

INDEX

- absence of choice
 - applicable law in, 44–49, 155–177
 - contractual claims in choice-of-law framework and, 137–138
 - engaging place of business rule and, 120–124
 - escape clause and, 174–177
 - habitual place of work rules and, 156–157
- accessory choice-of-law, 241–247
- agency workers. *See* triangular employment relationships
- aircraft place of registration
 - international transport workers' protections and, 48, 121–123
 - transnational occupations and, 162–167
- air-crew members. *See* international transport workers
- Allonby* case, 78–82, 87
- ancillary establishments
 - branches, agencies, and other establishments, 124–126
 - employer's domicile *vs.* general defendants' domicile jurisdictional rules and, 106–109
 - improvements for existing rules for, 129–132
- anti-discrimination legislation
 - applicable law in absence of choice, 47
 - chosen law *vs.* objectively applicable law, 150–152
 - Equality Act 2010 (United Kingdom) and, 73–76, 189–190
 - EU law-derived rights and, 196 n. 75, 201 n. 100
 - overriding mandatory provisions and, 212–213
 - posted worker protections and, 286–294
- anti-suit injunctions, 25–26, 29–33, 87–88, 101–104
- applicable law. *See* objectively applicable law
- Arblade and Leloup* case, 210–211, 274–280
- Athanasios Kalfelis v. Bankhaus Schröder, Münchmeyer, Hengst and Co.* case, 205
- atypical workers
 - classification of, 64
 - employment contracts and, 56–58
- autonomous interpretation, autonomous worker concepts and, 78–82
- autonomous interpretations
 - choice-of-law rules and, 202–206
 - comparative analysis of employee definitions and, 70–78
 - concurrent causes of action and, 237–241
 - definitions of employee and, 69–83
 - individual employment contracts, 58–69, 82–83, 89–90
 - place of provision of services
 - jurisdictional rule and, 115–118
 - statutory claims and, 78–82
 - substantive EU law, definitions of employee and, 78–82
- Base Metal Trading Ltd. v. Shamurin*, 223–224, 225, 234–241,
- base of operations for work performed
 - ancillary establishments and, 124–126
 - international transport workers' protections and, 48
- Belgium
 - overriding mandatory provisions
 - vs.* choice-of-law rules and, 211–212

- Belgium (cont.)
 - public enforcement of employment standards in, 274–280
- Bleuse v. MBT Transport Ltd.* case, 181–189, 195–201, 202–206
- Bolkestein directive, 254–260
- bonus agreements, in employment contracts, 87–88
- Boukhalfa* case, 200–201
- Briggs, A., 192–195, 222–223, 229, 248–250
- British Airways plc v. Sindicato Espanol de Pilotos de Lineas Aeras* case, 280–285
- British nationals, Employment Rights Act 1996 (United Kingdom) and, 186–189
- Brodie, Lord, 186–189
- Brodin v. A/R Seljan* case, 248–250
- Brussels Convention, 5–6
 - employer responsibilities and, 108 n. 78
 - employment contracts provisions in, 58–62
 - engaging place of business rule in, 120 n. 130
 - habitual place of work rule and, 109–110 n. 83, 132–136
 - jurisdictional rules in, 58–62, 95–100
- Brussels I Recast, 5–6
 - ancillary establishments and jurisdictional rules in, 124–126
 - Article 6(1), 280–285
 - Article 7(1), 115–119, 205, 229–241
 - Article 7(2), 205, 229–241
 - Article 7(5), 106–109, 120–121, 124–126, 132–136, 167–174
 - Article 8, 94, 100–101, 126, 129–132, 141–143,
 - Article 20, 18–19, 94
 - Article 21, 18–19
 - Article 22, 18–19
 - Article 23, 18–19
 - Article 25, 100–101, 115–119, 126–128
 - Article 26, 100–101, 126, 144–154
 - Article 31, 126–128
- autonomous interpretation of individual employment contracts in, 62–69, 82–83
- claimant employees and jurisdictional rules of, 126, 128–129
- co-defendants and jurisdictional rules in, 91–94, 98–100, 126, 280–285
- concurrent causes of action and, 229–241
- defendant employees and jurisdictional rules of, 100–101
- employee protection in, 106
- employee's domicile in, 47, 49–54, 106–109
- employer responsibilities in, 83–88
- employer's domicile vs. general defendants' domicile and, 106–109
- employment contracts provisions in, 58–62
- engaging place of business rule and, 120–124
- evolution of jurisdictional rules in, 91–94
- future issues concerning jurisdictional rules and, 136
- habitual place of work rule and, 109–115, 118–119
- improvements for existing jurisdictional rules, 129–132
- individual employment contracts in, 37–38, 78–82, 89–90
- jurisdiction agreements and, 126–128
- jurisdictional rules in, 15–16, 53–54, 118–119
- lis pendens* principle and, 25–26, 101–104
- new jurisdictional rules proposed for, 132–136
- place of provision of services rule and, 115–119
- posted workers and, 254–260, 286–294
- private international law of employment and, 12–15

- Recital 4 of, 64
- Recital 18 of, 7–9, 91–94
- scope of, 15–16
- systemic approach to employee protections and, 9–12
- tacit choice-of-law, 142–143
- Brussels I Regulation, 5–6, 53–54
 - applicable law in absence of choice, 155–177
 - collective enforcement of employment standards and, 280–285
 - employer defined in employment contract provisions of, 83–88
 - employment contracts provisions in, 58–62
 - engaging place of business rule in, 120 n. 130
 - habitual place of work rule and, 156
 - individual employment contracts in, 56–58
 - jurisdictional rules in, 91–94, 98–99
 - recognition and enforcement of judgments in, 104–105
- Bullen v. Club Cantabrica Coach & Air Holidays Ltd.*, 294–298
- Burke v. Uvex Sports GmbH*, 234
 - n. 56–235 n. 56
- Cameron v. Navy, Army and Air Force Institutes (NAAFI) case*, 185
 - n. 30
- Cheshire, North and Fawcett: Private International Law*, 7–9, 62–63, 214–219
- China. *See* People's Republic of China
- choice of court
 - economic efficiency and, 23–25
 - employee protection laws and, 35–38
 - European jurisdictional rules and, 101–104
 - freedom of contract and, 21–23
 - jurisdictional rules in Member States and, 49–54, 126–128
 - legal certainty and party autonomy issues and, 25–26
- choice-of-law
 - absence of choice and applicable law and, 155–177
 - accessory choice-of-law rule and, 241–247
 - applicable law selection and, 68–69, 140
 - autonomous interpretation of individual employment contracts and, 64
 - in British labour law, 184–186, 192–195, 214–219
 - choosing applicable law, 68–69, 241–247
 - chosen law vs. objectively applicable law, 150–152
 - common law and, 223–224
 - concurrent causes of action in, 222–247
 - contracts without foreign or non-EU elements, 144
 - contractual claims and, 137–178
 - economic efficiency and party autonomy shortcomings and, 23–25
 - employee protection and, 38–49
 - employment contracts and, 15–16, 66–67, 68–69, 139–140
 - engaging place of business rule and, 129–132
 - escape clause in, 174–177
 - 'European' choice-of-law rules, 206–214
 - Europeanisation of private international law and, 300–306
 - exemption clauses and, 248–250
 - express choice and, 141–142
 - flexibility in, 49
 - freedom of contract and, 21–23, 70–78
 - German labour law and, 35–38
 - intra-group transfers and, 161–162
 - Ivenel* doctrine and, 96–97
 - jurisdictional rules and, 49–54, 95–100
 - Lawson v. Serco* case and, 202–206
 - legal certainty and, 25–26
 - lex causae* classification of employment contracts and, 65–66, 67–68
 - lex fori* classification of employment contracts and, 137–138, 241–247

