

CONTENTS

<i>Preface</i>	vii
<i>Table of United Kingdom Cases</i>	xvii
<i>Table of Foreign Cases</i>	xxxix
<i>Table of Cases before the European Court of Justice – Numerical</i>	xlvi
<i>Table of Cases before the European Court of Justice – Alphabetical</i>	lvii
<i>Table of International Court and Tribunal Cases</i>	lxvii
<i>Table of United Kingdom Statutes and Statutory Instruments</i>	lxix
<i>Table of Foreign Statutes</i>	lxxiii
<i>Table of European Community Legislation</i>	lxxvii
<i>Table of International and EC Treaties and Conventions</i>	xciii
<i>Table of the Principal Conventions</i>	ci

PART 1—COMMON PRINCIPLES

CHAPTER 1—CONTEXTS AND ORIGINS	3
The Genesis of the Rome Convention and the Rome I and II Regulations	3
The Rome Convention, the Rome Regulations and the Community Legal Order	13
The Terms of Related International Agreements	16
The Relationship between the Rome Convention, the Rome I and II Regulations and other Conventions	22
Entry into Force	26
Territorial Application	29
Interpretation	33
CHAPTER 2—THE DIVIDING LINE BETWEEN ROME I AND ROME II	47
Characterisation	47
Concurrent Liability	70
Intermingling of Contractual and Tortious issues	74
Exemption Clauses as a Defence to Liability in Tort	75
CHAPTER 3—THE COUNTRY WHOSE LAW IS TO BE APPLIED	77
Summary	77
Habitual Residence	78
The Exclusion of <i>Renvoi</i>	89
States with More than One Legal System	90

PART 2—CONTRACT

CHAPTER 4—LEGISLATIVE HISTORY AND SCOPE OF THE ROME I REGULATION	93
Legislative History	93
Material Scope	94
Territorial Scope	100
Temporal Scope	100
CHAPTER 5—EXCLUDED MATTERS	101
Status or Legal Capacity of Natural Persons	101
Family Relationships, Matrimonial Property, Wills and Succession	103
CHAPTER 6—FREEDOM OF CHOICE	131
Origins of Autonomy	131
Extent of Autonomy	134
Ways in Which the Choice may be Demonstrated	141
<i>Depeçage</i>	154
Variation of the Chosen Law	155
Restrictions upon Party Autonomy	159
Existence and Validity of the Parties' Consent as to the Applicable Law	166
CHAPTER 7—APPLICABLE LAW IN DEFAULT OF CHOICE	167
Introduction	167
The Position under the Rome Convention	167
The Rome I Regulation	176
CHAPTER 8—CONTRACTS OF CARRIAGE	205
Introduction	205
Carriage of Goods	207
Carriage of Passengers	213
Limitations on Party Autonomy	216
Effects of International Conventions	217
CHAPTER 9—CONSUMER CONTRACTS	223
Policy	223
The Unfair Contract Terms Act 1977	223
International Conventions	225
The Rome I Regulation: The Definition of "Consumer Contracts"	227
Dual Purpose Contracts	234
Knowledge of the Professional	235
The Requirement That There be a Contract	237

The Protection Afforded to Consumer Contracts	241
Provisions that Cannot be Derogated from by Contract	248
Excluded Consumer Contracts	251
Consumer Protection in EC Legislation	254
 CHAPTER 10—INSURANCE CONTRACTS	 263
The Position under the Rome Convention	263
Legislative History of the Rome Convention's Regime	267
The Position under the Rome I Regulation	270
<i>Renvoi</i>	283
Insurance Contracts Falling Outside the Scope of art.7	288
Relationship between Rome I Rules and Insurance	
Directive Rules	296
Risks Situated in EFTA States Parties to the EEA Agreement	297
 CHAPTER 11—EMPLOYMENT CONTRACTS	 301
"Individual Employment Contracts"	302
Definition of an Employment Contract	304
Choice of Law by the Parties	310
Mandatory Rules of the Law Designated by art.8(2)–(4)	311
Applicable Law in the Absence of Choice by the Parties	314
Effects of Statutes of the Forum	322
The Impact of Community Legislation	329
 CHAPTER 12—MANDATORY RULES AND <i>ORDRE PUBLIC</i>	 333
Introduction	333
The Meaning and Effect of Mandatory Rules	334
Art.9(3) and the <i>Sonderstatut Theory</i>	343
The Relationship between art.6(2), art.8(1) and art.9(1) and (2)	351
Mandatory Rules of Community Law Origin	355
<i>Ordre Public</i>	362
 CHAPTER 13—VOLUNTARY ASSIGNMENT, SUBROGATION, MULTIPLE LIABILITY AND SET-OFF	 367
Assignment—Legislative History and Relationship to art.12 of the Rome Convention	367
Assignment—Operation of art.14	373
Legal Subrogation	387
Multiple Liability and Set-Off	388
 CHAPTER 14—SCOPE OF THE APPLICABLE LAW, VALIDITY AND PROOF	 393
Introduction	393
Drafting and Responses to the New Provision	395

