

## Index

- Administration of Justice Act 1920, 219
- agents, 361
- alternative dispute resolution, 42
- anchor defendant, 150
- anti-suit injunctions: *see* restraining foreign proceedings
- applicable law, 265
- arbitration, 65–8, 137–8, 235–6
- Arbitration Act 1996, 222
  - s 9, 178
- arbitration agreements, 137, 171, 178–86, 204, 260
  - contractual characteristics, 296
  - effect, 182
  - formal invalidity, 179
  - injunctions for breach of, 198–9
  - interpretation of, 181–2
  - material invalidity, 179–80
  - and the Rome I Regulation, 296
  - validity, 179–81
- Australian courts, 413
  - application of a foreign rule, 50
  - choice of law rule for tort, 336, 423
  - partial *renvoi*, 424
- bankruptcy proceedings, 63–5
- Bartin, F., 269
- battle of the forums, 112
- Beckett, W.E., 270
- BIICL Report, 405
- Briggs, A., 74, 286
- British colonies, 4
- Brussels Convention, 8, 56
  - Accession Conventions, 56–7
  - arbitration, 65
  - Article 5(1), 79
  - Article 59, 233
  - treaties under, 233
- caselaw, 80, 82–6
- employment disputes, 103
- Reports on, 57
- Brussels I Regulation, 2, 8, 56–138
  - Annex I, 219
  - applicable law of a contract, 293
  - application of, 59
  - and arbitration, 137, 204, 222, 233, 235–6
  - contractual obligations (Article 5(1)), 76–86, 343
    - autonomous meaning of ‘matters relating to a contract’, 77–8, 295
  - breaches, 82–6, 156
  - caselaw on, 80, 82–6
  - claims over, 152
  - contracts for the provision of services, 79, 81–2
  - contracts for the sale of goods, 79–81
  - contractual and non-contractual obligations, 339
  - disputes about the existence of a contract, 78–9
  - employment contracts, 103–5
  - place of performance, 84–5, 148, 157
  - sale of goods contracts, 79–81
  - structure of Article 5(1), 79
  - Tessili* doctrine, 80, 84–5
- civil and commercial matters, 296
- co-defendants, 97–9
- consumer protection matters, 101–3
- counterclaims, 100
- definition of domicile, 12
- discretion in, 100, 190
- domicile, 69–75, 174, 188
  - definition, 12, 70
  - legal persons, 73–5
  - natural persons, 71
  - mandatory provision, 189

- Brussels I Regulation (cont.)  
 exclusions, 61–8  
 exclusive jurisdiction, 54, 69, 105, 111, 122, 137, 232  
 Explanatory Memorandum, 58  
 expressed exclusions, 62–8  
 arbitration, 65–8  
 bankruptcy proceedings, 63–5  
 property rights arising out of matrimonial relationships, 62–3, 86  
 social security, 65  
 wills and succession, 63  
 habitual residence, 36  
 and the Hague Convention on choice of court agreements, 186  
 history, 56  
 Insolvency Regulation, 63  
 insurers, 100–1  
 intellectual property, 110  
 interpretation of, 57–8  
 judgment, 223  
 jurisdiction, 42, 46, 54, 140, 147, 211–12  
 application of, 105  
 branches, 94, 310, 342  
 civil and commercial matters, 54  
 consumers, insurance and employees, 70  
 contract, 76–86  
 corporations and legal persons, 107–9  
 formal requirement, 113, 117, 136, 191  
 entries in public registers, 109  
 examination of, 119–20  
 and the Hague Convention on choice of court agreements, 187  
 hierarchy of rules, 68–70  
 intellectual property rights, 109–11  
 limitations on, 118  
 property, 105–7, 340, 385  
 general rule of jurisdiction, 70–5  
 party autonomy, 111  
 persons domiciled in other Member States, 71  
 special rules, 76  
 standard form contract, 114  
 on the substantive proceedings, 210  
 territorial, 42  
 jurisdiction agreements, 68, 70, 101, 111, 112–13, 115, 117, 118, 178, 233, 263, 296  
 application of, 117  
 interpretation, 117–18  
 preclusive effect of the jurisdiction agreement, 117  
 reform proposals, 135, 138  
 limitation on a claimant's ability to sue in any court, 203  
*lis pendens*, 68, 105, 120, 122, 136  
 avoidance of irreconcilable judgments, 68, 98, 130, 222, 231  
 cause of action, 129  
 criticism of, 127–9  
 discretion to stay proceedings, 122, 131, 212–13  
 and forum shopping, 127, 129  
 interpretation of, 125, 193  
 related causes of action, 129  
 parallel proceedings, 75, 203  
 same cause of action and same parties, 122–9  
 same parties, 125–6, 131  
 same subject matter and same object, 125  
 Maintenance Regulation, 62  
 mutual recognition and enforcement of judgments, 131  
 objective of, 189, 231  
 particular rules  
 consumers, 101–3  
 employees, 103–5  
 insurers, 100–1  
 problems with, 222  
 and promotion of the internal market, 58  
 property, 308  
 arbitration, 137–8, 235–6  
 areas covered, 134  
 definition of 'judgments', 235  
 examination of jurisdiction, 138  
*exequatur*, 224, 235  
 extending jurisdiction, 134–5  
 jurisdiction agreements, 135, 138  
 parallel proceedings in other Member states, 135  
 parallel proceedings in third states, 136–7, 188  
 reduction of defences, 235  
 staying of actions, 136  
 protection of the weaker party, 101, 103, 229  
 and the Protection of Trading Interests Act 1980, 252  
 provisional measures, 132–3  
 public policy, 329

- purpose of, 55, 57–8, 120, 188, 218, 220
- recognition and enforcement of foreign judgments, 218, 221–36
- cause of action estoppel, 218
- civil and commercial matters, 221
- declaration of enforceability, 235
- defences, 225–34
- meaning of 'judgment', 223
- requirement that the judgment is adversarial and the defendant had an opportunity to defend the case, 229
- as *res judicata*, 218
- scope of the Regulation, 221–2
- recognition of third party debt orders, 411
- reform - Brussels I Regulation 133–8, 193–4, 228, 234–6
- refusal of recognition of a judgment, 232
- scope of, 59–68, 221–2
- special rules, 76
- branches, 94
- co-defendants, third parties and counterclaims, 97–100
- criminal proceedings, 94
- maintenance, 87
- tort, 87–93
- trusts, 96
- submission, 118–19
- third parties, 97–100, 150
- tort, 87–93, 158–60, 339, 343
- caselaw, 159–60, 347, 349
- claim for an injunction, 149–50
- concurrent actions in tort and contract, 89–90
- damage, 93, 343
- definition, 87–93
- financial harm at one's place of business, 92
- place where the harmful event occurred, 90
- restrictive interpretation, 90
- threatened wrongs, 89
- tort, 87–93
- trusts, 75, 96
- uniform application of, 58
- Brussels II *bis* Regulation, habitual residence, 36
- Canada
- forum conveniens*, doctrine of, 174
- recognition and enforcement of foreign judgments, 219, 248–9
- certainty, 121, 125, 260, 412
- and the Brussels I Regulation, 120–1
- and the CJEU, 119, 125, 311
- and *forum conveniens*, 189, 221
- and the Rome I Regulation, 298, 311, 338
- and the Rome II Regulation, 338
- characterisation, 267–77
- analytical jurisprudence and comparative law, 270–1
- classification of foreign penal, revenue or other public laws, 269
- complexity of, 268
- debate about what it is that is characterised, 269
- English courts and, 271–5
- of equitable claims, 274
- Falconbridge's views, 271
- legal issues, 269
- the *lex causae* theory, 270
- the *lex fori* theory, 269–70
- limitation of actions
- procedural rules, 276
- substantive rules, 276
- and property, 377–80
- purpose of, 270
- identifying the choice of law rule, 271
- need to look at the substance of the issue, 271
- substance and procedure, 275–6
- taking account of *lex fori* and substantive law, 275
- Cheshire & North, 334, 344, 357, 360, 363, 365
- child abduction, 32–4
- choice of law rules, 264–90
- absence of choice, 307
- avoiding the results of the process, 412–34
- damages, 418
- evidence, 413–16
- interest on damages and currency of damages, 420–1
- limitation of actions, 416–17
- mandatory rules, 434
- parties, 422–3
- priorities and set off, 421–2
- public policy, 424–33
- remedies, 417–18

