Index

abduction
Abduction Convention 404, 418–21
Brussels IIA Regulation 412, 421–4
see also children; parental responsibility

access order
Brussels IIA Regulation and 404 recognition and enforcement of 428–9
see also order

action
consumer, against, consumer contracts 127
direct, against liability insurers, torts and 374–5
employee, against, employment contracts 131–2
employer, against, employment contracts 129–31
insurer, against, insurance contracts 115–18
insurer, brought by, insurance contracts 118–19
original, inadequate notice of, exception to general rule of no review of jurisdiction 229–33
pending, concerning property, exceptions to choice of law general rule, insolvency proceedings 459–60
related, concurrent proceedings and 176, 177, 187–92
similar, concurrent proceedings and Brussels I Regulation and 176–7 concurrent exclusive jurisdiction 187
mechanism 179–80
other provisions, relation with 185–7
same cause of action 180–82
same parties 182–3
seisin, time of 183–5
supplier, against, consumer contracts 126–7
act
detrimental, invalidation of, exceptions to choice of law general rule, insolvency proceedings 462
address
service, for, initial application for enforcement and, normal procedure 240–41
Admiralty
alternative jurisdiction and 103–5
advertising
consumer contracts 125, 313–14
agency
applicable law, choosing, torts and 356–7
arbitration, Brussels I Regulation material scope and 33–5
choice of court, Hague Convention 18
distribution, proper law of contract and, closest connection 286
existing, with external countries, exception to general rule of no review of jurisdiction 219–21
jurisdiction see jurisdiction agreement
parties, of, jurisdiction by, parental responsibility and, Brussels IIA Regulation 414–15
submission to jurisdiction by see submission by agreement
see also consent

463
Index

aircraft territorial scope and, torts 334–5
alternative jurisdiction
Admiralty 103–5
ancillary jurisdiction 106
co-defendants 107–9
counterclaims 111–12
land, claims involving 112
third party proceedings 109–11
Brussels I Regulation and 64–7
contract, ordinary 69–70
Art 5(1), merits of 85–6
contractual matters 70–74
Luxembourg concession 82
new approach 78–81
obligation in question 74
place of performance 82–5
residual approach 74–8
residual cases 81–2
establishing jurisdiction 67–9
maintenance 86
secondary establishments 99–101
tort 86
criminal proceedings 99
defamation 93–4
economic 94–7
equitable wrongs 97
harmed events, general principles 90–92
reform, possible 98
restitutionary claims 98
tortious matters 87–90
trust 102–3
see also jurisdiction
ancillary jurisdiction
alternative jurisdiction and 106
co-defendants 107–9
counterclaims 111–12
land, claims involving 112
third party proceedings 109–11
insurance contract and 117, 118
see also jurisdiction
anti-suit injunction
Brussels I Regulation and 35–6, 193–5
English law, traditional 192
merits 195–7
see also injunction
appeal
enforcement, against, normal procedure 244–8
further 248–9
provisional enforcement pending 243–4
appearance
child’s 415, 426–7
spouse’s 395, 399
submission to jurisdiction by 20, 127, 173–5
applicable law
agreements choosing, torts and 356–7
identifying, insurance contracts and 327
application
custody, date of, habitual residence of child and, Brussels IIA
Regulation 410
discovery of documents relevant to merits, for, as submission by appearance 175
initial, for enforcement, normal procedure 239–43
arbitration agreement
Brussels I Regulation material scope and 33–5
see also agreement
arbitration clause
anti-suit injunction and 193, 194
proper law of the contract and, express choice 275
Rome Convention and, excluded from 267
transnational contract 271
arbitration proceedings
anti-suit injunction and 192, 193
Brussels I Regulation material scope and 31
concurrent proceedings and 178
provisional measures and 199
recognition and enforcement of judgments and 207, 217
Rome Convention choice of law rules and 264
see also proceedings
Arrest Convention
alternative jurisdiction and 103–4
see also international conventions
ascertainability
jurisdiction to open main insolvency proceeding and 444–5
assets
  debtor’s 452, 453, 455–6
  see also property
assignment
  voluntary, contracts 303–4
association see company
auditor
  liability of, excluded from torts 333
Australia
  alternative jurisdiction and 94
  contract and 293
  recognition and enforcement of judgments and 220
tort and 343
Austria
  ancillary jurisdiction and 111
authentic instrument
  enforcement of uncontested claim and 289
  enforcement of, Brussels I Regulation and 43
  recognition and enforcement of judgments and 205, 206, 211–13
  see also document; instrument
authority
  contract and 299–301
bank
  obligation in question and, alternative jurisdiction 76
  proper law of the contract and 280–81, 284
bankruptcy
  Brussels I Regulation material scope and 28–9
  concurrent proceedings and 178
  see also insolvency
Belgium
  Brussels Convention and 14
  domicile concept and 60
  parental responsibility and 426
Borrás Report
  Brussels II and IIA Regulations and, interpretation 385
  matrimonial proceedings and 392, 396, 397, 400
  recognition and enforcement and, grounds for refusing 399, 426
Brussels I Regulation
  adoption 6
  alternative jurisdiction and 64–7, 85–6
  anti-suit injunction and 35–6, 193–5
  arbitration and 31
  arbitration agreement and 33–5
  Brussels Convention and 6
  civil and commercial matters and 22–4
  civil jurisdiction and judgments and 6–7
  concurrent proceedings and 176–9, 185–7
  consumer contract and 122
  costs against non-party and, ordering 37
  direct jurisdiction and, domicile 45–7
  domicile concept and 62, 63
  employment contract and 128
  enforcement and, normal procedure 238, 239
  European Enforcement Order and 7
  excluded matters 24–5
  exclusive jurisdiction and 133–4
  external judgment and 36–7
  family matters and 25–7
  history 13–14
  insolvency and 28–30, 439
  insurance contract and 114
  Lugano Convention and 6
  maintenance and matrimonial property and 430, 431–2, 433
  material scope 18–19, 21
  matrimonial proceedings and 384, 385
  New York Convention 1958
  relevance 31
  outline 18–21
  protected contract and 113–14
  provisional measures under 198–201
  recognition and enforcement of judgments and 205–7, 219–22
  social security and 30–31
  specialized conventions and 37–40
  specialized Community instruments and 40–41
  subject matter and, test for principal 31–3
Brussels I Regulation (cont.):
submission to jurisdiction by
agreement and 155–7, 164
submission to jurisdiction by
appearance and 173, 174
succession and 27–8
temporal scope 41–4
Uncontested Claims Regulation
compared 251
see also EC Regulations

Brussels II Regulation
custody order and, recognition and
enforcement of 407–8
matrimonial proceedings and 383–90
see also EC Regulations

Brussels IIA Regulation
maintenance and matrimonial
property and 430, 435
parental responsibility and 403–9,
412, 421–6
matrimonial proceedings and 383–90
see also EC Regulations

Brussels Convention
alternative jurisdiction and
Admiralty 105
contract, ordinary 69, 70
Luxembourg concession 82
obligation in question 74
place of performance 82, 83
tort 86
Brussels I Regulation and 6
concurrent proceedings and 184, 189
consumer contract and 123–4, 125
direct jurisdiction and, domicile 46,
48
employment contract and 128, 131–2
enforcement and, normal procedure
248–9
history 14–15
insurance contract and 120
recognition and enforcement of
judgments and 205, 206,
221–2
specialized conventions and 38
submission to jurisdiction and 164,
167, 169–70, 174
see also international conventions