- choice-of-law (cont.)
 - mandatory EU law and, 144–146, 149
 - mandatory provisions and, 144–146, 149, 206–214
 - non-standard employment relationships and, 58–62
 - objectively applicable law and, 150–152
 - party autonomy limitations and, 144–154
 - place of provision of services
 - jurisdictional rule and, 115–118
 - posted workers and, 254–260
 - private international employment law and, 12–15, 19–21, 229–241
 - procedural forms of action and, 225–228
 - role of courts in, 152–154
 - Rome I regulation and, 15–16, 106, 179–180, 202–206
 - Rome II regulations, 179–180, 202–206, 241–243
 - Rome Convention and, 202–206
 - severance (*dépeçage*) and, 142–143
 - sources of mandatory provisions and, 147–149
 - statutory claims and, 179–220
 - tacit choice and, 142–143
 - territorial scope of British employment legislation and, 201–219
 - tortious claims and, 58–62, 179–180, 205, 221–253
 - transnational occupations and, 162–167
- civil procedure rules, jurisdictional rules and, 223 n. 11–224 n. 11
- claimants, employees as, 91–94
 - employer's domicile vs. general defendants' domicile
 - jurisdictional rules and, 106–109
 - vs. general claimants, jurisdictional protection issues, 106–129
- improvements for existing jurisdictional rules for, 129–132
 - jurisdictional agreements and, 126–128
 - jurisdictional rules and, 49–54, 100–105, 126, 128–129
 - new jurisdictional rules for, 132–136
- co-defendant employees, jurisdictional rules for, 126
- collective agreements
 - mandatory provisions in, 147–149
 - posted workers and, 261–272
 - receiving perspective on posted worker protections and, 286–294
- Collective Agreements Act (Germany), 77
- collective bargaining, systemic perspective in private international law and, 26–29
- collective enforcement of employment standards, 267–272, 273–274
 - limitations of, 280–285
- Collins, H., 9–12, 29–33, 285–286
- Collins, L., 192–195
- Color Drack GmbH v. Lexx International Vertriebs GmbH*, 120–124
- Commercial Agents (Council Directive) Regulations SI 1993/3053 (United Kingdom), 199–200
- Commission v. Luxembourg* case, 208–213, 267–272, 286–294
- common employment defence, British contractual rights law and, 192–195
- common law conflict of laws
 - British contractual rights law and, 192–195
 - choice-of-law and, 202–206
 - concurrent causes of action and, 223–224, 229–241
 - European jurisdictional rules and, 102
 - exemption clauses and, 248–250
 - Lawson v. Serco* case and, 219–220
 - procedural forms of action and, 225–228
 - statutory claims and, 219–220

- common nationality of parties
 - jurisdictional rules in Member States and, 49–54
 - transnational employment relationships and, 46
- compliance with standards
 - Posted Workers Directive enforcement of, 273–274
 - public enforcement, limitations of, 274–280
 - receiving perspective on posted worker protections and, 286–294
- concurrent causes of action
 - accessory choice-of-law and, 241–247
 - Brussels I Recast and, 229–241
 - in choice-of-law rules, 222–247
 - common law conflict of laws and, 223–224
 - current and future issues in, 252–253
 - employer responsibilities and, 237–241
 - European private international law and, 229–241
 - procedural rules and, 225–228
 - in Rome I and Rome II, 241–247
- conflict of laws. *See* choice-of-law; jurisdiction rules
- ‘conflicts justice,’ private internal law and, 19–21
- conspiracy to harm employer’s business
 - concurrent causes of action and, 234–237
 - jurisdictional rules concerning, 91–94
- constitutionalisation process, private international law and, 29–33
- Constitutional Treaty (draft), private international law and labour law principles of, 4–16
- consumer laws
 - habitual residence principle, 47
 - jurisdictional rules and, 98–99
- Contracts (Applicable Law) Act 1990 (United Kingdom), 139–140
- Contracts of Employment Act (United Kingdom), 202–206
- contractual claims
 - breach claims, 221–222
 - British contractual rights law and, 192–195
 - characteristics of, 137–138
 - choice-of-law and, 137–178, 179–180
 - territorial scope of British employment legislation and, 181–201
- control test, U.K. employment and services contracts, 70–71
- Convention on the Accession of Spain and Portugal into the Brussels Convention, jurisdictional rules in, 61, 97–98
- conversion agreement, objectively applicable law and, 150–152
- corporate groups. *See also* triangular employment relationships
 - Posted Workers Directive and, 261–272
 - tacit choice and, 142–143
 - triangular employment relationships and, 83–88
- corporate seat, jurisdictional rules and, 49–54
- country of origin principle
 - private international law of employment and, 12–15
 - sending perspective on posted worker protections and, 294–298
- Coupland v. Arabian Gulf Oil Co.*, 223–224
- Court of Justice of the EU (CJEU)
 - ancillary establishments and rulings by, 124–126
 - autonomous interpretation of individual employment contracts and, 64, 78–82
 - Brussels Convention and Brussels I Regulation and case law of, 101–104
 - choice-of-law rules and case law of, 202–206, 229–241
 - claimant employees, jurisdictional rules for, 91–94

- Court of Justice of the EU (cont.)
 collective enforcement of
 employment standards and,
 280–285
 employee protection in case law of,
 7–9, 18–19, 35–38
 employer responsibilities in rulings
 by, 83–88
 employment contract rulings by,
 58–62, 78–82
 engaging place of business rule in
 rulings by, 120–124
 EU law-derived rights and case law
 of, 195–201
 habitual place of work rule and
 proceedings of, 109–115, 129–132,
 156–157, 160–161
 jurisdictional rules in case law of,
 95–100
 mandatory provisions in rulings by,
 147 n. 47
 Member State employment
 standards and, 267–272
 overriding mandatory provisions *vs.*
 choice-of-law rules, 208–213
 place of provision of services
 jurisdictional rule and, 117–118
 posted workers and rulings by,
 254–260, 262–264, 270–272,
 298–299
 public enforcement of Posted
 Workers Directive and,
 274–280
 reduction of Member State
 autonomy by, 29–33
 tortious claims and case law of,
 229–241
 transnational employment
 relationships and, 1–2
 transnational occupations and,
 162–167
 courts, objectively applicable law and
 role of, 152–154
Cox v. ELG Metals Ltd., 289 n. 145
 Darmon, AG, 225
 Davies, P., 294–298
 defendants, employees as
 employer's domicile *vs.* general
 defendants' domicile jurisdictional
 rules and, 106–109
 jurisdictional rules for, 49–54, 91–94,
 100–101, 104–105, 126
 Denmark
 'Brussels I Recast' and, 5–6
 Rome Convention and, 6
 Denning MR (Lord), 17–18, 192–195,
 248–250
dépeçage. *See* severance (*dépeçage*)
 dependent self-employed workers,
 15–16, 56–58, 62–83, 89–90,
 300–306
Dicey, Morris and Collins on the
Conflict of Laws, 7–9, 62–63,
 214–219
 Diplock, Lord, 141 n. 23
 Directive 96/71/EC. *See* Posted
 Workers Directive
 dismissal legislation
 applicable law in absence of choice,
 44–49, 155–177
 choice-of-law and, 150–152, 205
 employer's domicile *vs.* general
 defendant's domicile
 jurisdictional rules and,
 106–109
 Employment Rights Act 1996
 (United Kingdom), 182–184
 habitual place of work rules and,
 109–115
 judicial rescission of employment
 contracts, 132–136
 jurisdictional rules and, 91–94,
 101–104
 objectively applicable law and, 149
 overriding mandatory provisions
 and, 212–213
 party autonomy limitations and,
 23–25
 transnational occupations and,
 162–167
 domestic labour laws. *See also* state
 interests
 choice-of-law rules and, 19–21
 cross-state comparisons of employee
 protections and, 44–45