- choice of law rules (cont.)  
*renvoi*, 423–4  
 substance and procedure, 412–23  
 unilateral choice of law rules, 433  
 and changes in the law, 288–90  
 characterisation, 267–77  
 connecting factors, 11–12, 266–7, 291  
 domicile, 266–7  
 nationality, 267  
*situs* of property, 267  
 types of, 266  
 for contractual and non-contractual obligations, 7  
 determination of the closest connection  
 objectively, 312  
 subjectively, 311  
 distinction between substance and procedure, 413  
 English cases on, 7  
 and the expectations of the parties, 275  
 form of, 11  
 general rules, 264  
 alternative application, 265  
 connecting factor, 265–6  
 cumulative application, 265  
 legal categories, 266  
 difficulties with, 265–6  
 legal category, 265  
 and habitual residence, 32  
 harmonisation of, 292, 294  
 incidental question, 277–80  
 conditions for it to arise, 278  
 interpretation of the territorial scope of  
 English rules, 264  
 jurisdiction, 2, 88  
 legal category, 291  
 need to take account of unknown foreign concepts, 274  
 personal connecting factor for, 11–12  
 public policy  
 contracts contrary to public policy, 432–3  
 laws which breach public international law, 431  
 laws which grossly infringe human rights, 431  
 laws which infringe basic principles of justice or morality, 432  
 penal laws, 425–8  
 public laws, 429–31  
 revenue laws, 428–9  
 purpose of, 400, 412  
*renvoi*, 280–8  
 and the Rome I Regulation, 302–7  
 express choice, 302–4  
*dépeçage*, 306  
 inferred choice, 304–5  
 limitations on, 306  
 and the Rome II Regulation, 362  
 substance and procedure, 275–6, 412–23  
 damages, 418  
 evidence, 413–16  
 interest on damages and currency of damages, 420–1  
 limitation of actions, 416–17  
 parties, 422–3  
 priorities and set off, 421–2  
 remedies, 417–18  
 three-stage process for identification of the appropriate law, 274  
 time factor, 288–90  
 unilateral choice of law rules, 433  
 citizenship, 29  
 civil and commercial matters, 59  
 actions involving a State or public authority, 59  
 consumer protection matters, 60  
 environmental matters, 60  
 mixed public-private law actions, 60–1  
 nature of the legal relationships, 61  
 subject matter of the dispute, 61  
 Civil Evidence Act 1972, 47–8  
 Civil Jurisdiction and Judgments Act 1982, 56,  
 151, 211, 218, 380  
 s 32, 260–1  
 discretion, 212  
 interim remedies, 151, 206  
 submission, 245  
 Civil Jurisdiction and Judgments Order 2001,  
 72, 149  
 Civil Procedure Rules, 2, 40, 43, 139  
 definition of domicile, 12  
 Practice Direction 6B, 139, 148, 158, 293,  
 386  
 challenge to jurisdiction, 119, 143, 146, 162  
 companies, 75, 144–5  
 interim remedies, 207, 213  
 service of the claim form, 139, 143, 147–8,  
 163, 237  
 ‘service out’ rules, 139  
 class actions, 53  
 comity, 176, 219

- and anti-suit injunctions, 194, 197–8, 202
- and freezing injunctions, 212–13
- and public policy, 330, 428
- Commercial Court of the Queen's Bench
  - Division, 40
- costs rule, 40
- principles of interpretation of the Brussels Convention and the Brussels I Regulation, 58
- rules of procedure for, 40
- commercial law, 6
- common law, 8, 219, 236
  - appearance to contest the existence
    - of jurisdiction and appearance to argue about the exercise of jurisdiction, 245
  - application of foreign rules of the applicable law, 328
  - choice of law rule for torts, double-actionability rule, 336
  - close connection, 315
  - contracts refused enforcement, 326–8
  - contracts which have been refused enforcement, 432–3
  - distinction between public and private law issues, 59
  - double-actionability rule, 347, 366–9
    - flexible exception, 354, 367
  - effect of illegality on a contract, and public policy, 329
  - habitual residence, 351
  - 'implied' choice of law, 304
  - law of the closest connection, 311
  - overriding law, 322
  - overriding mandatory rules, 365
  - rules on choice of law in the absence of the parties' choice, 311
    - on torts, 367
- Companies Act 2006, 144
- competence-competence*, 113–14, 180, 198
- competition, 356–7
- conflict of laws
  - characteristics of the English conflict of laws, 6–10
  - development of, 6–7
  - emphasis of the subject, 7
  - geographical considerations, 4
  - glossary of terms, 5
  - judge-made rules, 8
  - meaning of the term, 3–4
  - and public policy, 425
  - purpose of, 1
  - role of the EU, 8–10
  - scope of, 2
  - subject matter, 5
- conflict of laws rules, 84
  - harmonisation of, 9
  - policy considerations, 283
  - purpose of, 283
  - scope of, 273
  - use of absolutely general conceptions, 270
- connecting factor, 266–7, 280, 291, 316
  - for assignment of debt, 399–400
  - changes in, 288
  - domicile, 266–7
  - habitual residence, 32
  - nationality, 267
  - personal, 11–12
  - place of performance, 292
  - situs* of property, 267
  - types of, 266
- consumer contracts, 101–3, 318–19, 321
  - interpretation of 'consumer', 102
  - mandatory provisions, 318
- contempt of court, 215
- continental legal systems
  - distinction between public and private law issues, 59
  - jurisdiction, 53
- Contracts (Applicable Law) Act 1990, 292
- contractual obligations, 291; *see also* Rome I Regulation
  - applicable law, 155, 293
  - autonomous meaning, 77–8, 295, 363, 402
  - breach of, 156–7, 199, 298
  - Brussels I Regulation, 76–86
  - capacity to conclude a commercial contract, 320–1
  - and changes in the law, 288
  - characteristic performance, 309
    - non-payment obligation, 309
  - choice of law rules, 291
    - absence of choice, 307
    - dépeçage, 306
    - express choice, 302–4
    - inferred choice, 304–5
    - limitations on, 306