Relationship to Rome Convention	395
Unspecified Matters Governed by the Applicable Law	397
Interpretation	399
Performance	406
Consequences of Breach	409
Damages	413
The Various Ways of Extinguishing Obligations, and	
Prescription and Limitation	416
Consequences of Nullity	418
Validity and Proof	420
 CHAPTER 15—FINAL PROVISIONS	431
Entry into Force and Application	431
Other Obligations	431
 PART 3—THE LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS	
 CHAPTER 16—THE SCOPE OF THE LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS	435
Introduction	435
Art.15(a)—Existence and Extent of Liability	438
Art.15(b)—Exemption, Limitation and Division of Liability	441
Art.15(c)—Damage and Remedy	445
Art.15(d)—Prevention and Termination of Injury and Damage and Ensuring Payment of Compensation	453
Art.15(e)—Transfer of a Right to Claim Damages	455
Art.15(f)—Persons Entitled to Claim for Damage Sustained Personally	456
Art.15(g)—Liability for the Acts of Another Person	457
Art.15(h)—Extinguishment of Obligations, Prescription and Limitation	458
 CHAPTER 17—THE ROME II REGULATION: LEGISLATIVE HISTORY AND SCOPE	461
Legislative History	461
Scope	464
 CHAPTER 18—THE GENERAL CHOICE OF LAW RULE FOR TORT AND DELICT	495
Introduction	495
The Law of the Country of the Damage	499
Maritime and Aerial Torts	514
Particular Torts	518
Torts to Property	520

Reliance Loss: Deliberate and Negligent Misstatement	522
The Exception: Law of Common Habitual Residence	534
The Escape Clause: "Manifestly Closer Connection"	536
CHAPTER 19—PRODUCT LIABILITY	543
Introduction	543
Background to art.5 of the Rome II Regulation	546
The Product Liability Regime Established by the Rome II Regulation	550
The Detailed Operation of the Choice of Law Rules in art.5	568
Other articles of the Rome II Regulation Significantly Related to the Operation of art.5	591
CHAPTER 20—COMPETITION	597
Legislative History	597
The Scope of art.6 of the Rome II Regulation	600
Relationship Between art.6 and the E-commerce Directive	628
Non-Contractual Liability Claims Under National Law	630
The Application of the National Law Designated by art.6(3) of the Rome II Regulation when a Breach of Community Competition Law is in Issue	632
CHAPTER 21—ENVIRONMENTAL DAMAGE	635
Legislative History	635
The Rule in art.7	636
Scope	637
The Concept of "Environmental Damage"	637
Damage Sustained by Persons or Property as a Result of Environmental Damage	640
Claims for Compensation by Public Bodies	641
The Basic Rule Designated by art.4(1)	643
The Law of the Place of the Harmful Event	645
The Applicability of art.7 to an Application for an Injunction	646
Determination of the Applicable Law where the Situation Falls under Both art.7 and Another Special Regime	647
Freedom of Choice	648
CHAPTER 22—INTELLECTUAL PROPERTY RIGHTS	649
Background	649
Patent Litigation in England: The Traditional Approach	651
Legislative History of the Rule in art.8 of the Rome II Regulation	652
Position under art.8 of the Rome II Regulation	654
Applicable Law	659

CHAPTER 23 — INDUSTRIAL ACTION	669
Introduction	669
The Rule Adopted in the Rome II Regulation	670
Applicable Law	676
The Law of the Common Habitual Residence	679
Possibility of Party Choice	679
CHAPTER 24 — UNJUST ENRICHMENT	681
Introduction	681
Background to art.10 of the Rome II Regulation	681
Matters Expressly Provided Not to Pertain to “Unjust Enrichment”	683
Matters Which Pertain to “Unjust Enrichment”	688
Matters Which Arise from Unjust Enrichment	688
Restitution for Wrongs	703
The Operation of the Choice of Law Rules in art.10	705
CHAPTER 25 — NEGOTIORUM GESTIO	713
Introduction	713
The Approach in the Member States	713
<i>Negotiorum Gestio</i> : art.11 of the Rome II Regulation	719
<i>Negotiorum Gestio</i> and Unjust Enrichment	722
English Domestic Law and art.11	722
The Choice of Law Rules for <i>Negotiorum Gestio</i>	724
<i>Negotiorum Gestio</i> in the Maritime Context	727
CHAPTER 26 — CULPA IN CONTRAHENDO	729
<i>Culpa in Contrahendo</i>	729
Choice of Law Rules	736
Country of Habitual Residence	739
Escape Clause	739
Party Autonomy	740
CHAPTER 27 — MANDATORY RULES AND ORDRE PUBLIC	741
Introduction	741
Overriding Mandatory Rules	742
Public Policy (“ <i>Ordre Public</i> ”)	746
CHAPTER 28 — DIRECT ACTIONS AGAINST INSURERS	755
The Brussels Regulation	755
The Progress of Drafting of art.18	757
Characterisation of the Insurer’s Obligation	758
Motoring Claims	761

CHAPTER 29—FREEDOM TO CHOOSE THE APPLICABLE LAW	763
Introduction	763
The Progress in Negotiation of art.14	765
Agreements Made After the Event Giving Rise to the Damage	766
Agreements Made Before the Event Giving Rise to the Damage	769
Choice Demonstrated with Reasonable Certainty	772
Third Parties	775
Preservation of Mandatory Rules	775
Preservation of Provisions of Community Law	779
APPENDIX 1—THE ROME I REGULATION: REGULATION 593/2008 OF THE COUNCIL AND PARLIAMENT (ENGLISH, FRENCH AND GERMAN VERSIONS)	783
APPENDIX 2—REPORT ON THE CONVENTION ON THE LAW APPLICABLE TO CONTRACTUAL OBLIGATIONS	859
APPENDIX 3—THE ROME II REGULATION: REGULATION 864/2007 OF THE COUNCIL AND PARLIAMENT (ENGLISH, FRENCH AND GERMAN VERSIONS)	925
APPENDIX 4—COMMISSION PROPOSAL FOR A REGULATION ON THE LAW APPLICABLE TO NON-CONTRACTUAL OBLIGATIONS (ROME II) COM(2003) 427 FINAL	985
<i>Index</i>	1035