Canada
recognition and enforcement of
judgments and 220
tort and 343
see also Quebec
capacity
debtor’s 447, 452
contract and 297–8
individual legal, Rome Convention
and, excluded from 267
remarriage and, Brussels IIA
Regulation and 399–400
cause of action
same, concurrent proceedings and
180–82
centre, debtor’s see debtor, centre of
certification
enforcement and 241–2, 253–5
children
fundamental rights of, Brussels IIA
Regulation 404
habitual residence of, direct
jurisdiction and, Brussels IIA
Regulation 410, 411–14,
421–2
placement in care, non-compliance as
grounds for refusing
recognition and enforcement of
custody order 427
presence of, Brussels IIA Regulation
415
property of, Brussels IIA Regulation
407
see also abduction
choice of court
acceptable, submission to jurisdiction
and 166–7
agreement for, Hague Convention 18
submission to jurisdiction by
agreement and 169–70, 171
choice of law
conflict rules and 3
consumer contract 315–16
contract 264–5
express 271, 272–8
implied 278–82
employment contract 320–21
insolvency proceedings 447, 456–62
insurance contract 323, 325–7
matrimonial proceedings, Brussels II
and IIA Regulations not
applicable to 384, 385
restitution 377
Index

Rome II Proposal and 7–8
Rome Convention and 7
tort 356–7, 338–9, 64
civil jurisdiction and judgments
Brussels I Regulation and 6–7
see also judgment; jurisdiction
civil matters
Brussels I Regulation material scope and 22–4
civil obligations
law applicable to 7–8
see also duties; Rome Convention
civil proceedings
ancillary to criminal prosecution, exception to general rule of no review of jurisdiction 226, 234
see also proceedings
claim
ancillary, Brussels I Regulation and 25
uncontested see enforcement, uncontested claims; Uncontested Claims Regulation
classification
conflict rules, 5–6
non-contractual duties 332
closest connection
proper law of the contract and 282–3
main presumption 283–8
minor presumption 289
reform, possible 290–92
severance 289–90
express choice 272–8
implied choice 278–82
see also manifestly closer connection, law of
commercial matters
Brussels I Regulation material scope and 22–4
communication
liquidator’s duties, effects of secondary insolvency proceeding and 452–3
Community Plant Variety Rights Regulation
exclusive jurisdiction and 151–2
see also EC Regulations; intellectual property
company
association and, domicile concept and direct jurisdiction 62–3
constitution, submission to jurisdiction and 161–2
domicile and, recognition and enforcement of judgments 220
habitual residence and, torts 340, 363
Rome Convention and, exclusions from 267–8
subsidiary, insolvency of 442–3, 445
company law
exclusive jurisdiction and 140–42
competition
unfair see unfair competition
concurrent proceedings
anti-suit injunction 192–7
Brussels I Regulation and 176–9
consumer contract and 127
insurance contract and 118
Lugano Convention and 16
related action 187–92
similar action
Brussels I Regulation and, Art 27 relation with other provisions 185–7
concurrent exclusive jurisdiction 187
mechanism 179–80
same cause of action 180–82
same parties 182–3
seisin, time of 183–5
see also proceedings
confidentiality
alternative jurisdiction and 97
conflict rules
choice of law and 3
direct jurisdiction and 3
domestic 3
foreign judgments and 3
harmonization 3–4
purposes 3
see also rules
connection see closest connection; manifestly closer connection, law of
consent
defective, submission to jurisdiction by agreement and 167–8
parties’ 278, 295–6
see also agreement
<table>
<thead>
<tr>
<th>Term</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>consumer contract</td>
<td>127</td>
</tr>
<tr>
<td>action against consumer</td>
<td>127</td>
</tr>
<tr>
<td>action against supplier</td>
<td>126–7</td>
</tr>
<tr>
<td>alternative jurisdiction and</td>
<td>70, 71–2</td>
</tr>
<tr>
<td>jurisdiction</td>
<td>127–8, 219</td>
</tr>
<tr>
<td>Rome Convention</td>
<td>268–9, 312–18</td>
</tr>
<tr>
<td>scope</td>
<td>122–6</td>
</tr>
<tr>
<td>subject-matter, excluded, submission to</td>
<td>165</td>
</tr>
<tr>
<td>jurisdiction</td>
<td></td>
</tr>
<tr>
<td>see also</td>
<td></td>
</tr>
<tr>
<td>contract; protected contract</td>
<td></td>
</tr>
<tr>
<td>consumer action against, consumer contract</td>
<td>127</td>
</tr>
<tr>
<td>contract</td>
<td></td>
</tr>
<tr>
<td>alternative jurisdiction and</td>
<td>69–70</td>
</tr>
<tr>
<td>Brussels I Regulation Art 5(1), merits</td>
<td>85–6</td>
</tr>
<tr>
<td>contractual matters</td>
<td>70–74</td>
</tr>
<tr>
<td>Luxembourg concession</td>
<td>82</td>
</tr>
<tr>
<td>new approach</td>
<td>78–81</td>
</tr>
<tr>
<td>obligation in question</td>
<td>74</td>
</tr>
<tr>
<td>place of performance</td>
<td>82–5</td>
</tr>
<tr>
<td>residual approach</td>
<td>74–8</td>
</tr>
<tr>
<td>residual cases</td>
<td>81–2</td>
</tr>
<tr>
<td>assignment, voluntary</td>
<td>303–4</td>
</tr>
<tr>
<td>authority</td>
<td>299–301</td>
</tr>
<tr>
<td>capacity</td>
<td>297–8</td>
</tr>
<tr>
<td>corporate constitution</td>
<td></td>
</tr>
<tr>
<td>as, submission to jurisdiction</td>
<td>161</td>
</tr>
<tr>
<td>current, exceptions to choice of law</td>
<td></td>
</tr>
<tr>
<td>general rule, insolvency</td>
<td>461</td>
</tr>
<tr>
<td>discharge</td>
<td>293</td>
</tr>
<tr>
<td>electronic, consumer contract</td>
<td>125–6</td>
</tr>
<tr>
<td>formation</td>
<td>294–5</td>
</tr>
<tr>
<td>general commercial usages and</td>
<td></td>
</tr>
<tr>
<td>submission to jurisdiction</td>
<td>160–61</td>
</tr>
<tr>
<td>interpretation</td>
<td>292–3</td>
</tr>
<tr>
<td>nullity, consequences of</td>
<td>303</td>
</tr>
<tr>
<td>oral, agreement evidenced in writing</td>
<td></td>
</tr>
<tr>
<td>and, submission to jurisdiction</td>
<td>158–9</td>
</tr>
<tr>
<td>overriding interests</td>
<td>305, 308–11</td>
</tr>
<tr>
<td>performance</td>
<td>293</td>
</tr>
<tr>
<td>procedure</td>
<td>301</td>
</tr>
<tr>
<td>proper law</td>
<td></td>
</tr>
<tr>
<td>see proper law of the contract</td>
<td></td>
</tr>
<tr>
<td>protected</td>
<td></td>
</tr>
<tr>
<td>see protected contract</td>
<td></td>
</tr>
<tr>
<td>public policy</td>
<td>305–8</td>
</tr>
<tr>
<td>related, implied choice of proper law</td>
<td>280–81</td>
</tr>
<tr>
<td>remedies</td>
<td>301–2</td>
</tr>
<tr>
<td>representation</td>
<td>299</td>
</tr>
<tr>
<td>Rome Convention</td>
<td>263–5</td>
</tr>
<tr>
<td>exclusions</td>
<td>266–8</td>
</tr>
<tr>
<td>material scope</td>
<td>265–6</td>
</tr>
<tr>
<td>other EC measures, relationship</td>
<td></td>
</tr>
<tr>
<td>with 268–9</td>
<td></td>
</tr>
<tr>
<td>other international conventions,</td>
<td></td>
</tr>
<tr>
<td>relationship with 269–70</td>
<td></td>
</tr>
<tr>
<td>outline</td>
<td>271–2</td>
</tr>
<tr>
<td>time limitation</td>
<td>302–3</td>
</tr>
<tr>
<td>transnational, factual complexities</td>
<td>270–71</td>
</tr>
<tr>
<td>unfair terms</td>
<td>268, 274–5, 316</td>
</tr>
<tr>
<td>validity</td>
<td>294–7</td>
</tr>
<tr>
<td>see also</td>
<td></td>
</tr>
<tr>
<td>consumer contract; conversion</td>
<td></td>
</tr>
<tr>
<td>alternative jurisdiction and</td>
<td>96</td>
</tr>
<tr>
<td>co-operation</td>
<td></td>
</tr>
<tr>
<td>central authorities, through, parental</td>
<td></td>
</tr>
<tr>
<td>responsibility and 405, 416, 421</td>
<td></td>
</tr>
<tr>
<td>liquidator’s duties, of, effects of</td>
<td></td>
</tr>
<tr>
<td>secondary insolvency proceeding and 452–3</td>
<td></td>
</tr>
<tr>
<td>procedural, Regulations 10</td>
<td></td>
</tr>
<tr>
<td>corporation</td>
<td></td>
</tr>
<tr>
<td>see company</td>
<td></td>
</tr>
<tr>
<td>costs</td>
<td></td>
</tr>
<tr>
<td>non-party, ordering against, Brussels</td>
<td></td>
</tr>
<tr>
<td>I Regulation material scope and 37</td>
<td></td>
</tr>
<tr>
<td>security for</td>
<td>201–2</td>
</tr>
<tr>
<td>counterclaim</td>
<td></td>
</tr>
<tr>
<td>ancillary jurisdiction and 107, 111–12</td>
<td></td>
</tr>
<tr>
<td>consumer contract and 127</td>
<td></td>
</tr>
<tr>
<td>insurance contract and 118</td>
<td></td>
</tr>
<tr>
<td>country</td>
<td></td>
</tr>
<tr>
<td>forum, public policy of, contract and</td>
<td>305–7</td>
</tr>
<tr>
<td>305–7</td>
<td></td>
</tr>
<tr>
<td>home-, control principle, tort and</td>
<td>336</td>
</tr>
<tr>
<td>third, overriding interests of, contract</td>
<td></td>
</tr>
<tr>
<td>and 310–11</td>
<td></td>
</tr>
<tr>
<td>court</td>
<td></td>
</tr>
<tr>
<td>certification by, enforcement and</td>
<td>241–2, 253–4</td>
</tr>
</tbody>
</table>
Index