- contractual obligations (cont.)  
 close connection with a country, 311  
 concluded in a market in financial instruments, 308  
 consumer contracts, 101–3, 318–19, 321  
 contracting subject to the general terms of the market, 116  
 contracts contrary to public policy, 432–3  
 contracts for the provision of services, 103  
 contracts for the sale of goods, 79–81, 307–8  
 contracts for transport, 102, 317  
 contracts over immovable property, 319  
 damages, 418  
 determination of the applicable law, 294  
 distribution contracts, 308  
 domestic rules determining where a contract is made, 154  
 effect of a contract limiting liability, 364–5  
 effect of illegality on a contract, 329–33  
 effect of the applicable law, 297–300  
 employment contracts, 103, 321  
 enforceability of, 124  
 exceptions to the applicable law, 321–2  
 formal validity, 319  
 franchise contracts, 308  
 gateways to service out of jurisdiction, 152  
 general rules, 300–17  
   absence of choice, 307  
   choice of law rules, 302–7  
   method to follow, 301  
   *renvoi*, 301  
 insurance contracts, 318  
 international contracts, 298  
 liability in both contract and tort, 333–4  
 negative obligations, 86  
 and non-contractual obligations, 339–40, 365  
 non-derogable provisions, scope of, 321  
 overriding mandatory rules, 333  
 package holidays, 102  
 place of delivery, autonomous meaning, 85  
 place of performance, 84, 292–3  
 public policy and mandatory rules, 323  
 special rules, 317–19  
 temporary tenancies for private use, 308  
 unilateral rules, 333  
 voluntarily assumed by agreement, 339  
 conversion, 340  
 corporate veil, 242–3  
 corporations, 37–9, 143–6  
 agents, 243–4, 310, 342  
 branches, 94–6, 240–1, 310, 342  
 central management and control, 38, 74  
 company law, 243  
 domicile, 37–8, 73–5  
 habitual residence, 38–9, 309  
 indirect presence in a state, 241  
 joint ventures, 240  
 as judgment debtors, 240  
 local representatives, 241  
 national rules for service on, 75  
 nationality, 39  
 personal law of, 37  
 physical location of, 240  
 place where business is done, 241–2  
 posting employees, 241  
 principal place of business, 38  
 ‘real seat’ of, 38, 73  
 relationship between the agent and the judgment debtor, 243  
 subsidiary companies, 240, 242  
 ways of establishing a place of business, 144  
 Court of Justice of the European Union, 57  
 arbitration agreements, 235  
 Article 4 of the Rome Convention, 314  
 autonomous definition of ordinary appeal, 234  
 Brussels I Regulation Article 5(1)(b), 85  
 Brussels I Regulation Article 5(3), 87  
 cause of action, 124  
 certainty and uniformity, 121, 125, 311  
 characteristics of a branch, agency or other establishment, 95  
   agent subject to the direction and control of the parent, 95  
   appearance of permanency, 95  
   branch or agent’s ability to act on behalf of the parent, 95  
 consensus on jurisdiction, 113  
 consumer contracts, 103  
 corporations’ power to enter into contracts, 108  
 damage, 343  
 definition of matrimonial relationship, 63  
 definition of public policy, 226  
 definition of the parties, 126  
 domicile, 76  
*effet utile*, 68  
*forum conveniens*, doctrine of, 131

- 'general principles of law', 275
- habitual residence, 36
- interpretation of the Brussels I Regulation, 220
- irreconcilable judgments, 98, 131
- jurisdiction agreements, 121
- libel, 93
- meaning of contractual obligation, 295
- mutual trust, principle of, 203
- orders to maintain a legal or factual situation to safeguard rights, 74
- place where the harmful event occurred, 90–1, 93
- principles of public policy, 329
- provisional measures, 211
- purposes of the Brussels I Regulation, 58
- relationship between national mandatory rules and EU legislation, 323
- and the Rome I Regulation, 294
- and the Rome II Regulation, 338
- sale of goods contracts, place of delivery, 80
- culpa in contrahendo*, 346, 361–2
  - autonomous meaning, 361
  - and tort, 346
- cultural heritage, protection of, 393–5
- damages, 173
  - breach date rule or judgment date rule, 420
- defamation, 337, 366–9
  - and the Brussels I Regulation, 368
  - choice of law rule, 368
- defendants, protection of, 229
- Denning, Lord, 420
- Dicey, A.V., 3, 6
- Dicey, Morris & Collins, 369, 430
- Dickinson, A., 339–40, 345–6, 365
- disclosure of relevant documents, 44, 55, 172
  - purpose of, 44
- disclosure orders, 208
- discovery, 44
- discrimination, 251, 328
- domicile, 11–39
  - autonomous meaning, 13
  - of children of same sex relationships, 29
  - and citizenship, 29
  - at common law, 12
  - of corporations, 37–8
  - criticism and reform of the law on, 27–31
  - definition in the Brussels I Regulation, 71
  - definition of, 11–14
    - domicile of choice: *see separate entry*
    - domicile of dependence: *see separate entry*
    - domicile of origin: *see separate entry*
    - EU legislation on, 29
    - interpretation of, 12
    - Law Commission proposals for reform, 30–1
    - in a 'law district', 13
    - of minors, 30
    - and nationality, 29, 70
    - as 'permanent home', 12
    - proof upon a balance of probabilities, 30
    - rules ascribing domicile to a person, 12
- Domicile and Matrimonial Proceedings Act 1973, 24, 26–7
- domicile of choice, 13–23, 29
  - abandonment, 23
  - acquisition of, 14, 18, 30
  - burden and standard of proof, 19–21, 27
  - coincidence of physical residence and intention, 17
  - and country of residence, 28
  - definition of residence
  - differences from domicile of origin, 14–15
  - domicile as a social bond, 21–2
  - and employment, 23
  - evidence of intention, 21
  - illegal or precarious residence, 18, 22
  - intention, 15, 22, 30
  - and invalids, 22
  - motive and freedom of choice, 22–3
  - motive and intention, 22
  - personal declarations as evidence of intention, 21
  - presence or residence, 15, 17
  - proof upon a balance of probabilities, 19
  - reasons for dividing time between residences, 18
  - as a social bond, 21–2
- domicile of dependence, 13, 15, 23–7
  - abandonment, 23
  - of an illegitimate child, 25
  - of a legitimated child, 14, 25
  - married women, 23–4
  - mental patients, 26–7
  - minors, 24–6, 29
  - power to change, 24, 29
  - statutory rules and, 26
- domicile of origin, 12–14
  - and adopted children, 14
  - ascribed by law, 14
  - and minors, 14–15

- domicile of origin (cont.)  
 presumption of continuance, 27–8  
 revival of, 15, 19, 23, 27–8, 285  
 rules for ascertainment of, 14
- double-actionability, 347, 366–9
- EC Treaty, 8–9, 57, 294, 337
- efficiency, 131, 150, 176
- employment contracts, 103–5, 233, 319, 321
- Employment Rights Act 1996, 333, 433  
 s 204, 333
- enforcement of judgments  
 charging orders, 45  
 enforcement mechanisms of the other State's  
 courts, 217  
 foreign judgments, 45  
 third party debt order, 45  
 worldwide freezing order, 45
- England, 4, 27
- English Companies Act 1985, 50
- English court  
 adversarial system, 41, 51, 119  
 assumptions, 43  
 binding effect of a judgment, 46  
 case management, 42–3  
 cause of action, 124  
 characterization, 271–5  
 choice of law in tortious liability, 336  
 Commercial Court of the Queen's Bench  
 Division, 40, 58  
 disclosure of relevant documents, 41, 43–4  
 discretionary rules, 141  
 ease of enforcement in England, 173  
 enforcement of judgments, 45  
*forum conveniens*, doctrine of, 141  
 good arguable case, 55–6, 78  
 High Court, 45  
 interlocutory hearings on jurisdiction, 43–4  
 interpretation of jurisdiction agreements,  
 181  
 issue of the claim form, 41  
 jurisdiction, 42, 52–139, 188, 249  
 meaning of 'foreign law', 281  
 ordinary and extraordinary appeals, 234  
 outline of cases, 41–6  
 party autonomy, 41  
 penalty cost orders, 43  
 pleading and proof of foreign law, 46–7  
 power to grant injunctions, 194  
 power to stay the proceedings, 43  
 Pre Action Protocols, 41  
 preference for consolidating actions in one  
 court, 170  
 presumption that the most closely connected  
 law was that of the habitual  
 residence of the party to perform  
 characteristic performance, 313  
 procedures of, 40–51  
 proper law approach, 312  
 reluctance to use public policy to avoid  
 choice of law rules, 327  
*res judicata*, 46  
 Rules of the Supreme Court, 139  
 rules on enforcement of foreign  
 judgments, 238  
 serious issue to be tried, 55–6, 78  
 service of the claim form, 41–2, 54  
 statement of case, 42–3  
 Supreme Court, 139  
 trial – substantive hearing on merits, 45
- environmental damage, 357–8
- Equality Act 2010, 333
- estoppel, 115  
 cause of action estoppel, 46, 218  
 issue estoppel, 46, 218, 222, 232
- European Commission, 332  
 reform of the Brussels I Regulation, 133–6,  
 138, 236
- European Convention for the Protection of  
 Human Rights and Fundamental  
 Freedoms, 226
- European Convention on Human Rights,  
 226–7, 329, 431  
 Article 6, 175, 202–3, 216, 257, 431  
 entitlement to a fair and public hearing,  
 52, 258–60  
 jurisprudence on, 260  
 international effect of, 203
- European Council, reform of the Brussels  
 I Regulation, 135, 138, 235
- European Order for Payment Procedure  
 Regulation, 236
- European Parliament, 9  
 Committee on Legal Affairs, 366  
 reform of the Brussels I Regulation, 134
- European Patent Office, 109
- European regime and statutory rules of  
 jurisdiction, Council Regulation  
 (EC) No 44/2001, 2
- European Union, 394  
 area of freedom, security and justice,  
 58, 220, 337