- economic efficiency and party autonomy shortcomings and, 23–25
- employer responsibilities in, 89–90
- employment contracts and, 56–58, 61–62, 89–90
- EU law-derived rights and, 195–201
- ‘European’ choice-of-law rules and, 206–214
- expanded diversity of, 29–33
- individual employment contracts and, 58–69,
- jurisdictional agreements and, 126–128
- jurisdictional rules and, 95–96
- legal certainty and party autonomy issues and, 25–26
- legitimate state interests and, 26–29
- lex fori* employment contracts and, 64–65
- party autonomy and employee protections and, 39–44
- public enforcement of employment standards and, 274–280
- systemic approach to employee protection and, 9–12
- transnational employment and, 3–4
- triangular employment relationships and, 83–88
- Domicrest Ltd v. Swiss Bank Corp.*, 234 n. 56–235 n. 56
- Dos Santos Palhota* case, 274–280
- Duarte v. Black & Decker Corp.*, 144–146, 147–149
- Duncombe (No 2)* case, 188–189, 206–207, 214–219
- Duncombe v. Secretary of State for Children, Schools and Families* case, 184–186, 192–202, 206–207, 214–219,
- duty of care
 - concurrent causes of action and claims involving, 223–224, 225, 234–237
 - tortious claims based on breach of, 223–224
- economic efficiency, party autonomy and, 23–25
- economic freedoms
 - competing interests of Member States and, 261–272
 - European private international law of employment and, 15–16, 29–33
 - party autonomy and employee protections and, 39–44
- economic reality test, U.K. employment and services contracts, 70–71
- effective centre of working activities, habitual place of work rule and, 112
- effectiveness principle, EU law-derived rights and, 195–201
- employee, definitions of
 - in France, 70–78
 - in Germany, 77
 - in substantive EU law, 78–82
 - in United Kingdom, 73–76
- employee protections
 - applicable law in absence of choice, 44–49
 - choice-of-law and, 38–49
 - economic efficiency and party autonomy shortcomings and, 23–25
 - jurisdictional rules and, 49–54, 91–94, 129–136
 - party autonomy and, 39–44
 - posted workers and threat to, 254–299
 - in private international law, 7–9, 15–16, 17–55
 - statutory rights in UK, 181–192
 - systemic approach to, 9–12, 29–33
 - territorial scope of British employment legislation, 26–29, 181–201
- employee’s domicile
 - jurisdictional rules and, 49–54
 - transnational employment relationships and, 47
- employer responsibilities
 - concurrent causes of action and, 237–241

- employer responsibilities (cont.)
 - in domestic labour laws, 89–90
 - in employment contracts, 83–88
 - jurisdictional rules for employee claims and, 91–94
 - public enforcement of posted worker standards and, 274–280
 - tortious claims in British law and, 221–222
- employer's principal place of business, 46
 - international transport workers' protections and, 48
- employment agencies
 - engaging place of business rule and, 120–124
 - triangular employment relationships and, 83–88
- employment contracts. *See also* individual employment contracts
 - in ancillary establishments, 124–126
 - applicable law in absence of choice, 44–49
 - applicable law selection and, 140
 - autonomous vs. domestic interpretations of, 56–69, 82–83, 89–90
 - choice-of-law rules and, 58–62, 139–140, 152–154, 202–214
 - concurrent causes of action and, 222–247
 - conspiracy to harm employer's business as breach of, 91–94
 - contracts without foreign or non-EU elements, 144
 - defined, 56–58
 - employee, definitions of, 69–83
 - employee protection laws and, 35–38
 - employer, definitions of, 83–88
 - exemption clauses and, 247–251
 - express choice and, 141–142
 - French laws on, 70–71
 - genealogy of individual employment contracts, 58–62
 - German laws on, 72–73
 - habitual place of work rule and, 114, 156–157
 - intra-group transfers and, 161–162
 - Member State concepts of, 49–54, 70–78
 - party autonomy and employee protections, 39–44, 54–55, 144–154
 - place of provision of services jurisdictional rule and, 115–118
 - posted workers, 157–161
 - in private international law, 12–15, 56–90, 300–306
 - severance (*dépeçage*) and, 142–143
 - sources of mandatory provisions, 147–149
 - state classifications for, 37–38
 - substantive EU law definitions of, 78–82, 144–146, 195–201
 - tacit choice and, 142–143
 - territorial limitations and, 214–219
 - transnational employment and, 3–4
 - U.K. laws on, 70–71, 192–195, 221–222
- Employment Relations Act 1999 (United Kingdom), 73–76
 - choice-of-law framework and, 202–206
 - statutory rights in, 181–189
 - territorial limitations in, 214–219
- Employment Rights Act 1996 (United Kingdom), 73–76, 147–149, 181–189
 - enforcement of posted worker protections in, 286–294
 - 'European' choice-of-law rules and, 206–214
- engaging place of business rule
 - ancillary establishments and, 124–126
 - in Brussels I Recast, 99–100, 118–119
 - employer's domicile vs. general defendants' domicile jurisdictional rules and, 106–109
- EU jurisdictional rules concerning, 120–124
- habitual place of work rule and, 109–115
- improvements to jurisdictional rules concerning, 129–132

- in Lugano Convention, 97–98
- in Rome I, 120–123, 231–234
- tortious claims and concurrent causes of action and, 231–234
- English law. *See* United Kingdom, labour laws in
- EqA. *See* Equality Act 2010 (United Kingdom)
- Equality Act 2010 (United Kingdom), 181, 189–190
 - posted worker protections and, 286–294
- Equal Opportunities (Employment Legislation) (Territorial Limits) Regulations SI 1999/3163 (United Kingdom), 286–294
- ERA. *See* Employment Rights Act 1996 (United Kingdom)
- European Civil Code, 9–12
- European Commission
 - choice-of-law rules drafted by, 58–62, 139–140
 - GlaxoSmithKline* case and, 91–94
 - Member State employment standards and, 267–272
 - recognition and enforcement of judgments and, 104–105
- European Communities Act 1972 (United Kingdom), 214–219
- European Convention on Human Rights, transnational employment relationships and, 2
- European Court of Human Rights, transnational employment relationships and, 2
- European Economic Community, European choice-of-law rules and, 139–140
- European Free Trade Area Court, 272
- European Free Trade Association states, 5–6
 - jurisdictional rules concerning employment and, 97–98
- European Parliament, Brussels I Recast amendments considered by, 132–136
- European Union (EU)
 - employee rights under law of, 195–201
 - employees as claimants, jurisdictional rules for, 91–94
 - employer's domicile vs. general defendants' domicile jurisdictional rules in, 106–109
 - individual employment contract concepts in, 89–90
 - private international law and labour principles of, 4–16
 - substantive EU law definitions of employee and, 78–82
 - systemic approach to employee protection in, 9–12, 29–33
 - transnational employment relationships and role of, 2–3
- exemption clauses
 - common law conflict of laws and, 248–250
 - current and future issues in, 252–253
 - Rome I and Rome II provisions and, 250–251
 - tortious employment claims and, 247–251
- expatriate employees. *See also* posted workers
 - Lawson v. Serco* case and, 182–184, 186–189, 287
- express choice, choice-of-law and, 141–142
- Field J, 147–149, 280–285
- Finalarte* case, 262–264
- Financial Times Ltd. v. Bishop*, 181–189, 184 n. 24, 202–206, 214–219
- Finland, employment standards enforcement in, 280–285
- Fixed-Term Contracts Directive, 195–201
- Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations SI 2002/2034 (United Kingdom), 192–201,
- flags of convenience. *See also* law of the flag
 - international transport workers' protections and, 48

