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
harmful 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
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
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, of, 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
consumer contract
  action against consumer 127
  action against supplier 126–7
  alternative jurisdiction and 70, 71–2
  jurisdiction and 127–8, 219
  Rome Convention and 268–9, 312–18
  scope 122–6
  subject-matter, excluded, submission to jurisdiction and 165
  see also contract; protected contract
consumer action against, consumer contract 127
contract
  alternative jurisdiction and 69–70
  Brussels I Regulation 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
  assignment, voluntary 303–4
  authority 299–301
  capacity 297–8
  corporate constitution as, submission to jurisdiction 161
  current, exceptions to choice of law general rule, insolvency proceedings 461
  discharge 293
  electronic, consumer contract and 125–6
  formation 294–5
  general commercial usages and, submission to jurisdiction 160–61
  interpretation 292–3
  nullity, consequences of 303
  oral, agreement evidenced in writing and, submission to jurisdiction 158–9
  overriding interests 305, 308–11
  performance 293
  procedure 301
  proper law see proper law of the contract
  protected see protected contract
public policy 305–8
  related, implied choice of proper law and 280–81
  remedies 301–2
  representation 299
  Rome Convention and 263–5
  exclusions 266–8
  material scope 265–6
  other EC measures, relationship with 268–9
  other international conventions, relationship with 269–70
  outline 271–2
  time limitation 302–3
  transnational, factual complexities 270–71
  unfair terms 268, 274–5, 316
  validity 294–7
  see also consumer contract;
  employment contract;
  insurance contract
conversion
  alternative jurisdiction and 96
co-operation
  central authorities, through, parental responsibility and 405, 416, 421
  liquidator’s duties, of, effects of secondary insolvency proceeding and 452–3
  procedural, Regulations 10
  corporation see company
  costs
  non-party, ordering against, Brussels I Regulation material scope and 37
  security for 201–2
  counterclaim
  ancillary jurisdiction and 107, 111–12
  consumer contract and 127
  insurance contract and 118
  country
  forum, public policy of, contract and 305–7
  home-, control principle, tort and 336
  third, overriding interests of, contract and 310–11
  court
  certification by, enforcement and 241–2, 253–4
<table>
<thead>
<tr>
<th>Term</th>
<th>Page References</th>
</tr>
</thead>
<tbody>
<tr>
<td>choice of 18, 166–7, 169–70, 171</td>
<td>242–3</td>
</tr>
<tr>
<td>decision of, on initial application for enforcement</td>
<td></td>
</tr>
<tr>
<td>defined 386, 441</td>
<td></td>
</tr>
<tr>
<td>designated, initial application for enforcement and, normal</td>
<td></td>
</tr>
<tr>
<td>procedure 239–40</td>
<td></td>
</tr>
<tr>
<td>discretion of 49–51, 169, 190–92</td>
<td></td>
</tr>
<tr>
<td>duties of, exercise of jurisdiction, matrimonial proceedings and</td>
<td>395–6</td>
</tr>
<tr>
<td>first, jurisdiction of, concurrent proceedings and 179, 185–6</td>
<td></td>
</tr>
<tr>
<td>powers of 198, 446</td>
<td></td>
</tr>
<tr>
<td>second, powers of, concurrent proceedings and 189–90</td>
<td></td>
</tr>
<tr>
<td>transfer between, parental responsibility and, Brussels IIA</td>
<td></td>
</tr>
<tr>
<td>Regulation 416–17</td>
<td></td>
</tr>
<tr>
<td>see also European Court; order</td>
<td></td>
</tr>
<tr>
<td>court settlement</td>
<td></td>
</tr>
<tr>
<td>enforcement of, Brussels I Regulation and 43</td>
<td>242–3</td>
</tr>
<tr>
<td>recognition and enforcement of judgments and 212–13</td>
<td></td>
</tr>
<tr>
<td>uncontested claims enforcement and 259</td>
<td></td>
</tr>
<tr>
<td>creditor</td>
<td></td>
</tr>
<tr>
<td>assets distributed amongst, effects of secondary insolvency</td>
<td>453</td>
</tr>
<tr>
<td>proceeding and 453</td>
<td></td>
</tr>
<tr>
<td>equal treatment 449, 454</td>
<td></td>
</tr>
<tr>
<td>independent territorial insolvency proceeding requested by 455</td>
<td></td>
</tr>
<tr>
<td>maintenance, direct jurisdiction and 432–3</td>
<td></td>
</tr>
<tr>
<td>provisional measures exceptions and 199</td>
<td></td>
</tr>
<tr>
<td>uncontested claims enforcement and see enforcement, uncontested</td>
<td></td>
</tr>
<tr>
<td>claims</td>
<td></td>
</tr>
<tr>
<td>criminal proceedings</td>
<td></td>
</tr>
<tr>
<td>alternative jurisdiction and 99</td>
<td></td>
</tr>
<tr>
<td>Brussels I Regulation and 24</td>
<td></td>
</tr>
<tr>
<td>see also proceedings</td>
<td></td>
</tr>
<tr>
<td>criminal prosecution</td>
<td></td>
</tr>
<tr>
<td>civil proceedings ancillary to, exception to general rule of no</td>
<td></td>
</tr>
<tr>
<td>review of jurisdiction 226, 234</td>
<td></td>
</tr>
<tr>
<td>custody order</td>
<td>recognition and enforcement of 407–8, 424–9 see also order</td>
</tr>
<tr>
<td>custody proceedings</td>
<td>Brussels II and IIA Regulations and 407</td>
</tr>
<tr>
<td>date of application, habitual residence of child and, Brussels</td>
<td></td>
</tr>
<tr>
<td>IIA Regulation 410</td>
<td></td>
</tr>
<tr>
<td>direct jurisdiction 407, 410–11</td>
<td></td>
</tr>
<tr>
<td>see also proceedings</td>
<td></td>
</tr>
<tr>
<td>damage</td>
<td></td>
</tr>
<tr>
<td>environmental, Rome II Proposal and 369–70</td>
<td></td>
</tr>
<tr>
<td>loss or, to cargo, obligation in question and, alternative</td>
<td></td>
</tr>
<tr>
<td>jurisdiction 76</td>
<td></td>
</tr>
<tr>
<td>nuclear, excluded from tort 333</td>
<td></td>
</tr>
<tr>
<td>see also place of injury</td>
<td></td>
</tr>
<tr>
<td>damages</td>
<td></td>
</tr>
<tr>
<td>claim for, alternative jurisdiction and 89–90</td>
<td></td>
</tr>
<tr>
<td>exemplary, stringent public policy of forum and 358</td>
<td></td>
</tr>
<tr>
<td>habitual residence and 341</td>
<td></td>
</tr>
<tr>
<td>tort, for 373–4</td>
<td></td>
</tr>
<tr>
<td>see also injunction; interim relief; order; remedies</td>
<td></td>
</tr>
<tr>
<td>date</td>
<td></td>
</tr>
<tr>
<td>commencement, Rome Convention, exclusion of contracts concluded</td>
<td></td>
</tr>
<tr>
<td>before 264</td>
<td></td>
</tr>
<tr>
<td>custody application, habitual residence of child and, Brussels</td>
<td></td>
</tr>
<tr>
<td>IIA Regulation 410</td>
<td></td>
</tr>
<tr>
<td>determining debtor’s centre, jurisdiction to open main</td>
<td></td>
</tr>
<tr>
<td>insolvency proceeding and 445</td>
<td></td>
</tr>
<tr>
<td>determining existence of debtor’s establishment, jurisdiction to</td>
<td></td>
</tr>
<tr>
<td>open secondary insolvency proceeding and 451</td>
<td></td>
</tr>
<tr>
<td>domicile, of, ancillary jurisdiction and 107</td>
<td></td>
</tr>
<tr>
<td>see also time</td>
<td></td>
</tr>
<tr>
<td>debtor</td>
<td></td>
</tr>
<tr>
<td>assets of 452, 453, 455–6</td>
<td></td>
</tr>
</tbody>
</table>
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
discovery
domestic decisions relevant to merits, application for as submission by appearance 175
discretion
court 49–51, 169, 190–92
dishonest assistance
alternative jurisdiction and 97
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
collision 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
concurrent proceedings and 178
anti-suit injunction 192, 193–4
Brussels I Regulation, Art 27 relation with other provisions 186
related action 188, 190, 191–2
same cause of action 184
same parties 183
time of seisin 184
consumer contract and 316
contract and
  assignment, voluntary 304
  authority 300
capacity 298
  closest connection 283, 286–7,
    288, 289, 290
discharge 293
essential validity 295
express choice of proper law of
  273–4, 274–5, 276–7, 277–8
formal validity 297
formation 295
implied choice of proper law of 279
nullity 303
overriding interests of third country 311
public policy of forum country 305–7
remedies 301–2
Index