- availability of counterclaims in, 100
- competence over matters of civil jurisdiction, 58
- Directive on the return of cultural objects, 394
- Environmental Liability Directive, 358
- European Enforcement Order, 221, 236
- European Order for Payment Procedure Regulation, 236
- European Small Claims Procedure, 236
- free movement of judgments, 188, 338
- freedom of establishment, 61
- freedom of movement, 220, 292
- habitual residence, 36–7
- and the Hague Convention on choice of court agreements, 261
- harmonisation measures, 9, 294
- judicial cooperation, 58
- legislation, 7, 36
- Posted Workers Directive, 104
- recognition and enforcement of judgments, 57, 221
- Regulation on the export of cultural goods, 394
- Regulations, 7
- Service Regulation, 163
- simplification of formalities governing recognition and enforcement of judgments, 57
- fairness, 52, 141 *see also* justice
- Falconbridge, J.D., 271
- family law, 3, 6, 86
  - and the Brussels I Regulation, 62–3
  - definition of matrimonial relationship, 63
- Family Law Act 1986, 280
- federal constitutional systems, 5, 13, 242
- Fentiman, Richard, 50, 114, 296, 316, 391
- financial crisis of 2008, 108
- foreign judgments, 217–63
  - and cause of action estoppel, 218
  - and the Civil Jurisdiction and Judgments Act, 260–1
  - declaratory judgments, 249
  - enforceable judgments, 249–52
    - final and conclusive judgments, 249–50, 253
    - fixed sum, 250
    - maintenance awards, 250
    - multiple damages, 251–2
    - objectionable judgments, 251
    - sovereign immunity, 252
    - taxes, penalties or other public law judgments, 250–1
- enforcement as a debt, 234, 237
- enforcement of, 217
- English rules on enforcement of, 238
- European procedures, 236
- Hague Convention on choice of court agreements, 261–3
- and issue estoppel, 218, 222, 232
  - conditions for, 218
- judgment creditor, 237
- judgment debtor, 237, 240
- judgments falling within the Brussels I Regulation, 221–3
- provisional judgments, 249
- recognition and enforcement, 136, 217
  - and the Brussels I Regulation, 218, 221–36
  - and enforcement under national law, 237
  - evidence that the defendant had been served with notice of the original proceedings, 230
  - grounds for refusal, 262–3
  - under national law rules, 219, 236
  - other European procedures, 236
  - regimes governing, 218
  - theories of, 219–21, 238
  - time for the defendant to arrange a defence, 230
- recognition and enforcement under national rules, 236
- bases of jurisdiction, 237, 248–9
- consent of the judgment debtor to the exercise of jurisdiction, 239
- defences, 253–60
  - conflicting English or foreign judgment, 260
- European Convention on Human Rights, 259–60
- fraud, 254–6
  - collateral fraud, 254–5
  - definition of, 254
  - fraud on the court, 254–5
  - fraud on the merits, 254
  - ‘fraud unravels all’, 254
  - recognition of a judgment obtained by, 227
  - judgments contrary to natural justice, 256–8

- foreign judgments (cont.)  
   public policy, 253–4  
   effects of foreign judgments, 252–3  
   enforceable judgment, 249–52  
   jurisdiction of the foreign court,  
     237–49  
   natural persons as judgment debtors,  
     239–40  
   presence or submission of the judgment  
     debtor to the foreign court's  
     jurisdiction, 238  
   residence as a ground of the obligation,  
     239  
 Civil Jurisdiction and Judgments  
   Act 1982, 260–1  
   submission to the foreign court, 244–7  
 recognition and enforcement under the  
   Brussels I Regulation  
   appeals, 234  
   conflicts with sections 3, 4, 6 or Article 72,  
     232–3  
   declaration of enforceability,  
     234–5  
   defences, 225–34, 235  
   effect, 224–5  
   enforcement, 223–4  
   *exequatur*, 224, 235  
   irreconcilable judgments,  
     231–2  
   judgments falling within the Brussels  
     I Regulation, 221–3  
   manifestly contrary to public policy,  
     225–9  
   meaning of judgment, 223  
   natural justice, 229–30  
   no review of jurisdiction or substance,  
     233–4  
   ordinary appeal, 234  
   recognition, 223  
   reform of the Brussels I Regulation,  
     234–6  
   recognition of, 136, 217  
   as *res judicata*, 218, 236  
   theories of recognition and enforcement,  
     219–21  
 Foreign Judgments (Reciprocal Enforcement)  
   Act 1933, 219  
 Foreign Limitation Periods Act 1984, 277, 299,  
   345, 416  
*forum (non) conveniens*, doctrine of, 10, 55, 76,  
   140, 164, 170  
   criticism of, 177  
   and English courts, 141, 193, 201, 220  
   and jurisdiction, 134, 189–90  
   and jurisdiction agreements, 182  
   and *lis pendens*, 191, 193  
   and natural forum, 165–74  
 forum shopping, 112, 140, 419  
   and application of the *lex fori*, 336  
   and the Brussels I Regulation, 127,  
     129, 137  
   and harmonisation of choice of law rules,  
     292  
   and natural forum, 172  
   *renvoi* and, 286  
 France, Court of Cassation, 281  
 freezing injunctions, 207  
   discretionary power to grant, 208  
   enforcement of, 208  
   exercise of discretion in support of foreign  
     proceedings, 212–13  
     factors in, 212  
   and extraterritoriality, 210  
   foreign proceedings  
     Brussels I Regulation, 211–12  
     jurisdiction over the respondent, 210–12  
     national law, 211  
   full and frank disclosure, 207  
   good arguable case, 210  
   and human rights, 215–16  
   jurisdiction over the respondent, 209–12  
   jurisdiction to grant the order, 210  
   made without notice to the respondent, 207  
   protection of defendants and third parties,  
     provisos, 215  
   and the respondent's assets, 210  
   and uncertainty, 208  
   worldwide freezing order, 45, 213  
     difficulties with, 215  
     foreign proceedings, 214–15  
     problems for the respondent and third  
       parties, 213  
     protections for the respondent, 215  
 fundamental rights, 226–7  
 gateways to service out of jurisdiction, 176  
   claims against necessary and proper parties,  
     and third parties, 150  
   claims for interim remedies, 151–2  
   claims in tort, 158–60  
     breach of confidence, 159  
     classification of the claim, 158