- 'flexicurity' concept, transnational employment and, 2–3
- foreign courts
 - jurisdictional rules for employee disputes and, 100–101
 - objectively applicable law and role of, 152–154
- foreign law
 - EU law-derived rights and role of, 199 n. 89
 - jurisdictional rules and, 49–54
 - relevant mandatory EU provisions and, 144–146
 - statutory claims and, 179–180
- foreign service providers, public enforcement of employment standards and, 274–280
- forum, law of. *See lex fori*
- forum shopping, concurrent causes of action and, 227–228
- France
 - employee definitions in, 70–78
 - employer's domicile vs. general defendants' domicile
 - jurisdictional rules and, 106–109
 - mandatory provisions in laws of, 148–149
 - non cumul des responsabilités* rule in, 225–228
 - objectively applicable law vs. chosen law in, 150–152
 - party autonomy and employee protections in, 39–44
 - public enforcement of employment standards in, 274–280
 - role of courts in choice-of-law, 152–154
 - scope of labour laws in, 70–78
 - tacit choice in courts of, 142–143
 - territorial scope of labour law in, 26–29
- Freedland, M., 89–90
- freedom of contract
 - common law of employment and, 70–78
 - party autonomy and, 21–23
- freedom of establishment, 124–126
- free movement of services, 109–119
- free movement of workers, 12–15, 29–33
- fundamental rights, transnational employment and EU protections for, 2–3
- Germany
 - accessory choice-of-law in, 241–247
 - concurrent causes of action in, 225–228
 - definitions of employee in, 77
 - dismissal statutes in, 205
 - employee protection in, 35–38
 - employment contracts in, 72–73
 - mandatory provisions in laws of, 147 n. 47
 - overriding mandatory provisions in, 212–213
 - party autonomy and employee protections in, 39–44
 - role of courts in choice-of-law and, 152–154
 - territorial scope of labour laws in, 26–29, 70–78
 - tortious claims and concurrent causes of action in, 229–241
 - transnational occupations and labour laws of, 162–167
- Giuliano-Lagarde Report, 7–9, 35–38
- individual employment contracts and, 58–62
- relevant mandatory provisions and, 144–146
- GlaxoSmithKline* case, 98–99
- jurisdictional rules and, 91–94
- globalisation, transnational employment relationships and, 1–16
- Goff LJ, 221, 223–224
- governing law, employee protections and, 17–18
- Haase v. Superfast Ferries* case, 121–123
- habitual place of work rules
 - absence of choice and applicable law, 156–157
 - in Brussels I Recast, 99–100, 118–119

- employee protection and, 45–46
- engaging place of business rule and, 121–123, 167–174
- escape clause and, 174–177
- in EU jurisdictional rules, 109–115
- international transport workers and, 121–123
- intra-group transfers and, 161–162
- jurisdictional rules in Member States and, 49–54, 126–128
- peripatetic workers and, 48
- place of provision of services
 - jurisdictional rule vs., 109–119
- posted workers and, 157–161
- principal place of employment and, 111–112, 114–115
- proposed amendments to, 129–132
- tortious claims and concurrent causes of action and, 231–234
- transnational occupations and, 162–167
- habitual residence
 - accessory choice-of-law rule and, 241–247
 - jurisdictional rules and, 49–54
 - new jurisdictional rules for Brussels I Recast and, 132–136
 - Rome II choice-of-law rules and, 241–243
 - transnational employment relationships and, 47
- Hague Convention on jurisdiction and foreign judgments
 - choice-of-court agreements and, 35–38
 - judicial rescission of employment contracts and, 132–136
- Hale, Lady, 184–186, 188–189, 195–201, 206–207
- Hassan Shenvai v. Klaus Kreischer*, 58–62, 78–82
- health and safety legislation
 - applicable law in absence of choice, 47
 - Health and Safety at Work Act 1974 (United Kingdom), 147–149
 - overriding mandatory provisions and, 212–213
 - posted worker protections and, 286–294
 - Heidelberg Report, 94
 - Heiko Koelzsch v. Luxembourg*, 162–167, 205
 - ‘hired-out’ workers
 - habitual place of work rules and, 112–113, 157–161
 - triangular employment relationships and, 83–88
 - Hoffmann, Lord, 137, 179, 182–184, 186–189, 202–207, 214–219, 286–294
 - Hope, Lord, 186–189, 206–207
 - ‘horizontal’ conflicts
 - multi-level governance and, 4
 - private international law and, 26–29
 - human rights, transnational employment relationships and, 29–33
 - individual employment contracts. *See* employment contracts
 - individualistic perspective on employment relationships
 - limitations of, 54–55
 - private international law focus on, 7–9
 - transnational employment and, 34
 - Ingmar* case, 199–200, 211–212
 - insurance law, jurisdictional rules and, 98–99
 - integration test, U.K. employment and services contracts, 70–71
 - Inter-American Convention, party autonomy and employee protections and, 39–44
 - internal market
 - posted worker protections and, 285–286
 - receiving perspective on posted worker protections and, 286–294
 - International Labour Organisation, 28–29, 280–285
 - international transport workers. *See also* peripatetic workers

- international transport workers (cont.)
 - collective enforcement of
 - employment standards and, 280–285
 - engaging place of business rule and, 121–123
 - European choice-of-law rules and, 139–140
 - habitual place of work rules and, 162–167
 - protections for, 48
- intra-group transfers, habitual place of work rule and, 161–162
- Ireland, employment contracts in, 62
- Ivenel* rule
 - employment contracts and, 58–62
 - jurisdictional rules for employment disputes and, 96–97
 - Lugano Convention adoption of, 97–98
- Jacobs AG, 111–112
- Jakob Handte & Co. GmbH v. Traitements Mécano-chimiques des Surfaces SA*, 205
- Jan Voogseerd v. Navimer SA*, 64, 78–82, 83–88, 120–121, 147 n. 47, 164, 231–234
- Jenard-Möller Report, 58–62, 78–82
- Jenard Report, 58–62, 78–82, 100–101
- Jivraj v. Hashwani* case, 73–76
- John Pfeiffer Pty. v. Rogerson* case, 227–228
- Johnson v. Coventry Churchill International Ltd.*, 223–224
- Jorens-Peters-Houwerzijl study, 279–280
- jurisdiction agreements. *See also* choice of court
 - in Brussels I Recast, 126–128
 - claimant employees and, 126–128
 - tacit choice and, 142–143
- jurisdiction rules. *See also* Brussels I Recast
 - autonomous interpretation of individual employment contracts and, 64
 - branches, agencies, and other establishments and, 124–126
 - choice-of-law and, 49–54, 95–100
 - civil procedure rules and, 223
 - n. 11–224 n. 11
 - claimant employees' and, 100–105, 126
 - concurrent causes of action and, 234–237
 - employee protection and, 49–54, 91–94, 129–136
 - employment contracts and, 58–62
 - engaging place of business rule and, 120–124
 - European rules, 95–100
 - future issues concerning, 136
 - general claimants *vs.* claimant employees and, 106–129
 - habitual place of work rule and, 109–119
 - improvements for existing rules, 129–132
 - introduction of new rules, 132–136
 - in Member States, 49–54, 91–94, 101–104
 - place of provision of services rule and, 109–119
 - receiving perspective on posted worker protections and, 286–294
 - recognition and enforcement of judgments, 104–105
 - sending perspective on posted worker protections and, 294–298
- Kahn Freund, O., 21–23, 49
- Kissen Lord, 248–250
- labour laws
 - cross-state comparisons of, 44–45
 - EU legislation, 2–3
 - freedom of contract and party autonomy in, 21–23
 - sources of mandatory provisions in, 147–149
 - transnational employment relationships and, 2

