.	Arbitral Tribunals	122
5.2.6.	Notification of Non-Judicial Authorities.....	123
5.3.	Applicable Law	125
5.3.1.	State Law.....	125
5.3.2.	Universal Scope	126

5.3.3. Unity of the Law.....	126
5.3.4. Exclusion of <i>Renvoi</i>	127
5.4. Synthesis	128
5.4.1. Overview of the Findings	128
5.4.2. Interplay between Related Areas	129
5.4.3. Gaps to be Addressed	130
 PART III. CONTENT OF CHOICE	
Chapter 6. Direct Connections	133
6.1. Introduction	133
6.2. Habitual Residence.....	134
6.2.1. General Description.....	134
6.2.2. Choice of Court: Article 4(1)(a) and (c)(ii) of the Maintenance Regulation	139
6.2.3. Choice of Law.....	141
6.2.3.1. Article 5(1)(a) and (b) of the Rome III Regulation	141
6.2.3.2. Article 22(1)(a) of the Property Regulations	143
6.2.3.3. Article 8(1)(b) of the Hague Maintenance Protocol	143
6.3. Nationality and Domicile.....	144
6.3.1. General Description.....	145
6.3.2. Substitution with Domicile.....	147
6.3.3. Choice of Court: Article 4(1)(b) of the Maintenance Regulation.....	149
6.3.4. Choice of Law.....	149
6.3.4.1. Article 5(1)(c) of Rome III, Article 22(1)(b) of the Property Regulations and Article 8(1)(a) of the Hague Maintenance Protocol	150
6.3.4.2. Article 22 of the Succession Regulation	150
6.4. The Place where the Legal Relationship was Created	154
6.4.1. General Description.....	154
6.4.2. Choice of Court: Article 7 of the Property Regulations.....	154
6.4.3. Choice of Law: Article 22(1)(c) of the Partnership Property Regulation.....	156
6.5. Synthesis	156
6.5.1. Overview of Findings	157
6.5.2. Interplay between Related Areas	160
6.5.3. Gaps to be Addressed	163

Chapter 7. Coordinating Provisions	165
7.1. Introduction	165
7.2. Jurisdictions that Decide on Related Matters	166
7.2.1. Article 5 of the Property Regulations	166
7.2.2. Article 4(1)(c)(i) of the Maintenance Regulation.....	169
7.2.3. Article 12(1) of the Brussels II Bis Regulation	169
7.3. Laws that Apply to Related Matters	173
7.4. Determining Jurisdiction on the Basis of Applicable Law	174
7.4.1. Article 7 of the Property Regulations	175
7.4.2. Articles 5, 6(b) and 7(b) and (c) of the Succession Regulation.....	176
7.5. Designating the Application of the <i>Lex Fori</i>	178
7.5.1. Article 5(1)(d) of Rome III	178
7.5.2. Article 7 of the Hague Maintenance Protocol.....	179
7.6. Synthesis	180
7.6.1. Overview of Findings	180
7.6.2. Value Added to the Framework	185
7.6.3. Gaps to be Addressed	188
Chapter 8. Subsidiary Forms of Party Autonomy.....	191
8.1. Introduction	191
8.2. Party Autonomy and Judicial Discretion	191
8.2.1. Article 12(3) of Brussels II Bis	192
8.2.2. Article 15 of Brussels II Bis.....	195
8.2.3. Articles 6(a) and 7(a) of the Succession Regulation.....	198
8.3. Entering an Appearance before a Court.....	199
8.3.1. Article 8 of the Property Regulations	200
8.3.2. Article 5 of the Maintenance Regulation.....	201
8.3.3. Article 9 of the Succession Regulation.....	202
8.4. Synthesis	203
8.4.1. Overview of Findings	203
8.4.2. Value Added to the Framework	205
8.4.3. Gaps to be Addressed	208
PART IV. VARIABLES OF CHOICE	
Chapter 9. Temporal, Formal and Material Requirements	211
9.1. Introduction	211
9.2. Temporal Limits of Choice	211