- the conduct and damage are tortious
  - under English law, 158
- the conduct gives rise to tortious liability
  - under an applicable foreign law, 158
- definitions of wrongful conduct, 158
- dispute about the applicable law and likelihood of liability or damage, 159
- infringement of intellectual property, 159
- international torts, 158
- claims over contracts, 152–7
  - breach of contract committed within the jurisdiction, 156–7
- claims 'in respect of' a contract, 152
- contracts containing a term to the effect that the court shall have jurisdiction to determine any claim in respect of the contract, 156
- contracts 'governed by English law', 155–6
- contracts made through an agent in the jurisdiction, 155
- contracts made within the jurisdiction, 154
- declaration that no contract exists, 157
- interpretation of, 148
- place of performance of the contract, 157
- questions of the substance of the dispute, 152
- standard of a good arguable case, 153
- defendant domiciled within the jurisdiction, 149
- enforcement, 160
- injunction ordering the defendant to do or refrain from doing something within the jurisdiction, 149–50
- property, 160–1
- trusts and restitution, 161–2
  - alternative claims, 163
  - effecting service abroad, 163–4
  - procedure, 162–3
- German legal system, 51, 348, 404, 414
- good arguable case, 78, 88, 99, 116, 148, 151, 153, 210
- good faith, 77, 88, 114–15, 387, 392–3
- Guiliano and Lagarde report, 295, 305, 402
- habitual residence, 31–5, 309–11
  - autonomous meaning, 311, 351
  - burden and standard of proof, 34–5
  - and child abduction, 32
  - of children, 33–7
  - as a connecting factor, 32
  - difficulties with, 32
  - and domicile, 32
  - English cases on, 342
  - in EU legislation, 36–7, 343
  - factors in, 33
  - and length of residence, 36
  - multiple habitual residences, 34
  - a question of fact, 33–4
  - and residence, 32
  - and the Rome II Regulation, 342–3
  - rules for identifying, 343
  - and 'settled intention', 34
  - and social integration of children, 36
- Hague Choice of Court Convention, 137
- Hague Conference on Private International Law, 10, 186, 261
- Hague Convention on choice of court agreements, 179, 186, 261–3, 288
  - application of, 186, 261–2
  - exclusive jurisdiction agreements, 186
  - Article 9, 262–3
  - and the Brussels I Regulation, 186
  - consequences of, 187
  - exclusions from the scope of, 261
  - grounds for refusal of recognition or enforcement, 262–3
  - review of a designated State's decisions, 262
- Hague Convention on the law applicable to trusts and on their recognition, 369
  - definition of 'trust', 369
  - exclusions, 369–70
  - governing law, 370–1, 373
  - mandatory rules, 374
  - public policy, 374
  - recognition of trusts, 369, 372–3
  - severable aspects of trusts, 372
  - variation of a trust, 374–6
  - renvoi*, 372
- Hague Conventions on Private International Law, 29
- Hague Products Liability Convention, 355
- Hague Traffic Accidents Convention, 355
- Hess, Pfeiffer and Schlosser report, 133, 187
- High Court, civil cases, 45

- Huber, 6
- human rights; *see also* European Convention  
 on Human Rights  
 and freezing injunctions, 215–16  
 and international public policy, 425  
 laws which grossly infringe human rights, 431
- Human Rights Act 1998, 52
- industrial action, 359
- Insolvency Regulation, 36
- insurance, 70, 101, 318  
 and the Brussels I Regulation, 100–1  
 jurisdiction agreements, 115
- intellectual property rights, 109–11, 159, 358,  
 396–405
- interim remedies, 206–16  
 disclosure orders, 208  
 freezing injunctions, 207  
 freezing orders, 151  
 orders for disclosure of evidence, 151  
 restraining orders, 151
- interlocutory hearings on jurisdiction, 55, 146,  
 162
- international arbitral tribunals, 3
- International Court of Justice, 3
- international courts, 3
- international law, 3  
 proper boundaries of a state's adjudicatory  
 jurisdiction, 141  
 sources, 3  
 sovereignty, 137
- international organizations, 3
- international private law, 4
- international public policy, and human rights,  
 425
- Iowa, Supreme Court of, 29
- irreconcilable judgments, 97, 231–2  
 and the Brussels I Regulation, 120, 125, 130–1  
 definition of, 97  
 interpretation of, 130, 231
- Jenard Report, 65, 100, 224
- Jenner, Sir Herbert, 282
- judgments  
 judgments contrary to natural justice  
 Article 6 ECHR, 259–60  
 conflicting English or foreign judgment,  
 260  
 notice of the proceedings, 257  
 right to be heard, 257–8  
 substantial justice, 258  
 principle of finality of, 253, 255  
 recognition and enforcement of foreign  
 judgments, 1–2, 7, 119  
 uniformity of, 286
- jurisdiction, 7  
*actiones paulianae*, 64  
 actions for determining, 52  
 actions *in personam*, 52  
 actions *in rem*, 52  
 appropriate forum, 176  
 based on presence in the territory, 143  
 basis for, 42  
 and the Brussels I Regulation, 56–138  
 challenge to, 119, 142, 147, 164–5  
 arguments on the merits, 246  
 challenges to permission to serve out,  
 164–5  
 stays of proceedings on *forum non  
 conveniens* grounds, 164  
 and choice of law, 88  
 Convention to determine, 8  
 and decision on the merits of a case, 119  
 definition of domicile, 12  
 discretion, 140, 185  
 of the English courts, 52–138  
 exclusive jurisdiction agreement, 100  
 good arguable case, 55–6  
 identification of the best venue for the  
 dispute to be heard, 165  
 identification of the personal connecting  
 factor, 11  
 interlocutory hearings on, 43–4, 53–4, 162  
 mechanisms to avoid duplication of  
 proceedings, 120  
 national rules, 46, 195, 210, 242  
 natural forum, 165–74  
 advantages available in England, 172–3  
 applicable law, 168–9  
 consolidating actions, 170–1  
 jurisdiction and arbitration agreements,  
 171  
*lis pendens* rules, 169–70  
 most real and substantial connection,  
 165–8  
 particular factors in determining, 168–72  
 practical advantages, 171–2  
 treatment of advantages, 172–4  
 necessary or proper party ground, 151  
 over persons who are not nationals of the  
 Member State, 70  
 personal connecting factor for, 11–12

- in personam* jurisdiction, 213
- proper forum, 176
- real and substantial connection, 248
- relationship between Brussels I Regulation and national rules of jurisdiction, 188–94
  - criticism of *Owusu*, 190
  - defendant argues for a third state as appropriate, 193
  - outstanding questions, 190, 191–3
  - proposals to alter the Brussels I Regulation, 193–4
  - where proceedings are continuing in a third state, 192
  - where the parties agree to non-exclusive jurisdiction of the English court, 193
  - where there is a jurisdiction agreement in favour of a third state, 192
- rules for declining to exercise, 52
- rules on, 52
- serious issue to be tried, 55–6
- 'service out' jurisdiction, 147–8
  - gateways, 149–62
- settlement after establishment of jurisdiction, 53
- subject-matter jurisdiction, 213
- test of substantial justice, 174–7
  - caselaw, 174–6
  - evidence required, 175
  - experience of the foreign court, 176
  - nature and complexity of the case, 176
  - racial or political motivation, 174
- traditional rules of, 42
- uniform application of rules, 189
- uniform rules of, 120
- voluntary acceptance of the power of the State, 143–4
- jurisdiction agreements, 68, 70, 111, 147, 156, 171, 178–86, 246, 260
  - complexity of, 111, 178
  - and consumer contracts, 103
  - contractual characteristics, 296
  - effect, 182
    - a contractual matter, 182
    - English jurisdiction agreements, 183–5
    - foreign jurisdiction agreements, 185–6
    - a procedural matter, 182
    - strong cause, 182–3
    - when third parties are involved, 183
    - where proceedings are continuing abroad, 183
    - where the chosen court cannot do justice, 183
  - in employment contracts, 105
  - exclusive, 135, 182–3, 185, 199, 261, 263
    - definition in the Hague Convention on choice of court agreements, 186
  - express choice of the parties in English law, 118
  - formal requirement, 113, 115
  - incorporation from one contract into another, 180
  - injunctions for breach of, 198–9
  - and insurance, 101
  - interpretation of, 116–18, 181–2
    - a matter for national law, 117
  - invalidity, 179–80
  - and national rules of jurisdiction, 179
  - non-exclusive, 182, 185, 199
  - and the Rome I Regulation, 296
  - severable from their host contracts, 116, 118, 180
  - validity, 116, 179–81
- jurisdiction of an English court, 1
  - and choice of law, 2
  - EU legislation on, 7
  - questions about, 2
- justice, 131, 272
  - concept of substantial justice, 176
  - and expectations for the parties, 272
  - laws which infringe basic principles of justice or morality, 432
  - natural justice, 229–30, 256–8
  - right of access to, 202
  - substantial justice, 258
  - test of substantial justice, 174–7
- Kahn, F., 269
- Law Commission, 277, 416
- law of obligations, 3
- law of property, 3
- legal persons, 71, 73–5, 107–9, 143–6, 240
- Lenz, Advocate-General, 131
- lex causae*, 265
  - changes in, 288
  - and changes in the law, 289
  - substantive law, 294
- lex fori*, 265
  - procedural law, 294
  - procedural matters, 275, 412