- Laval un Partneri Ltd. v. Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundet avdelning 1, Byggettan and Svenska Elektrikerförbundet*, 29–33, 270–272, 280–285, 286–294
- law of the flag
- international transport workers' protections and, 48, 121–123
 - transnational occupations and, 162–167
- Law Reform (Personal Injuries) Act 1948 (United Kingdom), 192–195
- exemption clauses and, 248–250
- Lawrie-Blum case*, 78–82
- Lawson v. Serco case*, 193
- choice-of-law and, 202–206
 - common law conflict of laws and, 219–220
 - contractual rights conferred by employment legislation and, 195
 - expatriate employees and, 182–184, 186–189
 - job-sharing arrangements and, 186–189
 - limitations of approach in, 214–219
 - objectively applicable law and, 206–207
 - peripatetic workers and, 182–184, 186–189
 - receiving perspective on posted workers' protection and, 286–294
 - statutory claims and, 179–180
- Leclerc, F., 44–45
- Leflar, R., 44–45
- legal certainty principle
- absence of choice, applicable law in, 155–156
 - concurrent causes of action and, 227–228, 237–241
 - employee protection laws and, 35–38
 - employer responsibilities in employment contracts and, 83–88
 - individual employment contracts and, 89–90
 - party autonomy shortcomings and, 25–26
 - sources of mandatory provisions and, 147–149
 - territorial limitations and, 218
- legal diversity
- EU systemic perspective on employee protection and, 29–33
 - transnational employment and, 3–4
- legal subordination principle
- French concept of employment contracts and, 71–72, 73–76
 - German concept of employee and, 72–73
- legislation, table of xxiii–xxix
- legitimate state interests
- escape clause in employment contracts and, 174–177
 - jurisdictional rules and, 49–54, 132–136
 - party autonomy and, 54–55
 - Posted Workers Directive and conflict of, 261–272
 - systemic perspective in private international law and, 26–29
- Lex Britannia*, 270–272
- lex causae*
- accessory choice-of-law rule and, 241–247
 - domestic interpretation of individual employment contracts and, 65–66, 67–68
- lex contractus*
- accessory choice-of-law and, 241–247
 - concurrent causes of action and, 223–224, 239 n. 71
 - exemption clauses and, 248–250
 - flexibility in choice-of-law rules and, 49
 - Rome I and Rome II provisions, 241–247, 250–251
 - tortious claims and, 222–223
- lex delicti*
- accessory choice-of-law rule and, 241–247

- lex delicti* (cont.)
 concurrent causes of action and, 223–224, 239 n. 71
 exemption clauses and, 248–250
 Rome I and Rome II applications and, 250–251
 in Rome I and Rome II concurrent causes of action and, 241–247
 Rome II choice-of-law rules and, 241–247
 tortious claims and, 222–223
- lex fori*
 absence of choice and, 155–156
 accessory choice-of-law rule and, 241–247
 choice-of-law framework and, 137–138
 employee protection and, 17–18
 exemption clauses and, 248–250
 individual employment contracts and, 64–65
Ivenel principle and, 96–97
 jurisdictional rules and, 49–54, 91–94, 129–136,
 legitimate interests of states and, 26
lex causae and, 64–65
 party autonomy and employee protections and, 39–44
 party autonomy limitations and, 25–26, 39–44
 procedural forms of action and, 227–228
- lis pendens*
 European jurisdictional rules and, 101–104
 legal certainty and party autonomy issues and, 25–26
- Lloyd's Register of Shipping v. Société Campenon Bernard*, 124–126
- local employment rules
 intra-group transfers and, 161–162
 posted workers and, 261–272
 lorry drivers, 1, 48, 162–167
 Louisiana Civil Code, 35–38
 Lugano Convention 1988, 5–6
 engaging place of business rule in, 120 n. 130
 habitual place of work rule and, 109 n. 82, 132–136
 jurisdictional rules concerning employment in, 58–62, 97–98
 Lugano Convention 2007, 5–6
 employment contracts provisions in, 58–62
 engaging place of business rule in, 120 n. 130
 habitual place of work rule and, 109 n. 82, 132–136
- Luxembourg
 overriding mandatory provisions vs. choice-of-law rules and, 208–213
 transnational occupations and labour laws of, 162–167
- Mahamdia* case, 124–128,
 managerial employees
 habitual place of work rule and, 160–161
 private international law protections for, 35–38
- mandatory EU rules. *See also* overriding mandatory provisions
 application for employee protection, 149
 choice-of-law rules and, 206–214
 comparison of chosen law with objectively applicable law, 150–152
 contracts without foreign or non-EU elements and, 144
 limitations of party autonomy and, 144–154
 Member State employment standards and, 267–272
 posted workers and, 261–272
 receiving perspective on posted worker protections and, 286–294
 relevant provisions of objectively applicable law, 144–146
 role of courts and, 152–154
 Rome I and, 144–146
 sources of, 147–149
 ‘material justice,’ private international law and, 19–21

- Matthews v. Kuwait Bechtel Corp.*, 223–224
- meaningless choice, choice-of-law rules and, 141–142
- Megaw LJ, 183 n. 20
- Melzer case*, 229–241
- Member States (EU)
- ancillary establishments in, 124–126
 - atypical workers' independent contracts and, 64
 - autonomous interpretation of individual employment contracts and, 64–65, 82–83
 - choice-of-law rules and labour laws of, 58–62
 - collective enforcement of employment standards in, 280–285
 - comparative analysis of employee definitions in, 70–78
 - employer's domicile *vs.* general defendants' domicile and jurisdictional rules of, 106–109
 - employment contract/services contract division in, 61–62
 - engaging place of business rule in, 120–124
 - EU law-derived rights and, 198
 - gap in wages and labour standards among, 9–12
 - habitual place of work rule in, 109–115
 - intra-EU movement of workers in, 12–15
 - jurisdiction agreements and, 126–128
 - jurisdictional rules in courts of, 49–54, 91–94, 101–104
 - mandatory provisions in, 147–149
 - overriding mandatory provisions *vs.* choice-of-law rules and, 208–213
 - place of provision of services jurisdictional rule and, 115–118
 - posted workers and laws of, 254–299
 - Posted Workers Directive and competing interests of, 261–272
 - public enforcement of standards in, 274–280
 - receiving perspective on posted worker protections in, 286–294
 - relevant mandatory EU provisions for, 144–146
 - role of courts in choice-of-law rules and, 152–154
 - sending perspective on posted worker protections in, 294–298
 - systemic approach to employee protection in, 29–33
 - transnational employment relationships and, 1–16
- Michaels, R., 9–12
- Mills, A., 9–12
- minimum contacts doctrine, jurisdictional rules provisions and, 132–136
- minimum period of notice rights, British contractual rights law and, 195
- minimum standards
- party autonomy and employee protections and, 39–44
 - posted workers and, 261–272
 - Posted Workers Directive enforcement of, 273–274
 - transnational employment and, 2–3
- minimum wage
- applicable law in absence of choice, 47
 - National Minimum Wage Act 1998 (U.K.), 73–76, 181, 190–192, 286–294
 - overriding mandatory provisions and, 212–213
 - posted worker protections and, 267–272, 286–294
 - public enforcement of, 274–280
- Ministry of Defence v. Wallis case*, 185 n. 30, 195–201
- Mme Briand v. Institut culturel autrichien*, 150–152
- mobility clauses, habitual place of work rules and, 157–161
- monitoring of standards, Posted Workers Directive and, 273–274