choice of 18, 166–7, 169–70, 171
decision of, on initial application for enforcement 242–3
defined 386, 441
designated, initial application for enforcement and, normal procedure 239–40
discretion of 49–51, 169, 190–92

duties of, exercise of jurisdiction, matrimonial proceedings and 395–6
first, jurisdiction of, concurrent proceedings and 179, 185–6
powers of 198, 446
second, powers of, concurrent proceedings and 189–90
transfer between, parental responsibility and, Brussels IIA Regulation 416–17
see also European Court; order
court settlement enforcement of, Brussels I Regulation and 43
recognition and enforcement of judgments and 212–13
uncontested claims enforcement and 259
creditor
assets distributed amongst, effects of secondary insolvency proceeding and 453
equal treatment 449, 454
independent territorial insolvency proceeding requested by 455
maintenance, direct jurisdiction and 432–3
provisional measures exceptions and 199
uncontested claims enforcement and see enforcement, uncontested claims
criminal proceedings
alternative jurisdiction and 99
Brussels I Regulation and 24 see also proceedings
criminal prosecution

civil proceedings ancillary to, exception to general rule of no review of jurisdiction 226, 234
custody order
recognition and enforcement of 407–8, 424–9
see also order
custody proceedings
Brussels II and IIA Regulations and 407
date of application, habitual residence of child and, Brussels IIA Regulation 410
direct jurisdiction 407, 410–11
see also proceedings
damage
environmental, Rome II Proposal and 369–70
loss or, to cargo, obligation in question and, alternative jurisdiction 76
nuclear, excluded from tort 333
see also place of injury
damages
claim for, alternative jurisdiction and 89–90
exemplary, stringent public policy of forum and 358
habitual residence and 341
tort, for 373–4
see also injunction; interim relief; order; remedies
date
commencement, Rome Convention, exclusion of contracts concluded before 264
custody application, habitual residence of child and, Brussels IIA Regulation 410
determining debtor’s centre, jurisdiction to open main insolvency proceeding and 445
determining existence of debtor’s establishment, jurisdiction to open secondary insolvency proceeding and 451
domicile, of, ancillary jurisdiction and 107
see also time
debtor
assets of 452, 453, 455–6
debtor (cont.):
- capacity of 447, 452
- centre of 445, 451, 455
- establishment of 451, 455
- judgment, Brussels I Regulation and, recognition and enforcement of judgments 205
- payments to, recognition of judgments opening main insolvency proceeding and 450 uncontested claims enforcement and see enforcement, uncontested claim
- decision
  - initial application for enforcement, on 242–3
- declaration of enforceability
  - enforcement and, normal procedure 238, 242, 243, 245–6
  - recognition and enforcement of judgments and 207, 211
defamation
  - alternative jurisdiction and 93–4
  - EP version 368
  - Rome II Proposal and 367–8
  - see also tort
defences
  - merits, on, as submission by appearance 175
  - state-of-the-art, product liability and 361
  - statute of repose, product liability and 361
defendant
  - co-, ancillary jurisdiction and 107–9, 117
  - domicile of 113–14, 198, 219–20
  - European other than local, domicile and 54–7
  - external, domicile and 57–8
  - habitual residence of 219–20
  - local, domicile and 47–8
  - see also parties
definitions
  - authentic instrument 252
  - court 386, 441
  - defective product 360
  - habitual residence 401–2
  - international abduction 418
  - judge 386
judgment 207–9, 252
  - parental responsibility 406
  - product 360, 362
  - related action 180
  - restitutionary obligation 332
  - secondary establishment 100
  - similar action 180
  - tort 332
  - uncontested claim 251–2
  - see also interpretation
Denmark
  - alternative jurisdiction and 90
  - Brussels II Regulation and 383, 387
  - Brussels IIA Regulation and 386, 387
  - Brussels Convention and 15
  - recognition and enforcement of judgments and 205
  - Regulation 1346/2000 on Insolvency Proceedings and 10
tort and 330
Design Regulation
  - exclusive jurisdiction and 153
  - see also intellectual property
direct jurisdiction
  - Brussels I Regulation and 19, 42
  - conflict rules and 3
  - general rules, domicile and 45–7
  - Lugano Convention and 16
  - maintenance, over 432–3
  - matrimonial proceedings and 388, 391–7
  - parental responsibility and
    - Brussels II Regulation and 407, 410–11
    - Brussels IIA Regulation and 407, 410, 417
    - child’s habitual residence 411–14
    - child’s presence 415
    - jurisdiction by agreement 414–15
    - residual grounds 415–16
    - transfer between courts 416–17
  - see also domicile; jurisdiction
discovery
  - documents relevant to merits, application for as submission by appearance 175
  - discretion
    - court 49–51, 169, 190–92
dishonest assistance
displacement
  law of place of accident and, torts
  345
  undue enrichment and 379
document
  relevant to merits, application for
discovery of as submission by
  appearance 175
  see also information; instrument;
service of documents
domicile
  alternative jurisdiction and 64–7
  Admiralty 103
  contract, ordinary 69
  criminal proceedings 99
  defamation 93–4
  maintenance 86
  Luxembourg concession 82
  tort 86
  trust 102
ancillary jurisdiction and 107, 109, 111
  concept of, direct jurisdiction and
  58–63
  concurrent proceedings and 178
  consumer contract and 126–7
  defendant’s 113–14, 198, 219–20
  determination of, Brussels I
  Regulation and 21
  employment contract and 128–9
  enforcement and, initial application
  for, normal procedure 240
  European defendants other than local
  54–7
  exclusive jurisdiction and 133, 136, 140
  external defendants 57–8
  forum non conveniens 49–53
  insurance contract and 116–17, 118
  internal allocation of jurisdiction and
  48–9
  local defendants 47–8
  Luxembourg, submission to
  jurisdiction and 164
  maintenance and 432
  matrimonial proceedings and 392–3,
  394
  protected contract and 113–14
  recognition and enforcement of
judgments and 205
  reflex effect 53–4
  submission to jurisdiction by
  agreement and 168–9, 170–71
  submission to jurisdiction by
  appearance and 173–4
  see also direct jurisdiction; habitual
  residence; nationality;
  residence
duties
  contractual, alternative jurisdiction
  and 74
  court’s, exercise of jurisdiction,
  matrimonial proceedings and
  395–6
  liquidator’s, effects of secondary
  insolvency proceeding and 452
  non-contractual, classes of 332
  see also obligations