- lex incorporationis*, 73  
*lex loci damni* rule, 347–50  
 justification for, 347  
 personal injury, 348  
*lex loci delicti* rule, 347  
 libel, 91–2, 337  
 limitation periods, 172  
 Lipstein, K., 269, 289  
*lis pendens* rules, 120, 122, 169–70, 191  
 and *forum conveniens*, 191, 193  
 national rules on, 131  
 related causes of action, 129  
 same cause of action, 123  
*see also* under Brussels I Regulation  
 litigation  
 cost of, 53, 141, 283  
 expectations of the defendant, 141  
 expectations of the parties, 141,  
 166, 178  
 expeditious trial, 173  
 parallel proceedings, 201  
 principle that there should be an end to, 46,  
 218, 244  
 provisional measures, 206  
 voluntary nature of, 50  
 Lorenzen, E.G., 269  
 Lugano Convention, 2, 54  
 mandatory provisions, 321  
 domestic mandatory rules, 365, 434  
 internationally mandatory rules, 322, 324,  
 365, 433–4  
 and public policy, 326–9, 323  
 territorial connection, 324  
 mandatory rules and public policy  
 contractual obligations, 323  
 non-contractual obligations, 365–6  
 and tangible movable property, 393  
 and trusts, 373  
 marriage, and changes in the law, 289  
 matrimonial cases, 86, 289  
 maintenance, 87, 250  
 European regime and statutory rules  
 of jurisdiction, 2  
 validity of a foreign marriage, 6  
 Matrimonial Causes Act 1973, 375–6  
 mediation, 42  
 Mental Capacity Act 2005, 26  
 Mental Health Act 1983, 26  
 Misrepresentation Act 1967, 340  
 mutual trust, principle of, 120  
 and the Brussels I Regulation, 58, 121, 131,  
 204, 221, 223  
 and the CJEU, 68, 121, 203, 221  
 National Minimum Wage Act 1998, 333  
 national rules, 139–205  
 and the Brussels I Regulation, 188–94  
 Hague Convention on choice of court  
 agreements, 186  
 jurisdiction under national law, 139  
 applicable law, 168–9  
 challenge to, 164–5  
 discretionary element of, 179  
*forum conveniens*, doctrine of, 165–74,  
 177  
 jurisdiction and arbitration agreements,  
 178–86  
*lis pendens*, 169–70  
 most real and substantial connection,  
 165–8  
 natural or proper forum, 165–74  
 service on a defendant out of the  
 jurisdiction, 147–64  
 service on a defendant present in the  
 jurisdiction, 142–6  
 service on an agent of the defendant, 146  
 submission of the defendant, 146–7  
 test of substantial justice, 174–7  
 recognition and enforcement of foreign  
 judgments, 236  
 relationship between Brussels I Regulation  
 and national rules of jurisdiction,  
 188–94  
 restraining foreign proceedings (anti-suit  
 injunctions), 194–205  
 avoidance of the grant of an injunction, 195  
 basis for, 195–6  
 and comity, 194  
 and the European Convention on Human  
 Rights, 202–3  
 and the foreign court's sovereignty, 194  
 restraining proceedings in another  
 Member State, 203–5  
 service on a defendant out of the  
 jurisdiction, 147–64  
 challenges to, 164–5  
 gateways, 149–62  
 effecting service abroad, 163–4  
 possible alternative claims, 163  
 procedure, 162–3  
 staying of proceedings, 139

- nationality, 29, 70
- natural persons, 309, 311
- capacity, 62–3, 320–1
  - domicile, 71
  - habitual residence, 309, 342
  - as judgment debtors, 239–40
  - service of claim form, 142–3
- negotiorum gestio*, 361
- New York Convention, 137–8, 222, 233, 296
- non-contractual obligations, 334–76
- see also* Rome II Regulation
  - applicable law of obligations arising out of a tort/delict, 346–55
    - common habitual residence, 350–1
    - displacement, 351–5
    - lex loci damni* rule, 347–50
  - application, 337–8
  - autonomous meaning, 339, 363
  - and contractual obligation, 339–40, 365
  - damage, 343
  - defamation, 366–9
  - definition of, 339
  - effect of a contract limiting liability, 364–5
  - effect of the applicable law, 343–6
  - habitual residence, 342–3
  - liability in both contract and tort, 363
  - mandatory rules and public policy, 365–6
  - particular obligations, 355–62
    - culpa in contrahendo*, 361–2
    - environmental damage, 357–8
    - industrial action, 359
    - infringement of intellectual property, 358
    - negotiorum gestio*, 361
    - product liability, 355–6
    - unfair competition and restricting free competition, 356–7
    - unjust enrichment, 359–60
  - parties' choice of law, 362
  - and property, 340
  - renvoi*, 342
  - rules of safety and conduct, 355
  - scope of, 338
  - tortious liability, 335
  - trusts, 369
  - vicarious liability, 335
- Northern Ireland, 4
- Norwich Pharmacal* order, 430
- Nuyts, Professor, 133
- obligation, theory of, 3, 219, 238
- based on territoriality, 220
- Order 11 rules, 139
- Owusu v Jackson*, 136, 179, 189–90, 192–3, 205
- alterations to the Brussels I Regulation after, 193–4
  - criticism of, 190
  - interpretation of, 191
  - scope of, 190–1
- partie civile*, 94
- party autonomy, 41, 49–51, 111, 121, 136, 178, 292
- patents, 109–10
- pleading and proof of foreign law, 46–51
- appointment of experts to interpret the foreign law, 48
  - and cases on jurisdiction, 51
  - duty of the English court, 48–9
  - failure to plead or prove the content of foreign law, 49
  - foreign law as fact, 46–7
  - manner of proof, 51
  - method of proof, 48
  - party autonomy, 49–51
  - in the statement of claim, 47
  - statement of claim, 49
- Practice Direction 6B, 148
- predictability, 291, 311–12, 338, 388, 412
- presumptions, 297, 299, 312–13, 315, 414
- of continuance, 27–8
  - of fact, 414
  - of laws, 414, 416
- privacy, 366–9
- private international law, 3, 80
- international character of, 4
  - meaning of 'law' in, 4–5
  - objectives of, 419
  - and public international law, 3
- Private International Law (Miscellaneous Provisions) Act 1984, 353
- Private International Law (Miscellaneous Provisions) Act 1995, 51, 337, 341, 347, 353, 355, 367
- procedure, 40–51
- duty of the English court, 48–9
  - method of proof, 48
  - outline of a case, 41–6
  - party autonomy, 49–51
  - product liability, 355–6