- Morse, C. G. J., 62–63, 64–65, 149
M/S Bremen and Unterweser Reederei GmbH v. Zapata Off-Shore Co., 21–23, 35–38
 Muir Watt, H., 9–12
Mulox case, 156–157, 162–167
 habitual place of work rule and, 110–111
 multi-level governance
 ‘horizontal’ and ‘vertical’ conflicts in, 4
 private international law and, 4–16
 Mummery LJ, 192–195
 mutuality of obligations
 U.K. employment and services contracts, 70–71
 U.K. labour legislation and, 73–76
 mutual recognition principle, private international law of employment and, 12–15
 nationality of legal persons,
 jurisdictional rules and, 49–54
 National Minimum Wage Act 1998 (United Kingdom), 73–76, 181, 190–192, 286–294
 negative choice, choice-of-law and, 141–142
 negative externalities, economic efficiency and party autonomy shortcomings and, 23–25
 Netherlands, judicial rescission of employment contracts in, 132–136
 neutrality, in private international law, 19–21
 Nigerian law, employee protections and, 17–18, 26–29
 1972 draft convention
 employment relationships in, 58–62
 European choice-of-law rules and, 139–140
 relevant mandatory provisions and, 144–146
 1976 draft regulation
 employment relationships in, 58–62
 European choice-of-law rules and, 139–140
 party autonomy and employee protections, 39–44
 private international law employee protections and, 35–38
 non-contractual labour obligations. *See also* Rome II Regulation
 choice-of-law rules and, 58–62, 202–206
 concurrent causes of action in choice-of-law and, 229–241
 Rome II choice-of-law rules and, 241–243
 non-EU employers
 EU law-derived rights and, 195–201
 improvements of existing jurisdictional rules concerning, 129–132
 jurisdictional agreements and, 126–128
 posted worker protections and, 286–294
 non-payment claims, improvements to jurisdictional rules concerning, 129–132
 nonstandard work relations. *See also* atypical workers
 employment contracts and, 56–58
 non-state rules, choice-of-law rules and, 141–142
 Nordic countries
 party autonomy and employee protections in, 39–44
 territorial scope of labour law in, 26–29
 Nygh, P. E., 241–247
 objectively applicable law
 absence of choice-of-law and, 44–49, 155–177
 application of mandatory provisions and, 149
 British employment law and ‘European’ choice-of-law rules, 206–214
 in British labour law, 214–219
 choice-of-law and, 68–69, 241–247
 contracts without foreign or non-EU elements, 144

- contractual claims, 137–138
- employer responsibilities in
 - employment contracts and, 83–88
 - EU law-derived rights and, 199–200
 - express choice and, 141–142
 - habitual place of work rules and, 156–157
 - Lawson v. Serco* and, 206–207
 - overriding mandatory provisions and, 208–213
 - party autonomy and, 140
 - relevant mandatory EU provisions of, 144–146
 - role of courts and, 152–154
 - Rome I and, 154–155
 - Rome II escape clause and, 241–247
 - ‘objects of mutual exclusivity,’ concurrent causes of action and, 231–234, 237–241
- obligation in question, place of
 - provision of services rule and, 115–118
- ‘office factor,’ habitual place of work rule and, 111–112
- offshore workers
 - British employment legislation and, 190–192
 - engaging place of business rule and, 121–123
 - habitual place of work rule and, 110 n. 83, 162–167
 - peripatetic workers and, 48
 - transnational occupations and, 1, 162–167
- organisation test, U.K. employment and services contracts, 70–71
- Osborne, Lord, 186–189
- out-of-state service providers
 - Member States posted workers’ standards and, 267–272
 - public enforcement of standards on, 274–280
 - receiving perspective on posted worker protections and, 286–294
- outsourcing of labour, employment contracts and, 56–58
- over-regulation, legitimate state interests and, 26–29
- overriding mandatory provisions. *See also* mandatory EU rules
 - ‘European’ choice-of-law rules and, 208–213
 - posted workers and, 254–260
 - public policy and, 208, 267–272, 286–294
 - receiving perspective on posted worker protections and, 286–294
 - restrictive covenants and, 144–146
 - Rome I and Rome II and, 250–251
- party autonomy. *See also* choice-of-court; choice-of-law
 - applicable law selection and, 140
 - contracts without foreign or non-EU elements, 144
 - economic efficiency and, 23–25
 - employee protections and, 39–44
 - European choice-of-law rules and, 139–140
 - European jurisdictional rules and, 95–100
 - express choice and, 141–142
 - freedom of contract and, 21–23
 - habitual place of work rule and, 112–113
 - legal certainty and shortcomings of, 25–26
 - limitations of, 54–55, 144–154
 - overriding mandatory provisions and, 211–212
 - severance (*dépeçage*) and, 142–143
 - tacit choice and, 142–143
 - territorial limitations and, 214–219
 - transnational employment relationships and, 19–21
- party intentions, posted workers and, 157–161
- Patents Act 1977 (United Kingdom), 181, 190–192
- People’s Republic of China, exclusion of party autonomy in, 39–44
- peripatetic workers. *See also* international transport workers; posted workers

- peripatetic workers (cont.)
 - habitual place of work rule and, 48
 - Lawson v. Serco* and, 182–184, 186–189
 - Pervez v. Macquarie Bank Ltd* case, 292–294
- place of business that engaged the employee. *See* engaging place of business rule
- place of contracting rule, jurisdictional rules in Member States and, 49–54
- place of provision of services rule
 - in Brussels I Recast, 118–119
 - habitual place of work rule *vs.*, 115
 - improvements to, 129–132
- Plender, R., 66–68, 199 n. 89, 207–208
- Pocar, F., 44–45
- Poland, party autonomy and employee protections in, 39–44
- Portec (UK) v. Mogensen*, engaging place of business rule and, 121–123
- posted workers. *See also* expatriate employees
 - British protections for, 184–186, 286
 - Brussels I Recast and, 254–260, 286–294
 - choice-of-law and, 208–213, 254–260
 - collective agreements and, 261–272
 - employer's principal place of business and, 47
 - in EU Member States, 254–299
 - future challenges concerning protection of, 298–299
 - habitual place of work rules and, 47, 157–161
 - ineffective protections for, 285–286
 - intra-group transfers, 161–162
 - mandatory EU rules and, 261–272
 - overriding mandatory provisions and, 208–213
 - public policy and, 286–294
 - receiving perspective on protection of, 286–294
 - Rome I and, 157–161, 254–260
 - sending perspective on protection of, 294–298
- Posted Workers Directive, 6–7
 - choice-of-law rules and, 208–213
 - collective enforcement of employment standards and, 280–285
 - competing national interests and, 47, 261–272
 - economic freedoms and, 12–15
 - enforcement of, 273–285
 - EU approach to employee protections and, 29–33
 - evolution of, 254–260
 - flexibility in choice-of-law rules and, 49
 - habitual place of work rules and, 157–161
 - Member State employment standards and, 39–44
 - private enforcement of, 286
 - public enforcement of, 274–280
 - receiving perspective on enforcement of, 286–294
 - sending perspective on posted worker protections and, 294–298
 - systemic approach to employee protections and, 9–12
 - UK labour law and, 182, 286
- Posting of Workers Act (Germany), 262–264
- Posting of Workers Enforcement Directive, 274–280, 285–286, 292–294
- pre-contractual liability, jurisdictional rules concerning, 91–94
- predictability principle
 - concurrent causes of action and, 227–228, 237–241
 - employer responsibilities in employment contracts and, 83–88
 - escape clause and, 174–177
 - individual employment contracts and, 89–90
 - sources of mandatory provisions and, 147–149
- previously performed work, habitual place of work rule and, 160–161

- primary EU law, party autonomy and, 39–44
- principal place of employment
 - engaging place of business rule and, 121–123
 - habitual place of work rule and, 111–112, 114–115
- prior declaration requirement, posted workers in Member States and, 274–280
- private enforcement of employment standards, 273–274
 - enforcement of British Posted Workers Directive, 286
- private international law
 - analysis of employee protections in, 17–55
 - applicable law in absence of choice, 44–49
 - choice-of-law rules for employee protection and, 38–49, 139–140
 - concurrent causes of action in choice-of-law and, 229–241
 - constitutionalisation of, 29–33
 - economic efficiency and party autonomy shortcomings in, 23–25
 - economic freedoms vs. employee protections and, 12–15
 - employee protections in, 35–38
 - employer responsibilities in, 83–88
 - express choice and, 141 n. 23
 - freedom of contract and party autonomy shortcomings in, 21–23
 - grounds for employee protections in, 19
 - individual employment contracts in, 56–90
 - legal certainty and party autonomy issues and, 25–26
 - legitimate state interests and
 - systemic perspective in, 26–29
 - non-standard work relations in, 58–62
 - posted workers and, 254–260, 261–272
 - Rome II escape clause and, 241–247
 - systemic approach to employee protections and, 9–12, 54–55
 - transnational employment and, 4–16
- Private International Law Act (Austria), 39–44
- procedural forms of action, concurrent causes of action and, 225–228
- production systems, vertical disintegration of, 56–58
- professional services, concurrent causes of action and claims involving, 229–241
- proportionality principle
 - jurisdictional rules and, 49–54, 132–136
 - posted worker protections and, 285–286
 - transnational employment relationships, 29–33
- public enforcement of employment standards, 273–274
 - limitations of, 274–280
- public law sanctions, systemic perspective in private international law and, 26–29
- public policy
 - choice-of-law rules and, 208–213
 - Member State employment legislation and, 267–272
 - overriding mandatory provisions and, 208, 267–272, 286–294
 - posted workers and, 286–294
 - receiving perspective on posted worker protections and, 286–294
 - restrictive covenants and, 144–146
- Pugliese* case, 161–162
 - habitual place of work rule and, 114
- purposeful availment test,
 - jurisdictional rules and, 49–54, 132–136
- Rabel, E., 19–21
- ‘race to the bottom’
 - intra-EU movement of workers in Member States and, 12–15, 29–33
 - in labour regulations, 19–21
 - legitimate state interests and, 26–29