EC Regulations
  1346/2000 on Insolvency
  Proceedings 9–10, 439–44
  Community Plant Variety Rights
  151–2
  conflict rules harmonization and 4
  application 5
  classification 5–6
  forms 5
  legislative procedure 4–5
  measures which may be adopted 4
  Design 153
  procedural co-operation 10
  Trade Mark 148–51
  Uncontested Claims 213, 250–52
  see also Brussels I Regulation;
  Brussels II Regulation;
  Brussels IIA Regulation;
  European law; Rome II
Proposal
economic tort
  alternative jurisdiction and 94–7
  see also tort
EFTA see European Free Trade
Association
employee
action against, employment contract
  131–2
  habitual residence and, tort 341
  posting of workers, Directive 40–41,
  322–3
employer
  action against, employment contract 129–31
  secondary establishment of, protected contract and 114
employment contract
  action against employee 131–2
  action against employer 129–31
jurisdiction, agreement on 132
Rome Convention and 269, 319–23
scope 128–9
subject-matter, excluded, submission to jurisdiction and 165, 166
see also contract; protected contract
enforcement
authentic instruments and court settlement, Brussels I Regulation and 43
custody order 407–8, 424–9
European Enforcement Order 7
judgment, exclusive jurisdiction and 154
judgment related to main insolvency proceeding 450–51
matrimonial decree 398
normal procedure 238–9
appeal 244–9
application, initial 239–43
enforcement, provisional pending appeal 243–4
execution, measure of 249–50
procedure for obtaining 210–11
uncontested claim
certification 253–4
certified judgment 257–9
court settlement and authentic instruments 259
procedural standards, minimum 254–7
Uncontested Claims Regulation 250–52
see also recognition and enforcement
England and Wales
alternative jurisdiction and Admiralty 104
basis of jurisdiction 67
contract, concept of 72–3
economic tort 94–5
establishing jurisdiction 68–9
obligation in question 76–8, 79
place of performance 84
tortious matters 88–90
ancillary jurisdiction and 108, 109, 110
Brussels I Regulation material scope and
anti-suit injunction 35, 36
costs against non-party, ordering 37
family matters 27
insolvency 29
judicial proceedings brought in defiance of arbitration agreement 34, 35
judicial proceedings principally concerned with arbitration agreement 33–4
subject-matter, test for principal 32
succession 27–8
court settlement, Brussels I Regulation 43
certified judgment 257–9
court settlement and authentic instruments 259
procedural standards, minimum 254–7
nullity 303
overriding interests of third country 311
public policy of forum country 305–7
remedies 301–2
Rome Convention choice of law rules 264, 265, 269–70
time limitation 302–3
domicile and
domicile concept 60–62, 62–3
forum non conveniens 49–52,
56
internal allocation of jurisdiction 48–9
reflex effect 53–4
employment contract and 321, 322
enforcement and, normal procedure 238
further appeal 248
initial application 239, 240
measures of execution 249–50
normal appeal 244–5, 247
provisional enforcement pending appeal 244
exclusive jurisdiction and
company law 140, 141
enforcement of judgments 154
intellectual property 142, 143–5
proprietary rights in land 135, 137
tenancies of land 138–9
insolvency proceedings and 440–41, 442, 445
insurance contract and 323–4
action against insurer 116
action brought by insurer 118–19
Directive 88/357 and 325, 326–7, 328
jurisdiction agreement 120–21
maintenance and matrimonial property and 431, 434, 435
matrimonial proceedings and 392–3, 395
parental responsibility and 405,
412–14, 426
provisional measures and 198, 201,
202–4
recognition and enforcement of judgments and
judgment, exceptions to definition 207, 209
jurisdiction and, exceptions to general rule of no review 219, 220, 235, 236
merits of judgment, no review of 216–17
public policy 226, 227, 228
Regulation 1346/2000 on Insolvency Proceedings and 440, 443
restitution and 378
submission to jurisdiction by agreement and
agreement concluded in writing 157
choice of court, acceptable 166,
167
effects 169, 171
third parties 162–3
submission to jurisdiction by appearance and 174
tort and
common habitual residence, law of 341
damages 373
foreign law, pleading and establishment of 376
manifestly closer connection, law of 352–3
place of direct injury, law of 350
pre-existing relationships 354
product liability 362, 364
public policy and overriding rules 358, 359
Rome II Proposal 330, 334
subrogation and multiple liability 375
see also Scotland
environmental damage
Rome II Proposal and 369–70
see also damage
EP see European Parliament
equal treatment
creditor, of, recognition of judgments
opening main insolvency proceeding and 449
equitable wrong
alternative jurisdiction and 89, 97
see also tort
establishment
debtor’s 451, 455
foreign law, of, pleading and 375–6
insurance policyholder’s 324
secondary see secondary establishment
European Court alternative jurisdiction and
Admiralty 105
basis of jurisdiction 66
civil and commercial matters 22
contract, concept of 70, 71–2
criminal proceedings 99
defamation 93
establishing jurisdiction 68
freedom of choice 64
harmful event 90–92
obligation in question 74, 75, 76, 79–80
place of performance 82, 83, 84–5
secondary establishment 100, 101
tortious matters 87–8, 90
ancillary jurisdiction and 108–9, 110, 111–12
Brussels I Regulation material scope and
anti-suit injunction 35, 36
civil and commercial matters 22
excluded matters 24–5
external judgment 36–7
family matters 26–7
insolvency 28–9
judicial proceedings brought in
defiance of arbitration agreement 34
judicial proceedings principally concerned with arbitration agreement 33
New York Convention 1958
relevance 31
social security 30–31
subject-matter, test for principal 31–2, 32–3
concurrent proceedings and 178, 179
anti-suit injunction 194–5
Brussels I Regulation, Art 27
relation with other provisions 185–7
related action 188, 190
same cause of action 180–81
same parties 182–3
time of seisin 184
consumer contract and
advertising and specific invitation 125
concepts 312, 313
mixed purposes contract 123
substantive law, Directives on 317
transfer of possession 124
civil and
contract and 269, 309
domicile and
direct jurisdiction rules 46, 47
external defendants 58
forum non conveniens 52–3
internal allocation of jurisdiction 49
reflex effect 54
employment contract and 128, 129, 130–31, 319–20
enforcement and, normal procedure 240–41, 243, 246, 247–8, 248–9
exclusive jurisdiction and 134
company law 140–41, 142
enforcement of judgments 154
intellectual property 143
proprietary rights in land 134, 135, 136
tenancies of land 137–8
insurance contract and 115, 120
Lugano Convention and 16–17
maintenance and 430–31, 434
matrimonial proceedings and 388, 400
protected contract and 113
provisional measures and 198, 199–200, 201, 203
recognition and enforcement of judgments and
Brussels I Regulation 207, 222
civil proceedings ancillary to criminal prosecution
exception to general rule of no review of jurisdiction 234
concepts 210
inadequate notice of original action exception to general rule of no review of jurisdiction 230–33
irreconcilable judgments
exception to general rule of no review of jurisdiction 235, 236
judgment, exceptions to definition 208–9
merits of judgment, no review of 215, 216
procedure 211
provisional measures exception to general rule of no review of jurisdiction 222–3
public policy exception to general rule of no review of jurisdiction 224–5, 226
substantive requirements 214
Rome Convention and, interpretation 263–4
specialized conventions, Brussels I Regulation and 39
submission to jurisdiction by agreement and agreement concluded in writing 157
agreement evidenced in writing 158–9
bilaterally established practices 159
choice of court, acceptable 166, 167
consent, defective 167, 168
corporate constitution 161–2
effects 168, 169, 170, 172
general commercial usage 160–61
jurisdiction clause, permissible scope 164–5
Luxembourg domiciliaries 164
reflex effect 172–3
requirements, no additional 163
subject matter, excluded 166
third parties 162
submission to jurisdiction by appearance and 173, 174, 175
tort and 336, 349, 359
see also court
European Enforcement Order
Brussels I Regulation and 7
European Free Trade Association (EFTA)
Lugano Convention and 15–16
European law
provisional measures and, restrictions other than Brussels I Regulation 201–2
see also EC Regulations
European Parliament (EP)
restitution and 378, 379, 380
tort and 330–31
agreement choosing applicable law 356–7
common habitual residence, law of 341, 347, 348
damages 374
defamation and privacy 368
environmental damage 370
foreign law, pleading and establishment of 375
industrial dispute 370
international conventions, relationship with existing 337
main rules 339, 340
manifestly closer connection, law of 355
material scope 332, 333
other Community legislation, relationship with 335, 336
place of direct injury, law of 349
product liability 364
traffic accident 370–71
unfair competition 366
European Patent Convention
exclusive jurisdiction and 145–7
see also intellectual property; international conventions
European Union see EC Regulations; European law
evidence
Rome Convention and, exclusions from 268, 301
exceptions
Brussels I Regulation 18–19
choice of law in insolvency proceedings 457–62
concurrent proceedings, Brussels I Regulation 185–6
consumer contract 127, 132
contract, Rome Convention 273–4, 295, 297
direct jurisdiction and domicile, European defendants other than local 55–6
insurance contract, Rome Convention 324
judgment, definition 208–9
exceptions (cont.):
- jurisdiction and abduction, Brussels IIA Regulation 421–2
- jurisdiction agreement, insurance contract and 119–21
- jurisdictional review, general rule of none, recognition and enforcement of judgments and civil proceedings ancillary to criminal prosecution 234 existing agreement with external countries 219–21
- insurance, consumer contracts and exclusive jurisdiction by subject-matter 219
- irreconcilable judgment 234–7
- Lugano Convention, under 223–4 original action, inadequate notice of 229–33
- provisional measures, relating to 222–3
- public policy 224–9
- transitional 221–2
- provisional measures 199–200
- recognition and enforcement 213–14, 398–9, 436–7, 429
- third parties, submission to jurisdiction 162–3
- tort 338, 365