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
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
提交 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
Admiralty
basis of jurisdiction
contract, concept of
criminal proceedings
defamation
establishing jurisdiction
freedom of choice
harmful event
obligation in question
place of performance
secondary establishment
tortious matters
ancillary jurisdiction and
Brussels I Regulation material scope
and
anti-suit injunction
civil and commercial matters
excluded matters
external judgment
family matters
insolvency
judicial proceedings brought in
defiance of arbitration agreement
judicial proceedings principally concerned with arbitration agreement
New York Convention
relevance
social security
subject-matter, test for principal
concurrent proceedings and
anti-suit injunction
Brussels I Regulation, Art 27
relation with other provisions
related action
same cause of action
same parties
time of seisin
consumer contract and
advertising and specific invitation
mixed purposes contract
substantive law, Directives on
transfer of possession
contract and
domicile and
direct jurisdiction rules
external defendants
forum non conveniens
internal allocation of jurisdiction
reflex effect
employment contract and
enforcement and, normal procedure
exclusive jurisdiction and
company law
intellectual property
proprietary rights in land
tenancies of land
insurance contract and
Lugano Convention and
maintenance and
matrimonial proceedings and
protected contract and
provisional measures and
recognition and enforcement of judgments and
Brussels I Regulation
civil proceedings ancillary to criminal prosecution
exception to general rule of no review of jurisdiction
concepts
inadequate notice of original action exception to general rule of no review of jurisdiction
irreconcilable judgments
exception to general rule of no review of jurisdiction
judgment, exceptions to definition
Index