- Raiffeisen Zentralbank Österreich Aktiengesellschaft v. National Bank of Greece SA*, 234
n. 56–235 n. 56
- Ravat* case, 186–189, 206–207, 214–219
- Rayner v. Davies* case, 234 n. 56–235 n. 56
- Regulation (EC) No 593/2008. *See* ‘Rome I’ Regulation
- Regulation (EC) No 864/2007. *See* ‘Rome II’ Regulation
- Regulation (EU) No 1215/2012. *See* Brussels I Recast
- regulatory authority
individual employment contracts and, 89–90
legitimate state interests and, 26–29
overriding mandatory provisions and, 212–213
private international law and allocation of, 9–12, 19–21
transnational employment relationships and, 4
- Rehder* case, place of provision of services rule and, 117–118
- renvoi*, choice-of-law rules and, 214–219
- restrictive covenants in employment contracts, 144–146
- Rome Convention (1980), 6
British contractual rights law and, 192–195
choice-of-law rules in, 202–206
domestic interpretation of individual employment contracts in, 62–63
employer responsibilities in, 83–88
engaging place of business rule and, 120–123, 231–234
escape clause and, 174–177
European choice-of-law rules and, 139–140
Europeanisation of private international law and, 300–306
individual employment contracts in, 58–62
overriding mandatory provisions and, 208–213
party autonomy and employee protections in, 39–44, 214–219
posted workers and, 157–161
relevant mandatory provisions and, 144–146
renvoi principle excluded in, 214–219
statutory claims and, 219–220
transnational occupations and, 162–167
- Rome I Regulation, 6
applicable law in absence of choice, 155–177
Article 8(1) of, 42–43, 94, 126, 140, 141–142, 143, 144–154
Article 8 of, 18–19, 177–178, 206–207
Article 9, 207
autonomous interpretation of individual employment contracts in, 62–69, 82–83
British contractual rights law and, 192–195
choice-of-law rules in, 15–16, 49, 106, 179–180, 202–206
choosing applicable law, 154–155
comparison of chosen law with objectively applicable law, 68–69, 222–247
concurrent causes of action in choice-of-law and, 229–247
contracts without foreign or non-EU elements, 144
contractual claims, 137–138
employment contracts provisions in, 37–38, 56, 58–62, 78–82, 83–88, 89–90
engaging place of business rule and, 120–123, 231–234
escape clause, 174–177
EU law-derived rights and, 199–200
exemption clauses and, 250–251
express choice, 141–142
habitual place of work rule and, 45–46, 129–132, 156–161

- international transport workers and, 48 n. 112
- intra-group transfers and, 161–162
- mandatory provisions and, 144–146, 147–149
- objectively applicable law in, 206–214
- overriding mandatory provisions and, 250–251
- party autonomy and, 39–44, 214–219
- posted workers and, 157–161, 254–260
- private international law of employment and, 12–15, 300–306
- receiving perspective on posted worker protections and, 286–294
- Recital 1 of, 64
- Recital 23, 7–9
- Recital 36 of, 144–146, 157–162, 254–260
- Recital 37 of, 144–146, 210–211
- role of courts in, 152–154
- scope of, 15–16
- sending perspective on posted worker protections and, 294–298
- severance (*dépeçage*) and, 143
- statutory claims and, 15–16, 219–220
- systemic approach to employee protections and, 9–12
- tacit choice and, 142–143
- territorial scope of British employment legislation and, 201–219
- tortious claims and, 15–16, 221
- transnational occupations and, 162–167
- Rome II Regulation, 6
 - accessory choice-of-law rule and, 241–247
 - British contractual rights law and, 192–195
 - choice-of-law rules in, 179–180, 202–206, 241–243
 - concurrent causes of action in choice-of-law and, 229–247
 - escape clause in, 241–247
 - Europeanisation of private international law and, 300–306
 - exemption clauses in, 250–251
 - Explanatory Memorandum, 225
 - overriding mandatory rules, 250–251
 - private international law of employment and, 12–15
 - procedural forms of action and, 225–228
 - scope of, 15–16
 - systemic approach to employee protections and, 9–12
 - tortious claims and, 15–16, 58–62, 221
- Rüffert* case, 267–272
- Rush Portuguesa* case, 262–264, 272, 274–280
- Rushworth, A., 237–241
- Rutten* case, 111, 156–157, 162–167
- Ryanair, transnational occupations and, 162–167
- Salmon LJ, 141–142, 248–250
- Samengo-Turner* case, 87–88, 101–105
- Sanicentral* case, 95–96
- Sayers v. International Drilling Co. NV*, 17–18, 26–29, 39–44, 141–142, 218 n. 166, 248–250
- Schlecker* case, 26, 157–161, 174–177
- seamen, 139–140
- Second Restatement of the Conflict of Laws, 39–44
 - flexibility in choice-of-law rules and, 49
- ‘seeking out’ rule, proposal for, 132–136
- Self-Employed Commercial Agents Directive, 199–200
 - overriding mandatory provisions vs. choice-of-law rules and, 211–212
- self-employed workers
 - employment contracts and, 56–58, 89–90
 - EU concepts of, 78–82
 - EU law-derived rights and, 199–200
 - German definition of, 72–73
 - U.K. law concerning, 73–76

- Sellers LJ, 223–224
 Senior Courts Act (U.K.), anti-suit injunctions and, 101–104
 service providers representation, public enforcement of employment standards and, 274–280
 services contracts
 in Brussels I Recast, 118–119
 concurrent causes of action and, 229–241
 Member State concepts of, 70–78
 place of provision of services rule and, 115–118
 posted workers and, 254–260
 Posted Workers Directive and, 261–272
 severance (*dépeçage*), 142–143
 Sex Discrimination Act (United Kingdom), 189–190
Shekar v. Satyam Computer Services Ltd. case, 141–142, 188–189
 ship's flag, 48
Six Constructions case, 106–109
 social dimensions of EU policies,
 systemic approach to employment protections and, 29–33
 social dumping, threat of
 intra-EU movement of workers in Member States and, 12–15, 29–33
 legitimate state interests and, 26–29
 private international law and, 19–21
 social justice, private international law and principles of, 4–16
Source Ltd. v. TUV Rheinland Holding AG case, 234–237
 specialist staff
 habitual place of work rule and, 160–161
 private international law protections for, 35–38
 Stamp LJ, 248–250
 state interests
 cross-state comparisons of labour law and, 44–45
 relevant mandatory EU provisions and, 144–146
 systemic perspective in private international law and legitimate interests of states, 26–29
 statement of employment particulars, British contractual rights law and, 195
 statutory claims
 autonomous interpretations and, 78–82
 choice-of-law framework and, 179–220
 choice-of-law rules and, 202–206
 in Employment Rights Act 1996 (United Kingdom), 181–189
 European private international law and, 12–15
 foreign law and, 179–180
 statutory rights (United Kingdom), 181–192
 choice-of-law rules and, 202–206
 contractual rights and, 192–195
 overriding mandatory provisions vs. choice-of-law rules and, 208–213
STX Norway Offshore AS v. Norway, 272
 subsidiarity principles, transnational employment relationships, 29–33
 Supiot, J., 89–90
 Sweden
 collective enforcement of employment standards in, 280–285
 employment standards and, 267–272
 posted worker protests in, 254–260
 Swiss Federal Private International Law Code
 accessory choice-of-law in, 241–247
 jurisdictional rules and, 49–54
 party autonomy and employee protections in, 39–44
 systemic approach to employee protection
 EU context for, 29–33
 European jurisdictional rules and, 101–104