exclusions
- alternative jurisdiction 69, 78, 87, 89, 103
- ancillary jurisdiction 107
- Brussels I Regulation 24–5, 207
- Brussels IIA Regulation 385–6, 433
- consumer contract 122–3, 124, 313
- direct jurisdiction and domicile, European defendants other than local 54–5
- Regulation 1346/2000 on Insolvency Proceedings 441–2
- Rome Convention 266–8, 297, 299, 301, 323
- subject-matter, submission to jurisdiction and 165–6
- tort, Rome II Proposal 332–3
- exclusive jurisdiction anti-suit injunction and 192, 193
- company law 140–42
- enforcement of judgments 154

concurrent 187
- conflicts of, concurrent proceedings and 177
- intellectual property
  - Community designs 153
  - Community plant variety rights 151–2
  - Community trade marks 148–51
  - European patents 145–7
  - national rights 142–5
  - land 134–9
  - overriding character, Brussels I Regulation and 133–4
  - public registers 142
  - subject-matter, by 20, 165, 185–6, 219
  - submission to jurisdiction by agreement and 169–70
  - trust and 102
- see also jurisdiction
- execution
  - normal enforcement procedure and 238, 246, 249–50

family law
- Brussels II Regulations 8–9
- Brussels IIA Regulation and 8–9
- green papers and 9
- Hague Convention 1996 and 9

family matters
- Brussels I Regulation material scope and 25–7
- jurisdiction and, exceptions to general rule of no review 225, 235
- Rome Convention and, excluded from 266
torts and, excluded from 332–3
- see also maintenance; matrimonial proceedings; matrimonial property; parental responsibility

financial market
- exception to choice of law general rule, insolvency proceedings 460–61