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 II A 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 II A Regulation and 386
foreign judgment
  conflict rules and 3
Index

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
counterclaim 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
Index

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
conglomerate 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
legal aid  
enforcement and, initial application  
for, normal procedure 242
legal certainty principle  
forum non conveniens and 52
legislative procedure  
conflict rules harmonization 4–5
lex concursus  
insolvency proceedings and 447, 456–7
liability  
auditor, excluded from tort 333  
determining, tort and 339
multiple, subrogation and 375

tortious 372–3  
see also product liability
liability insurer  
direct action against, tort and 374–5
life insurance  
Directive 90/619, under 328
Rome Convention and, relationship  
with other EC measures 268
see also insurance contract
limitation  
contract and 302–3  
see also date; time
liquidator  
duties, effects of secondary  
insolvency proceeding and 452
powers of 447, 448–9, 452, 455–6
Lugano Convention  
alternative jurisdiction and 105
Brussels I Regulation and 6
exclusive jurisdiction and 152
history 15–17
jurisdiction and, exceptions to  
general rule of no review  
under 223–4
recognition and enforcement of  
judgments and 205, 206, 221–2
specialized Community instruments  
and 41
specialized conventions and 40  
see also international conventions
Luxembourg  
concession, alternative jurisdiction  
and 82
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 A 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 IIA 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 A 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
negoitium gesto see agency,
  unauthorized
Netherlands
  domicile concept and 60
  insolvency proceedings and,
  jurisdiction to open main
  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 IIA Regulation 421–4
  Brussels IIA 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
    IIA 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;
matriomsal 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
proper law of the contract
closest connection 282–3
main presumption 283–8
minor presumption 289
reform, possible 290–92
severance 289–90
express choice 272–8
implied choice 278–82
Rome Convention and 271–2
see also contract

property
child, of, Brussels IIA Regulation and 407
contract and, material scope of Rome Convention 265–6
exceptions to choice of law general rule, insolvency proceedings 458–60
immovable see land
see also assets; intellectual property; matrimonial property

protected contract
Brussels I Regulation and 19–20, 113–14
domicile and, external defendants 57
governing legislation 312
see also consumer contract; contract; employment contract; insurance contract

protective measures
declaration of enforceability and 243–4
see also remedies

provisional measures
Brussels I Regulation and 25, 198–201
European law restrictions other than Brussels I Regulation 201–2
freezing order, English 202–4
jurisdiction and, exception to general rule of no review relating to 222–3
matrimonial proceedings, exercise of jurisdiction and 396–7
see also interim relief

public authority
Brussels I Regulation and 22–4
public policy
contract and 272, 305–8

overriding rules and, tort 357–9
recognition and enforcement of judgments and, exceptions 214, 224–9
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

reciprocity
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
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 insolvent 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 insolvent 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
habitual 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
exceptions 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

res judicata
Index

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
 seizure
 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
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
consumer 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