- legitimate state interests and, 26–29
- private international law and, 9–12
- transnational employment and, 34
- table of cases, xii–xxii
- tacit choice, choice-of-law rules and, 142–143
- territorial scope of British employment legislation
 - choice-of-law and, 201–219
 - contractual claims and, 192–195
 - employee protections and, 17–18
 - Employment Rights Act 1996 (United Kingdom) and, 181–189
 - Equality Act 2010 (United Kingdom) and, 189–190
 - EU law-derived rights and, 195–201
 - habitual place of work rule and, 162–167
 - legitimate state interests and, 26–29
 - overriding mandatory provisions and, 208–213
 - peripatetic workers and, 48
 - private international employment law and, 13 n. 33–14 n. 33
 - receiving perspective on posted worker protection and, 286–294
 - Rome I and, 201–219
 - statutory claims and, 179–180
- Tolofson v. Jensen* case, 227–228
- tortious claims
 - accessory choice-of-law and, 241–247
 - choice-of-law and, 58–62, 179–180, 205, 221–253
 - common law and, 223–224
 - current and future issues in, 252–253
 - exemption clauses and, 247–251
 - jurisdiction and, 92 n. 13
 - private international law and, 229–241
 - procedural forms of action and, 225–228
 - Rome II and, 15–16, 241–243
- Toulson LJ, 78–82
- Trade Union and Labour Relations (Consolidation) Act 1992 (United Kingdom), 73–76, 121–123, 181, 190–192
- trade unions
 - collective enforcement of employment standards and, 280–285
 - Member State employment standards and, 267–272
 - party autonomy and, 39–44
 - posted workers and, 254–260
- transnational occupations
 - economic efficiency and party autonomy shortcomings in, 23–25
 - employer responsibilities, 83–88
 - employment contracts and, 56–58
 - Employment Rights Act (U.K.) and unfair dismissal claims, 184–186
 - habitual place of work rules and, 45–46, 162–167
 - Member State court rulings and, 29–33
 - overview of, 1–16
 - party autonomy and, 19–21
 - peripatetic workers and, 48
 - Posted Workers Directive and, 261–272
 - principal place of business principle and, 46
- treaties, table of xxiii–xxix
- Treaty of Rome
 - systemic approach to employee protection and, 29–33
 - transnational employment and, 2–3
- Treaty on European Union (TEU), transnational employment and, 2–3
- Treaty on the Functioning of the EU (TFEU)
 - collective enforcement of employment standards and, 280–285
 - competing interests of Member States and, 261–272
 - definitions of employee and worker in, 78–82
 - economic freedoms provisions in, 7

Cambridge University Press

978-1-107-08294-6 - The European Private International Law of Employment

Uglješa Grušić

Index

[More information](#)

350

INDEX

- Treaty on the Functioning (cont.)
 employer responsibilities in
 employment contracts and,
 83–88
 EU law-derived rights and, 201
 n. 100
 habitual (normal, usual, ordinary)
 place of work principle in, 45–46
 party autonomy provisions in,
 39–44
 posted workers and, 254–260
 transnational employment
 relationships and, 1–2
 triangular employment relationships
 choice-of-law and, 142–143
 employer responsibilities in,
 83–88
 escape clause and, 174–177
 jurisdiction and, 124–126
 tacit choice and, 142–143
 Trstenjak AG, 78–82, 83–88
 Tuckey LJ, 87–88, 102, 234–237
- Unamar* case, 211–212
 under-regulation, legitimate state
 interests and, 26–29
 unfair competition
 concurrent causes of action and
 claims of, 234–237
 intra-EU movement of workers in
 Member States and, 12–15
 unfair dismissal. *See also* dismissal
 legislation
 choice-of-law rules and, 202–206
 domestic regulation of transnational
 employment and, 3–4
 Employment Rights Act (U.K.) and,
 184–189
 EU law-derived rights concerning,
 195–201
 overriding mandatory provisions
 and, 212–213
 uniformity of result
 concurrent causes of action and,
 227–228, 237–241
 escape clause and, 174–177
 sources of mandatory provisions
 and, 147–149
- unilateralist approach, party autonomy
 and employee protections and,
 39–44
 United Kingdom, labour laws in. *See*
also specific laws
 choice-of-law rules and, 201–219
 concurrent causes of action and,
 229–241
 conflict of laws and employee
 protections, 12–15, 17–18
 contractual rights conferred by
 employment legislation, 192–195
 court systems and, 70–78, 280–285,
 286–294
 definitions of employee in, 73–76
 economic efficiency and party
 autonomy shortcomings in,
 23–25
 employer responsibilities in
 employment contracts and,
 83–88
 employment contracts in, 62, 70–71,
 73–76
 EU individual contract law and case
 law of, 78–82
 EU law-derived rights conferred by
 employment legislation, 195–201
 European choice-of-law rules and,
 139–140, 206–214, 229–241
 foreign law and, 152–154
 party autonomy and employee
 protections in, 39–44
 posted worker protests and,
 254–260
 Posted Workers Directive
 enforcement in, 286
 private international law and,
 15–16
 receiving perspective on posted
 worker protections, 286–294
 restrictive covenants in employment
 contracts and, 144–146
 Rome Convention and, 6 n. 14
 scope of labour laws in, 70–78
 sources of mandatory provisions in,
 147–149
 statutory claims in, 179–180
 statutory rights, 181–192

- territorial scope of employment
 - legislation in, 26–29, 181–201, 214–219
- tortious claims and, 221–222
- transnational employment
 - relationships and courts of, 1–2
- United States
 - economic efficiency and party autonomy shortcomings in, 23–25
 - jurisdictional rules for employment disputes in, 100–105, 132–136
 - ‘purposeful availment’ test and jurisdictional rules in, 49–54
 - territorial scope of labour law in, 26–29
- Vander Elst* case, 274–280
- van HoekHouwerzijl study, 274–280, 292–294
- Van Winkelof* case, 188–189, 213 n. 151, 286–294
- ‘vertical’ conflicts, multi-level governance systems and, 4
- Viking* case, collective enforcement of employment standards in, 280–285
- von Mehren, A. T., 49–54, 56
- von Savigny, F. K., 19–21
- wage standards. *See also* minimum wage
 - posted workers in Member States and, 267–272
 - public enforcement of, 274–280
- Wahl AG*, 26, 157–161, 174–177, 211–212
- Wai, R., 9–12
- Walrave v. Koch* case, 199–200
- Warbecq* case, engaging place of business rule and, 121–123
- ‘weak presumption’ approach, escape clause in employment contracts and, 174–177
- Weber* case, 156–157, 162–167
 - habitual place of work rule and, 112–113
- Weir, T., 225
- Wilderspin, M., 66–68, 207–208, 199 n. 89
- Wilson v. Maynard Shipbuilding Consultants AB*, 183 n. 20, 190–192
- Wood Floor* case, place of provision of services rule and, 117–118
- workers
 - definition in French law, 70–78
 - definition in German law, 77
 - definition in U.K. law, 73–76
- Working Time Regulations SI 1998/1833 (United Kingdom), 73–76, 195
 - EU law-derived rights and, 195–201
- WPP Holding Italy SRL v. Benatti*, 78–82, 87
- wrongful dismissal, contractual claims, 137–138