Finland
- Brussels IIA Regulation and 386

foreign judgment
- conflict rules and 3
foreign law
pleading and establishment of, tort 375–6
form conflict rules 5
forum country
public policy of, contract and 305–7
see also country
forum non conveniens
domicile and 49–53, 56–5
France
alternative jurisdiction and 84, 87, 91
ancillary jurisdiction and 106
concurrent proceedings and 189–90
contract and 297
domicile concept and 60
insurance contract and 115, 117
recognition and enforcement of judgments and 226–7
submission to jurisdiction and 163
tort and 343, 350
fraud
judgment obtained by, recognition and enforcement of judgments and 216–17
freezing order Brussels I Regulation and, recognition and enforcement of judgments 209
provisional measures and 199, 202–4
see also injunction; order
Germany
alternative jurisdiction and 84, 87
ancillary jurisdiction and 111
domicile concept and 60
exclusive jurisdiction and 154
maintenance and matrimonial property and 432, 434
recognition and enforcement of judgments and 231–2, 235
tort and 343, 350–51, 358
Giuliano and Lagarde Report
employment contract and 321
proper law of the contract and, closest connection and 284, 285, 289–90
Rome Convention and, interpretation 264
good faith principle
consumer contract and 126
guarantee
proper law of the contract and, implied choice 280–81
habitual residence
child’s 410, 411–14, 421–2
common, law of, torts and 340–48
consumer contract and 313–14, 315
defamation and privacy and 367–8
defendant’s, Brussels I Regulation and, recognition and enforcement of judgments 219–20
insurance contract and 324
product liability and 360, 361, 362, 363–4
restitution and 378, 379–80
spouse’s 391–3, 394, 395, 400–402
tort and 338, 339
unfair competition and 365
see also domicile; nationality; residence
Hague Conference on Private International Law conflict rules harmonization and 3–4
Hague Convention 1996
Brussels IIA Regulation relationship with 408–9
see also international conventions
Hague Convention on Choice of Court Agreements 2005
history 18
see also international conventions
harmful event
alternative jurisdiction and, general principles 90–92
see also place of injury
harmonization
conflict rules 3–4
Holy See
Brussels IIA Regulation and 386
home-country control principle
tort and 336
see also country
human rights
alternative jurisdiction and 98
fundamental, of child, Brussels IIA Regulation and 404
human rights (cont.):
recognition and enforcement of judgments and 225, 229
tort and, public policy and overriding rules 358
see also privacy; rights
Hungary
ancillary jurisdiction and 111
Iceland
New York Convention 1958 and 31
IMF see International Monetary Fund
immovable property see land
individual
domicile concept and direct jurisdiction 59–62
legal capacity, excluded from Rome Convention 267
legal status, excluded from Rome Convention 267
self-employed, habitual residence and, tort 340–41
industrial dispute
alternative jurisdiction and 90
Rome II Proposal and 370
information
uncontested claims enforcement and 256–7
injunction
anti-suit 35–6, 192–7
Mareva see freezing order
tort and 374
see also interim relief; order
injury
place of see place of injury
see also damage
insolvency
Brussels I Regulation and 28–30, 439
choice of law 456–62
exclusive jurisdiction and 141
independent territorial proceedings 455–6
main proceeding
choice of law 447
judgment opening, recognition of 447–50
jurisdiction to open 444–6
opened after independent territorial proceeding 456
related judgment, recognition and enforcement of 239, 450–51
secondary proceeding 447, 451–5
see also bankruptcy
instrument
authentic 43, 205, 206, 211–13, 259
negotiable 266, 333
specialized Community, Brussels I Regulation 40–41
see also document
insurance contract
action against insurer 115–18
action brought by insurer 118–19
jurisdiction, agreement on 119–21
jurisdictional review and, exception to general rule of no 219
proper law of the contract and 281, 284–5
Rome Convention and 323–4
Directive 88/357 325–8
Directive 90/619, life insurance under 328
excluded from 266
other EC measures, relationship with 268
reform, possible 329
risk 324–5
scope 114–15
subject-matter, excluded, submission to jurisdiction and 165
see also contract; protected contract
insurer
action against, insurance contract 115–18
action brought by, insurance contract 118–19
liability, direct action against, tort and 374–5
secondary establishment of, protected contract and 114
intellectual property
alternative jurisdiction and 96–7
exclusive jurisdiction and Community designs 153
Community plant variety rights 151–2
Community trade marks 148–51
European patents 145–7
national rights 142–5
Rome II Proposal and 366
interests
overriding see overriding interests
interim relief
consumer contract and 127
insurance contract and 118
see also injunction; provisional measures
international conventions
Abduction 404, 418–21
Arrest 103–4
contract and, Rome Convention
relationship with 269–70
European Patent 145–7
Hague, 1996 408–9
Hague, on Choice of Court
Agreements 2005 18
specialized, Brussels I Regulation
and 37–40
see also Brussels Convention;
Lugano Convention; Rome Convention
International Monetary Fund (IMF)
contract and, Rome Convention
relationship with 270
internet
consumer contract and 125–6
defamation and, alternative jurisdiction 93–4
interpretation
Brussels II and IIA Regulations,
matrimonial proceedings and 385
contracts 292–3
maintenance, term, by European Court 430–31
proper law of the contract and,
express choice 276–7
Regulation 1346/2000 on Insolvency Proceedings 440
Rome Convention, contracts and
263–4
words of incorporation, agreement
concluded in writing and,
submission to jurisdiction 158
see also definitions
Ireland
alternative jurisdiction and 84
ancillary jurisdiction and 109
enforcement and, normal procedure 247
exclusive jurisdiction and 135
maintenance and matrimonial property and 434
matrimonial proceedings and 392, 396
tort and 330
irreconcilable judgment
ancillary jurisdiction and 107–8
concurrent proceedings and 176, 180
custody order and, grounds for
refusing recognition and enforcement 427
maintenance and 434
matrimonial decree and, grounds for
refusing recognition and enforcement 399
recognition and enforcement of judgments and, exceptions
214, 234–7
see also judgment
Italy
domicile concept and 60
enforcement and, normal procedure 239
recognition and enforcement of judgments and 231–2
tort and 351
judge
defined 386
judgment
certified, enforcement of, uncontested claim and 257–9
default, recognition and enforcement of judgments and, exceptions 214
definition of 207–9, 252
external, Brussels I Regulation
material scope and 36–7
foreign, conflict rules and 3
fraud, obtained by, recognition and enforcement of judgments and 216–17
irreconcilable see irreconcilable judgment
provisional, Brussels I Regulation
and, recognition and enforcement of judgments 209
judgment (cont.):
related, insolvency proceedings, recognition and enforcement of 239, 450–51
review of 215–17, 257
see also enforcement; recognition; recognition and enforcement of judgments
jurisdiction
abduction and, Brussels IIA Regulation 421–2
Brussels I Regulation and, recognition and enforcement of judgments 206
certification and, enforcement of uncontested claim 253–4
concurrent proceedings and 179, 185–6
establishing, alternative jurisdiction and 67–9
excessive, direct jurisdiction and domicile exceptions, European defendants other than local 55–6
exercise of, Brussels I Regulation and 20
insurance contact and 116–17
internal allocation of, domicile and 48–9
lack of, recognition and enforcement of judgments and, exceptions 214
local court, initial application for enforcement and, normal procedure 240
open main insolvency proceeding, to 444–6
open secondary insolvency proceeding, to 451–2
opening main insolvency proceeding, recognition of 446, 447–50
protected contract and 113–14
provisional measures and 198, 200–202
Regulation 1346/2000 on Insolvency Proceedings and 442
related to main insolvency proceeding, recognition and enforcement of 450–51
review of, general rule of none, recognition and enforcement of judgments 217–19
civil proceedings ancillary to criminal prosecution exception 234
existing agreement with external countries exception 219–21
insurance, consumer contract and exclusive jurisdiction by subject-matter exception 219
irreconcilable judgment exception 234–7
Lugano Convention, exceptions under 223–4
original action, inadequate notice of, exception 229–33
provisional measures, relating to, exception 222–3
public policy exception 224–9
transitional exception 221–2
see also alternative jurisdiction; ancillary jurisdiction; direct jurisdiction; exclusive jurisdiction; submission by agreement; submission by appearance
jurisdiction agreement
ancillary jurisdiction and 106
consumer contract 127–8
employment contract 132
insurance contract 119–21
see also agreement
jurisdiction clause
anti-suit injunctions and 193, 194
formal validity, Brussels I Regulation and, submission 156–7
permissible scope, submission and 164–5
proper law of the contract and, implied choice 279–80
Rome Convention and, excluded from 267
transnational contract 271
land
claim involving, ancillary jurisdiction and 112
consumer contract and 317
exclusive jurisdiction and 134–9
see also property
domicile concept and 60
domiciliaries, submission to
jurisdiction and 164

maintenance
alternative jurisdiction and 86
Brussels I Regulation and 430, 431–2, 433
Brussels II Regulation and 430, 433, 435
direct jurisdiction 432–3
European Court and, construction of
term 430–31
irreconcilable judgment 434
maintenance order
enforcement and, normal procedure 239, 245, 250
variation of 217, 433–4
see also order
manifestly closer connection, law of
product liability and 360, 361–2
tort and 338, 351–4, 355
unfair competition and 365
see also closest connection
market
financial, exception to choice of law
general rule, insolvency
proceedings 460–61
location of, unfair competition and 365
matrimonial decree
recognition of 388, 397–400
matrimonial proceedings
Brussels I Regulation and 384, 385
Brussels II Regulation and 383, 384, 385–90
Brussels II Regulation and 383–4, 385–90
direct jurisdiction 391–7
habitual residence 400–402
matrimonial decree, recognition of
397–400
Rome Convention and 384
see also proceedings
matrimonial property
Brussels I Regulation and 430, 431–2
Brussels II Regulation not
applicable to 430
European Court construction 430–31
see also property
measures of assistance
  restitution and, measures of
  interference distinguished 380
misrepresentation
  alternative jurisdiction and 94–5
  mutual recognition principle
  tort and 336
mutual trust principle
  declaration of enforceability and
  242
  jurisdiction to open main insolvency
  proceeding and 446
nationality
  spouse's, matrimonial proceedings
  and 391, 392, 394
  see also domicile; habitual residence;
  residence
negotiable instrument
  Rome Convention and, excluded
  from 266
  tort and, excluded from 333
  see also instrument
negotiorum gesto see agency,
  unauthorized
Netherlands
  domicile concept and 60
  insolvency proceedings and,
  jurisdiction to open main
  proceeding 444
  maintenance and matrimonial
  property and 432, 434
  recognition and enforcement of
  judgments and 209, 226, 232, 235
  tort and 334, 350
New York Convention 1958
  Brussels I Regulation material scope
  and, relevance to 31
non-party
  costs against, ordering, Brussels I
  Regulation material scope and
  37
notice
  inadequate, of original action,
  exception to general rule of no
  review of jurisdiction 229–33
  see also service of documents
nuclear damage
  tort and, excluded from 333
obligations
  civil, law applicable to 7–8
  restitutionary see restitution
  see also duties; Rome Convention
order
  access 404, 428–9
  costs against non-party, for, Brussels
  I Regulation material scope
  and 37
  custody, recognition and enforcement
  of 407–8, 424–9
  ex parte, recognition and enforcement
  of judgments and, exceptions
  208–9
  freezing 199, 202–4, 209
  maintenance 217, 239, 245, 250,
  433–4
  money, recognition and enforcement
  of judgments and, exceptions
  208
  non-return of child, for, abduction
  and 423–4
  return of child, for 419–21, 422–3,
  428–9
  see also court; injunction
overriding interests
  contract and 272, 305–11
overriding rules
  consumer contract and 316
parental responsibility
  abduction
    Abduction Convention 418–21
    Brussels II Regulation 421–4
    Brussels II Regulation and 403–9
    custody order, recognition and
    enforcement of 424–9
  defined 406
  direct jurisdiction
    child’s habitual residence 411–14
    child’s presence 415
    earlier provisions 410–11
    jurisdiction by agreement 414–15
    other provisions 417
    residual grounds 415–16
    structure 410
    transfer between courts 416–17
parties
  agreement of, jurisdiction by, parental
  responsibility and, Brussels
  II Regulation 414–15
Index