- product liability (cont.)  
 concept of 'marketing', 356  
 concept of 'product', 356
- property, 3, 377–411  
 characterisation, 377–80, 388  
 immovable or movable, 379  
 procedural law, 378  
 tangible or intangible, 379–80  
 voluntary or involuntary, 378–9
- choses in possession and choses in action, 379
- enforcement of judgments, 383
- and gateways to service out of jurisdiction, 160–1
- immovable property, 106, 308, 383  
 choice of law, 383–5  
 and contract, 382  
 equity or fiduciary relationships, 382–3  
 exceptions to the *lex situs* rule, 380–3  
 fraud, 382  
 jurisdiction, 380  
*lex situs*, 383  
*in personam* jurisdiction, 381  
 questions of capacity, 385  
 validity of a contract concerning, 385  
 where the question of title arises  
 incidentally, 381
- intangible property, 396–405  
 applicable law, 398–400  
 assignment of debts, 396–405, 422  
 capacity to assign or take an assignment of debt, 400–1  
 choice of law questions on, 397  
 complexity of the law relating to, 396  
 connecting factor for assignment of debt, 399–400  
 contract debt, 398  
 definition of, 396  
 expropriation of, 408–9  
 where the property is a debt, 408  
 where the property is in a foreign country, 408  
 law of the contract between debtor and creditor, 400, 403  
 law of the contract of assignment of debt, 399–400, 402  
*lex situs*, 402  
 nationalisation or requisition, 405–7  
 possible applicable laws, 398–400  
 priority and security interests, 404  
 reform of the law on, 405  
 and the Rome I Regulation, 401–4  
 set off, 405  
*situs* of the property, 398–9
- involuntary transfers, 405–11  
 expropriation of intangible property, 408–9  
 laws purporting to confiscate property, 405  
 nationalisation or requisition of tangible property, 405–7  
 third party debt orders, 409–11  
 where the property is in a foreign country, 406–7  
 where the property is in England, 405–6
- lex situs*  
 consequences, 388  
 and expectations of the parties, 388  
 and *renvoi*, 384  
 and non-contractual obligations, 340  
 and public policy, 379  
 registration of property interests, 389  
*renvoi* and, 287  
 requisition or nationalisation of, 378  
 rights *in rem* in immovable property, 106, 188  
 autonomous meaning, 106  
 definition of, 106  
 and the Rome I Regulation, 308  
*situs* of, 267
- tangible movables, 385–96  
 choice of law rules other than *lex situs*, 388  
 complexity of financial transactions, 389  
 cultural heritage, 393–5  
 exceptions to the *lex situs* rule, 392–5  
 general rule – *lex situs*, 386–9  
 goods in transit, 392  
 insolvency and succession, 393  
 jurisdiction, 385–6  
*in rem*, 386  
*in personam*, 386  
 public policy, mandatory rules and fraud, 393  
*renvoi*, 395–6  
 reservation of title, 390–2  
 security interests, conditional sales, reservations of title etc, 389–92  
 title affected by the transaction in the new location, 387  
 use as a type of security, 389

- Protection of Trading Interests Act 1980,  
 251–2
- provisional measures, 206–16
- balance of the interests of the applicant and the respondent, 207
  - disclosure orders, 208
  - freezing injunctions, 207
    - foreign proceedings, 210–12
    - and human rights, 215–16
    - jurisdiction over the respondent, 210–12
    - protection of defendants and third parties, 215
    - and tracing claims, 209
    - worldwide freezing orders, 213–15
  - power to grant injunctions, discretionary power, 208
  - purpose of, 132, 206
  - real connection between the territory of the English court and the subject matter, 133
  - to safeguard rights, 211
- public international law, laws which breach, 431
- public policy, 225, 253–4, 412
- and application of the *lex situs*, 393
  - definition of, 226
  - fundamental principles, 225–6
  - international, 425
  - and a judgment obtained by fraud, 227
  - and mandatory rules, 323, 326–9
  - as a method of avoiding choice of law rules, 424–33
  - negative character of, 425
  - and the recognition and enforcement of foreign judgments, 225–9
  - which applies at the international level, 326
- putative applicable law approach, 303, 329, 368
- Rabel, Ernst, 270
- Racketeer Influence and Corrupt Organizations Act (US), 184, 196
- reciprocity, 219
- Recognition of Trusts Act 1987, 369, 375–6
- remission, 281
- renvoi*, 280–8
- and the application of *lex situs*, 384
  - areas of application, 287
  - arguments against, 284–6
  - arguments in favour, 286–7
  - and contract, 288
  - difficulties in determining whether it is available in foreign law, 284
  - double or total *renvoi*, 282, 286
  - essential or material validity of wills, 287
  - exclusion from the Hague Convention, 372
  - and expectations of the parties, 286
  - 'foreign court' doctrine, 282
  - and formal validity of wills, 287
  - hostility to, 281, 283
  - and immovable property, 287
  - meaning of, 288
  - as a method of avoiding choice of law rules, 423–4
  - and movable property, 287
  - and nationality, 285
  - partial, 336
  - and the Rome II Regulation, 342
  - single or partial *renvoi*, 282
  - succession, 287
  - and tangible movable property, 395–6
  - technique for solving problems arising from differences between the connecting factor used by English law and that of the law to which the English connecting factor leads, 280
  - and tort, 288
  - and trusts, 288
- res judicata*, 46, 124, 126
- cause of action estoppel, 46
  - English rules on, 125
  - issue estoppel, 46
- residence, 31, 72
- of corporations, 38–9
  - definition of, 11
  - habitual, 32–5; *see also* separate entry
  - and illegal residence, 31
  - interpretation of, 12
  - ordinary residence, 31
  - residence *simpliciter*, 31
- restitution, 7
- restraining foreign proceedings (anti-suit injunctions)
- basis for injunctions, 195–202
  - jurisdiction over the respondent, 195–6
  - and comity, 202
  - to control the exorbitant exercise of power by other courts, 202
  - and the European Convention on Human Rights, 202–3