9.2.1. Choice of Court	212
9.2.1.1. Article 7 of the Property Regulations and Article 4 of the Maintenance Regulation	212
9.2.1.2. Article 5 of the Property Regulations	213
9.2.1.3. Articles 5, 6(b) and 7(b) and 7(c) of the Succession Regulation.....	214
9.2.1.4. Article 12 of Brussels II Bis	215
9.2.1.5. Forum Non Conveniens Mechanisms.....	218
9.2.1.6. Acceptance of Jurisdiction by Entering an Appearance	218
9.2.2. Choice of Law.....	219
9.2.2.1. Article 5 of Rome III.....	219
9.2.2.2. Article 22 of the Property Regulations	220
9.2.2.3. Article 8 of the Hague Maintenance Protocol	220
9.2.2.4. Article 7 of the Hague Maintenance Protocol	221
9.2.2.5. Article 22 of the Succession Regulation	222
9.3. Formal Validity	222
9.3.1. Choice of Court	222
9.3.1.1. Article 7(2) of the Property Regulations.....	223
9.3.1.2. Article 4(2) of the Maintenance Regulation	224
9.3.1.3. Article 5(2) of the Succession Regulation.....	225
9.3.1.4. Article 7(c) of the Succession Regulation.....	225
9.3.1.5. Article 12 of Brussels II Bis	226
9.3.1.6. Other Subsidiary Party Autonomy Provisions.....	227
9.3.2. Choice of Law.....	229
9.3.2.1. Article 7 of Rome III and Article 23 of the Property Regulations.....	229
9.3.2.2. Articles 7(2) and 8(2) of the Hague Maintenance Protocol	231
9.3.2.3. Article 22(2) of the Succession Regulation.....	232
9.4. Material or Substantive Validity	236
9.4.1. Choice of Court	236
9.4.2. Choice of Law.....	238
9.4.2.1. The Rome III Regulation	239
9.4.2.2. The Property Regulations	239
9.4.2.3. The Hague Maintenance Protocol	240
9.4.2.4. The Succession Regulation	241
9.5. Synthesis.....	242
9.5.1. Overview of the Findings	242
9.5.2. Interplay between Related Areas	246
9.5.3. Gaps to be Addressed	249

Chapter 10. Enforcement of Choice	253
10.1. Introduction	253
10.2. Exclusivity of Jurisdiction and <i>Lis Pendens</i>	253
10.2.1. Exclusivity of Jurisdiction.....	254
10.2.2. <i>Lis Pendens</i>	255
10.3. Overriding Mandatory Provisions	256
10.3.1. Article 30 of the Property Regulations	257
10.3.2. Article 30 of the Succession Regulation	259
10.4. Public Policy (<i>Ordre Public</i>).....	260
10.4.1. Article 12 of the Rome III Regulation, Article 31 of the Property Regulations and Article 35 of the Succession Regulation.....	261
10.4.2. Article 13 of the Hague Maintenance Protocol	265
10.5. Substantive Provisions	267
10.5.1. Article 10 of the Rome III Regulation.....	267
10.5.2. Articles 22(3) and 28 of the Property Regulations.....	268
10.5.3. Article 6 of the Hague Maintenance Protocol	270
10.5.4. Article 14 of the Hague Maintenance Protocol	270
10.6. (Non-)Recognition of a Relationship	271
10.6.1. General Approach	272
10.6.2. Article 13 of Rome III	278
10.6.3. Article 9 of the Property Regulations	279
10.7. The Impact of Enhanced Cooperation	279
10.7.1. The Rome III Regulation.....	281
10.7.2. The Property Regulations	282
10.8. Synthesis.....	283
10.8.1. Overview of the Findings	283
10.8.2. Interplay between Related Areas	286
10.8.3. Gaps to be Addressed	290

PART V. CONCLUSION

Chapter 11. Concluding Synthesis.....	297
11.1. Introduction	297
11.2. Legal Certainty	297
11.2.1. General Findings	298
11.2.2. Impact of the Interplay between Related Areas	302
11.2.3. Gaps to be Addressed	304

11.3.	Affinity with the Applicable Law.....	306
11.3.1.	General Findings	306
11.3.2.	Impact of the Interplay between Related Areas	309
11.3.3.	Gaps to be Addressed	309
11.4.	Practical Considerations in Accessing Justice	310
11.4.1.	General Findings	311
11.4.2.	Impact of the Interplay between Related Areas	313
11.4.3.	Gaps to be Addressed	317
11.5.	The Manifestation of Free Will in the Present Framework.....	318
11.5.1.	General Findings	319
11.5.2.	Impact of the Interplay between Related Areas	326
11.5.3.	Gaps to be Addressed	327
11.6.	Closing Remarks.....	330
	<i>Bibliography</i>	333
	<i>Index</i>	345