consent 278, 295–6
pre-existing relationships 354, 378
same, concurrent proceedings and 182–3
third 117, 162–3
see also defendant
passing off
alternative jurisdiction and 96
see also intellectual property
payment
debtor, to, recognition of judgments
opening main insolvency proceeding and 450
periodic by way of penalty,
recognition and enforcement of judgments and, exceptions 214–15
payment system
exceptions to choice of law general rule, insolvency proceedings 460–61
performance
contract 293
place of, contract and, alternative jurisdiction 69–70, 78, 82–5
proper law of contract and, closest connection 285–6, 287–8
place of injury
defamation and, alternative jurisdiction 93
harmful event and, alternative jurisdiction 90–92
law of
product liability and 360, 362
tort and 338, 344–6, 348–51
see also damage
place of performance
contract and, alternative jurisdiction 69–70, 78, 82–5
see also performance
Poland
tort and 351
powers
courts’ 198, 446
liquidator’s 447, 448–9, 452, 455–6
second court’s 189–90
practice
bilaterally established, submission to jurisdiction and 159
predictability principle
consumer contract and 126
presence see appearance
privacy
EP version 368
Rome II Proposal and 367–8
see also human rights
private international law
described 3
procedural co-operation
Regulations 10
see also co-operation
procedural standards
minimum, enforcement of uncontested claims and 254–7
procedure
legislative, conflict rules
harmonization 4–5
normal enforcement see enforcement, normal procedure
recognition and enforcement of judgments, obtaining 210–11
Rome Convention and, exclusions from 268, 301
proceedings
civil, ancillary to criminal prosecution, exception to general rule of no review of jurisdiction 226, 234
criminal 24, 99
custody 407, 410–11
judicial, arbitration agreement and, Brussels I Regulation material scope 33–5
stay of 208, 214, 246–7
subject-matter of, exclusive jurisdiction by 133
third party, ancillary jurisdiction and 107, 109–11
see also arbitration proceedings; concurrent proceedings; matrimonial proceedings
product liability
Rome II Proposal and 360–64
see also liability
proper law
consumer contract 315–16
contract, of see proper law of the contract
employment contract 319–20
tort, of the 338, 371–4
<table>
<thead>
<tr>
<th>Proper Law of the Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Closest connection 282–3</td>
</tr>
<tr>
<td>Main presumption 283–8</td>
</tr>
<tr>
<td>Minor presumption 289</td>
</tr>
<tr>
<td>Reform, possible 290–92</td>
</tr>
<tr>
<td>Severance 289–90</td>
</tr>
<tr>
<td>Express choice 272–8</td>
</tr>
<tr>
<td>Implied choice 278–8</td>
</tr>
<tr>
<td>Rome Convention and 271–2</td>
</tr>
<tr>
<td>See also contract property</td>
</tr>
<tr>
<td>Child, of, Brussels IIA Regulation and 407</td>
</tr>
<tr>
<td>Contract and, material scope of Rome Convention 265–6</td>
</tr>
<tr>
<td>Exceptions to choice of law general rule, insolvency proceedings 458–60</td>
</tr>
<tr>
<td>Immovable see land see also assets; intellectual property; matrimonial property</td>
</tr>
<tr>
<td>Protected contract</td>
</tr>
<tr>
<td>Brussels I Regulation and 19–20, 113–14</td>
</tr>
<tr>
<td>Domicile and, external defendants 57</td>
</tr>
<tr>
<td>Governing legislation 312 see also consumer contract; contract; employment contract; insurance contract</td>
</tr>
<tr>
<td>Protective measures</td>
</tr>
<tr>
<td>Declaration of enforceability and 243–4 see also remedies</td>
</tr>
<tr>
<td>Provisional measures</td>
</tr>
<tr>
<td>Brussels I Regulation and 25, 198–201</td>
</tr>
<tr>
<td>European law restrictions other than Brussels I Regulation 201–2</td>
</tr>
<tr>
<td>Freezing order, English 202–4</td>
</tr>
<tr>
<td>Jurisdiction and, exception to general rule of no review relating to 222–3</td>
</tr>
<tr>
<td>Matrimonial proceedings, exercise of jurisdiction and 396–7 see also interim relief</td>
</tr>
<tr>
<td>Public authority</td>
</tr>
<tr>
<td>Brussels I Regulation and 22–4</td>
</tr>
<tr>
<td>Public policy contract and 272, 305–8</td>
</tr>
<tr>
<td>Overriding rules and, tort 357–9</td>
</tr>
<tr>
<td>Recognition and enforcement of judgments and, exceptions 214, 224–9</td>
</tr>
<tr>
<td>Public policy proviso recognition and enforcement and custody order 426 judgment 216, 224 judgment related to main insolvency proceeding 450–51 matrimonial decree 398–9 recognition of judgment opening main insolvency proceeding and 448 public registers exclusive jurisdiction and 142 Quebec tort and 343 see also Canada</td>
</tr>
<tr>
<td>Reciprocity</td>
</tr>
<tr>
<td>Rome Convention choice of law rules and 264 recognition custody order 407–8, 424–9 judgment Brussels I Regulation and 239 concept 210 opening main insolvency proceeding 446, 447–50 procedure for obtaining 211 related to main insolvency proceeding 450–51 matrimonial decree 388, 397–400 see also enforcement recognition and enforcement of judgments authentic instrument and court settlement 211–13 Brussels I Regulation and 20–21, 42, 205–7 judgment defined 207–9 jurisdiction, no review of, general rule 217–19 civil proceedings ancillary to criminal prosecution exception 234 existing agreement with external countries exception 219–21</td>
</tr>
</tbody>
</table>
Index

insurance, consumer contract and exclusive jurisdiction by subject-matter exception 219
irreconcilable judgment exception 234–7
Lugano Convention, exceptions under 223–4
original action, inadequate notice of, exception 229–33
provisional measures, relating to, exception 222–3
public policy exception 224–9
transitional exception 221–2
Lugano Convention and 16
merits of judgment, no review 215–17
procedure for obtaining 210–11
substantive requirements, basic principles 213–15
uncontested claim 213
reflex effect
domicile and 53–4
exclusive jurisdiction and 136
renvoi and, choice of law in insolvency proceedings 462
subject-matter, excluded, submission to jurisdiction 165–6
submission to jurisdiction by agreement and 172–3
reform
alternative jurisdiction 98
consumer contract 317–18
insurance contract 329
proper law of the contract 281–2, 290–92
remedies
contract and 301–2
see also damages; interim relief; injunction; order; protective measures; provisional measures
renvoi
reflex effect and, choice of law in insolvency proceedings 462
tort and 340
representation
contract and 299
see also agency

res judicata
authentic instrument and court settlement and, recognition and enforcement of judgments 212
residence
common, restitution and 379
habitant see habitual residence
proper law of the contract and 285, 286–7, 288, 289
restitution
claim for, alternative jurisdiction and 87–8, 98
Rome II Proposal and 377
unauthorized agency (negotiorum gesto) 379–80
undue enrichment 377–8
displacement 379
pre-existing relationships 378
stand-alone cases 378–9
rights
access, recognition and enforcement of access order and orders for return of child and 428
custody, abduction and 418–19
intellectual property see intellectual property
preferential, rationale for secondary insolvency proceeding and 454–5
proprietary, in land, exclusive jurisdiction and 134–7
see also human rights
rights in rem
extceptions to choice of law general rule, insolvency proceedings 458–9
exclusive jurisdiction and 134–5
risk
foreseeable, insolvency as, jurisdiction to open main proceeding and 445
large and mass, insurance contract 121, 324–5
jurisdiction agreement exceptions and, insurance contract 120–21
location of, insurance contract 323–4, 327–8
road accident see traffic accident
Rome II Proposal
- choice of law and 7–8
- law applicable to civil obligations and 7–8
- restitution and 377
- insurance contract and 116
- tort and 330–31
  - defamation and privacy 367–8
  - environmental damage 369–70
  - industrial dispute 370
  - intellectual property 366
  - international conventions, relationship with existing 337
  - material scope 331–3
  - other Community legislation, relationship with 335–6
  - product liability 360–64
  - territorial scope 333–5
  - traffic accident 370–71
  - unfair competition 364–6
- see also EC Regulations