- restraining foreign proceedings  
 (anti-suit injunctions) (cont.)  
   prevention of injustice, 198  
     proceedings in breach of a jurisdiction or  
       arbitration agreement, 198–9  
     unconscionable conduct, 200  
     vexation or oppression of the applicant,  
       200–2  
 restraining proceedings in another Member  
   State, 203–5  
 single-forum cases, 196, 198  
 a 'sufficient interest' in the dispute, 197–8  
*Réunion Européenne SA v Spliethoff's*  
   *Bevrachtingskantoor BV*, 77  
 Robertson, A.H., 269  
 Rome Convention 1980, 292, 295, 305, 309,  
   311–12  
   capacity to conclude a commercial  
     contract, 320  
   domestic and international mandatory  
     rules, 322  
   exclusions, issues of property, 402  
   governing law, 312  
   internationally mandatory rules, 325  
 Rome I Regulation, 87, 291  
   absence of choice, 307  
     Article 4, 311  
     exceptional rule – close connection, 311  
     habitual residence, 309–11  
     manifestly more close connection,  
       315–17  
     residual rule for other contracts, 309  
     specific contracts, 307–8  
   applicable law, 300  
     exceptions to, 321–2  
   application of, 293–4, 297, 401–2  
   Article 14, 401–4  
     assignability of debt, 402–3  
     and intangible property, 402  
     review of, 405  
   background of, 294  
   capacity, 319  
   characterisation, 274, 295  
   choice of law rules, 51, 156, 302–7, 311  
     in the absence of the parties' choice, 314  
     contested validity of, 303  
     dépeçage, 306  
     express choice, 302–4  
     impossible or meaningless choices, 304  
     inferred, 283, 302, 304–5  
     limitations on, 306  
     non-derogable provisions, 306  
     reference to a factor external to the  
       contract, 302  
     validity of, 303  
   civil and commercial matters, 296  
   close connection, 311, 314–15  
   and common law, 311  
   contractual misrepresentation, 346  
   contractual obligations, 277, 298, 325, 332  
     application of, 326  
     autonomous meaning, 274, 295  
     breaches of, 261, 298, 329, 418  
     capacity to conclude commercial  
       contracts, 320–1  
     characteristic performance, 309  
     consequences of nullity, 299, 360  
     consumer contracts, 319  
     contracts for the carriage of goods,  
       317, 419  
     contracts for the carriage of passengers,  
       317  
     contracts for the provision of services,  
       307  
     contracts for the sale of goods, 307–8  
     contracts in a market in financial  
       instruments, 308  
     contracts concerning immovable  
       property, 308, 385  
     damages, 420  
     discretionary character of, 325  
     distribution contracts, 308  
     effect of applicable law, 297–300  
     effect of illegality in a contract, 326,  
       329–33  
     employment contracts, 319  
     franchise contracts, 308  
     law of the country in which the obligation  
       is performed, 325  
     manner of performance, 298  
     residual rule, 309, 314  
     rule to determine applicable law, 307  
     set off, 405  
     special rules, 317–19  
     system of law to determine  
       the performance of a contract, 298  
     validity of contracts, 300, 319,  
       402  
   *culpa in contrahendo*, 361  
   evidence, 414  
   exclusions, 295–7  
     arbitration agreements, 296

- dealings prior to the conclusion of a contract, 296, 361
- issues of property, 402
- jurisdiction agreements, 296
- questions of authority, 296
- trusts, 296
- formal validity, 319
- general rules, 300–17
  - absence of choice, 307
  - method to follow in matters of contract, 301–2
  - parties' choice of law, 301
  - renvoi* is excluded, 301
- habitual residence, 307–11, 405
- interpretation, 294–5, 298
- limitation of actions, 299, 416
- mandatory provisions, 323
  - Article 9, 323–6
- objective of, 301
- parties' choice of law, 302–7
  - dépeçage, 306
  - inferred choice, 304–5
  - limitations on, 306
- presumption that the most closely connected law was that of the habitual residence of the party to perform characteristic performance, 312
  - strong model, 313
  - weak model, 313
- presumptions, burden and modes of proof, 297
- public policy and mandatory rules, 306, 324, 326–9, 434, 323
  - Article 9, 323–6, 332
  - Article 21, 326–9
- putative applicable law approach, 300, 303, 321, 329
- rules which cannot be derogated from by contract, 322
- scope of, 294–7
- security interests in intangible property, 404
- special rules, 317–19
  - carriage of passengers, 317
  - consumer contracts, 318
  - contracts of carriage of goods, 317
  - individual employment contracts, 319
  - insurance contracts, 318
- temporal scope and interpretation, 294–5
- unilateral rules, 333–4
- universal and exclusive character of, 293
- Rome II Regulation, 51, 87, 334, 337, 355
- application and interpretation, 337–8
- damage, 343, 418–19
- defamation, 366–9
- effect of the applicable law, 343–6
- effect of a contract limiting liability, 364–5
- habitual residence, 342–3
- liability in both tort and contract, 363
- limitation of actions, 277
- mandatory rules and public policy, 365–6, 373–4
- non-contractual obligations, 339
  - exclusions, 340–2
- non-contractual obligations arising from tort/delict, 346–55
  - general rules, 346–51
    - components of, 347
    - exceptions, 347
  - displacement rule, 346, 351–6
  - particular non-contractual obligations, 355–62
    - rules of safety and conduct, 355
- renvoi*, 301, 342
- scope, 296, 338
- trusts, 369
  - choice of law rules, 370–2
  - and the Hague Convention, 369–70
  - recognition, 373
  - restrictions, 373–4
  - variation, 374–6
- Rules of the Supreme Court, 139
- Sale of Goods Act 1979, s 18 Rule 1, 387
- Schlosser Report, 66, 228
- Scotland, 4
- seisin, autonomous meaning, 122
- Senior Court Act 1981, 169, 206, 210, 276
- serious issue to be tried, 78, 88, 99, 148, 151
- service of the claim form, 70, 139
  - on an agent of the defendant, 146
  - for companies without a seat in a Member State, 144
  - and corporations, 143–6
  - on a defendant out of the jurisdiction, 147–64
  - on a defendant present in the jurisdiction, 142–6
  - grounds for service, 142
  - legal persons, 143–6
  - method of service, 142
  - on natural persons, 142–3
  - service 'as of right', 142

- service of the claim form (cont.)  
 service out of the jurisdiction, 147, 220  
   foreign procedures for, 163  
   general principles governing, 162  
 submission  
   defendant argues the merits of the case or  
     counterclaims, 146–7  
   provision of an address for service within  
     the jurisdiction, 147  
 Sharia law, 304  
 sovereign immunity, 252  
 sovereignty, 137, 139  
 standard of proof, civil, 30  
   flexibility of, 19  
 State Immunity Act 1978, 252  
 statement of case, consequences of making an  
   untrue statement, 43  
 stays of proceedings, discretion in, 234  
 submission, 118–19, 146–7  
   by agreement, 246–7  
   appeal against a judgment given in default of  
     the judgment debtor's appearance,  
     246  
   arguments that are not to be treated as, 245  
   and challenge to the jurisdiction of the  
     foreign court, 261  
   and stay of proceedings, 147  
   by voluntary appearance, 244–7  
 succession, 63, 287, 289, 341, 393  
  
 taxation law, non-domiciled residents, 28  
*Tessili* doctrine, 80, 84–5  
 third party debt orders, 45, 409–11  
   discretion of the court, 409  
   if the debt is covered by a foreign law, 410  
   recognition of foreign orders, 410  
 tort  
   applicable law of obligations arising out of a  
     tort/delict, 346–55  
   autonomous meaning, 87–9  
   and changes in the law, 288  
   common law on, 367  
   and *culpa in contrahendo*, 346  
   damages, 418  
   focus on compensation for loss, 348  
   gateways to service out of jurisdiction, 158–60  
   natural forum, 168  
   proper law of, 337  
  
 transmission, 281  
 Treaty on the Functioning of the EU, 9, 57,  
   293–4, 338  
 trusts, 96, 338, 369  
   application of the Hague Convention,  
     369–70  
   constructive trusts, 7  
   domicile of, 75  
   and gateways to service out of jurisdiction,  
     161–2  
   governing law, 370–2  
   jurisdiction clauses, 96  
   limits to the settlor's freedom of choice,  
     370  
   and mandatory rules and public policy, 373  
   recognition of, 373  
   restrictions, mandatory rules and public  
     policy, 373–4  
   variation of trusts, 374–6  
     English settlement, 374  
     foreign settlement, 375  
  
 unconscionable conduct, 200  
 UNESCO Convention on the Means of  
   Prohibiting and Preventing the  
   Illicit Import, Export and Transfer  
   of Ownership of Cultural  
   Property, 395  
 unfair competition and restricting free  
   competition, autonomous  
   meaning, 356  
 Unfair Contract Terms Act 1997, 306  
 Unidroit Convention on Stolen or Illegally  
   Exported Cultural Objects 1995,  
   395  
 United Kingdom, 8–9, 233  
 United States, 27–8  
   Constitution, full faith and credit provision,  
     220  
   courts, 251, 335, 354  
 unjust enrichment, 359–60  
  
 Variation of Trusts Act 1958, 374–5  
  
 Wales, 4  
 Wills Act 1963,  
   287–9  
 Woolf Report, 40