Rome Convention
- choice of law and 7
- consumer contract and 312–18
- employment contract and 319–23
- insurance contract and 323–9
- law applicable to civil obligations and 7
- matrimonial proceedings and 384
- place of performance and, alternative jurisdiction 83, 84
- protected contract and 312
- tort and agreement choosing applicable law 356
  - liability 373
  - pre-existing relationships 354
  - public policy and overriding rules 357, 359
  - subrogation and multiple liability 375
  - territorial scope 333–4
- see also international conventions rules
- conflict see conflict rules
- overriding, consumer contract and 316

Schlosser Report
- forum non conveniens, direct jurisdiction and domicile 49
  - maintenance order and, variation of 433
  - recognition and enforcement of judgments and 208, 214–15, 217
  - subject-matter and, test for principal 31–2

Scotland
- alternative jurisdiction and 84
- concurrent proceedings and 181, 189
- contract and, proper law of, closest connection 287–8
- matrimonial proceedings and 395
- see also England and Wales
- secondary establishment
  - alternative jurisdiction and 99–101
  - proper law of the contract and 285
  - protected contract and 114
  - see also establishment
- security for costs
  - provisional measures and 201–2
  - see also costs
- seisin
  - time of, concurrent proceedings and 183–5
- self-employed individual
  - habitual residence and, tort 340–41

service of documents
- enforcement and 241–2, 255–6
- recognition and enforcement of judgments and 232–3
  - see also document; notice
- set-off
  - exceptions to choice of law general rule, insolvency proceedings 460
- settlement
  - court see court settlement
- severance
  - proper law of the contract and 277–8, 289–90
- ships
  - territorial scope and, tort 334–5

social security
- Brussels I Regulation material scope and 30–31
- specific invitation see advertising
- Spiliada doctrine see forum non conveniens
standards
procedural see procedural standards
status
individual legal, Rome Convention and, excluded from 267
stay of proceedings
enforcement and, normal appeal 246–7
recognition and enforcement of judgments and, exceptions 208, 214
see also proceedings
subject-matter
excluded, submission to jurisdiction and 165–6
exclusive jurisdiction by 20, 133, 165, 185–6, 219
principal, test for, Brussels I Regulation material scope 31–3
proceedings, of, exclusive jurisdiction by 133
recognition and enforcement of judgments 205, 215–16
submission by agreement
agreement concluded in writing 157–8
agreement evidenced in writing 158–9
bilaterally established practice 159
Brussels I Regulation and 20, 155–7
choice of court, acceptable 166–7
consent, defective 167–8
corporate constitution 161–2
effects 168–72
general commercial usage 160–61
insurance contract and 118
Luxembourg domiciliaries 164
reflex effect 172–3
requirements, no additional 163
scope of jurisdiction clause, permissible 164–5
subject-matter, excluded 165–6
third parties 162–3
see also jurisdiction
submission by appearance
Brussels I Regulation and 20, 173–5
customer contract and 127
see also jurisdiction
subrogation
multiple liability and 375
subsidiary company
insolvency 442–3, 445
see also companies
substantive law
consumer contracts, directives on 316–17
succession
Brussels I Regulation material scope and 27–8
exclusions, alternative jurisdiction and 103
supplier
action against, consumer contract 126–7
secondary establishment of, protected contract and 114
Sweden
Brussels IIA Regulation and 386
recognition and enforcement of judgments and 208
Switzerland
tort and 343, 350
tenancy
land, of, exclusive jurisdiction and 137–9
third country
overriding interests, contract and 310–11
see also country
third party
insurance contract and 117
submission to jurisdiction and 162–3
see also parties
third party proceedings
ancillary jurisdiction and 107, 109–11
see also proceedings
time
limitation, contract and 302–3
seisin, of, concurrent proceedings and 183–5
temporal scope of Brussels I Regulation 41–4, 205–6
see also date
title
reservation of, exceptions to choice of law general rule, insolvency proceedings 459
tort
alternative jurisdiction and 86
 criminal proceedings 99
defamation 93–4
economic 94–7
 equitable wrongs 97
 harmful events, general principles 90–92
 reform, possible 98
 restitutionary claims 98
tortious matters 87–90
civil claim in, Brussels I Regulation and 24
damages 373–4
direct action against liability insurer 374–5
foreign law, pleading and establishment of 375–6
injunction 374
liability 372–3, 375
main rules 337–40
applicable law, agreement choosing 356–7
 common habitual residence, law of 340–48
 manifestly closer connection, law of 351–4, 355
 place of direct injury, law of 348–51
 public policy and overriding rules 357–9
 relationships, pre-existing 354
 particular 360
defamation and privacy 367–8
environmental damage 369–70
industrial dispute 370
intellectual property 366
product liability 360–64
traffic accident 370–71
unfair competition 364–6
proper law, scope of 371–2
Rome II Proposal and 330–31
international conventions, relationship with existing 337
material scope 331–3
other Community legislation, relationship with 335–6
territorial scope 333–5
Trade Mark Regulation
exclusive jurisdiction and 148–51
see also EC Regulations; intellectual property
traffic accident
common habitual residence, law of, tort and 344–5, 347, 348
insurance contract and 116
Rome II Proposal and 370–71
transitional exception
Brussels I Regulation, to general rule of no review of jurisdiction 221–2
transparency
jurisdiction to open main insolvency proceeding and 444–5
trust matters
alternative jurisdiction and 102–3
Brussels I Regulation material scope and 28
Rome Convention and, excluded from 266
tort and, excluded from 333
Turkey
English freezing order and 203–4
Uncontested Claims Regulation
enforcement and 250–52
recognition and enforcement of judgments and 213
see also EC Regulations
undue enrichment
restitution and 377–9
unfair competition
Rome II Proposal and 364–6
unfair contract terms
consumer contract, Directive 316
proper law of the contract and, express choice 274–5
Rome Convention and, relationship with other EC measures 268
see also contract
United Kingdom see England and Wales
United States of America
anti-suit injunction 196–7
provisional measures and 201–2, 203
recognition and enforcement of judgments and 218
tort and 341–2, 343, 347, 350, 353
Index

unity principle
   Regulation 1346/2000 on Insolvency Proceedings and 443–4

universality principle
   Regulation 1346/2000 on Insolvency Proceedings and 443–4

usage
   general commercial, submission to jurisdiction and 160–61

validity
   essential 164, 295
   formal 156–7, 297

variation
   maintenance order 217, 433–4

Virgos-Schmit Report
   insolvency proceedings and choice of law 457, 458, 461, 462
   effects of secondary proceeding 453
   jurisdiction to open main proceeding 444
   jurisdiction to open secondary proceeding 451
   recognition and enforcement of judgments related to main proceeding 450
   recognition of judgments opening main proceeding 448, 449

Regulation 1346/2000 on Insolvency Proceedings, interpretation 440

Wallis Report
   restitution and 379
tort and 331
   agreement choosing applicable law 357
   common habitual residence, law of 341
defamation and privacy 368
environmental damage 370
industrial dispute 370
main rules 339
manifestly closer connection, law of 355
public policy and overriding rules 358

wills
   succession and see succession

worker see employee

writing
   agreement concluded in, submission to jurisdiction and 157–8
   agreement evidenced in, submission to jurisdiction and 158–9

see also document

wrong see tort