I yell agent they

Table of Cases		xlix
Table of Legisl	ation	lxxxix
Abbreviations	I see a see	cxiii
		1
Chapter 1	NTRODUCTION	
	I. Importance of the International Sale of Goods	1.01
	II. Scope of the Book	1.03
	1. International Sale of Goods	1.04
	The Different Definitions	1.04
	Different 'Definitions' for Different	
	Purposes	1.15
	'International' Sale of Goods and the Scope	
	of the Book	1.16
	Specific Issues and the Scope of the Book	1.20
	Transfer of Contractual Rights and	
	Obligations	1.21
	E-Commerce	1.22
	The Omission of Consumer Contracts	1.23
	2. Claims Arising out of the International Sale	
	of Goods	1.24
	3. The Principles and Rules of the Conflict of	
	Laws	1.25
	PART I JURISDICTION	
	TAKI I JUNISDICTION	
Chapter 2	PRELIMINARY REMARKS	
	I. Jurisdiction Under the European and	
	Traditional English Rules	2.01
	1. The European Regime	2.02
	The Brussels I Regulation (EC Rules)	2.02
	The Brussels Convention	2.04
	The Lugano Convention	2.07
	2. The Modified Regulation	2.10
	3. The Traditional English Rules	2.11

- Contract William I - Contract Contrac

and overthe moderned product the State

11.8 E

Chapter 3	An A	ACTION IN CONTRACT BETWEEN THE BUYER AND	
	SELL	ER: JURISDICTION UNDER THE EC RULES	
	I.	Introduction	3.01
	II.	When will the EC Rules Apply?	3.02
		1. A Civil and Commercial Matter	3.02
		The Exclusion of Arbitration	3.03
		The Exclusion of the Status or Legal	
		Capacity of Natural Persons, etc.	3.09
		The Exclusion of Bankruptcy, etc.	3.10
		2. Whether the Defendant is Domiciled in a	
		Member State	3.11
	III.	A Special Definition of Domicile	3.12
	IV.	Bases of Jurisdiction	3.15
		1. Article 24	3.17
		2. Section 4: Jurisdiction over Consumer	
		Contracts	3.18
		3. Section 5: Jurisdiction over Individual	
		Contracts of Employment	3.21
		4. Article 23	3.22
		The Provision	3.22
		Application to Contracts for the	
		International Sale of Goods	3.28
		5. General Jurisdiction: Article 2	3.60
		6. Special Jurisdiction: Article 5(1)	3.61
	-	Matters Relating to a Contract	3.62
		The Obligation in Question	3.83
		The Place of Performance of the	
		Obligation in Question	3.142
		7. Special Jurisdiction: Article 5(5)	3.302
		The Provision	3.302
		Application to Cases of the International	
		Sale of Goods	3.305
	V.	Declining Jurisdiction and Restraining Foreign	
		Proceedings	3.313
		1. Declining Jurisdiction Under the Brussels I	
		Regulation	3.313
		Lis Pendens	3.313
		Lis Pendens Related Actions	3.330
		2. Declining Jurisdiction Using the Doctrine	
		of Forum Non Conveniens	3.339
		3. Restraining Foreign Proceedings	3.340

Contents xi

Chapter 4	AN ACTION IN CONTRACT BETWEEN THE BUYER AND	
	Seller: Jurisdiction under the Traditional	
	English Rules	
	I. Introduction	4.01
	II. Bases of Jurisdiction	4.02
	1. Service of a Claim Form Within the	
	Jurisdiction	4.02
	The Rules	4.02
	Application to Contracts for the	
	International Sale of Goods	4.23
	2. Service of a Claim Form Out of the	
	Jurisdiction	4.26
	The Grounds of Rule 6.20	4.27
	A Reasonable Prospect of Success	
	(Serious Issue on the Merits)	4.95
	The Exercise of the Discretion to Permit	
	Service Out of the Jurisdiction	4.101
	III. Declining Jurisdiction and Restraining Foreign	
	Proceedings	4.154
77	1. Declining Jurisdiction	4.154
	Forum Non Conveniens	4.156
	Foreign Jurisdiction Clauses	4.164
	Arbitration Agreements	4.169
9_	2. Restraining Foreign Proceedings	4.172
	Where the Bringing of the Proceedings	
	Abroad would be in Breach of an	
	Agreement	4.173
	Where the Pursuit of the Proceedings	
	Abroad would be Vexatious or	
	Oppressive	4.181
	Where the Bringing of the Proceedings	
	Abroad would be Unconscionable for	
	Some Other Reason	4.187
Chapter 5	Transfer of Contractual Rights and	
	Obligations: Jurisdiction	
	I. Introduction	5.01
	II. The EC Rules	5.03
	1. Difficulties for the Parties in Relying on	
	Choice of Jurisdiction Agreements	5.04
	Jurisdiction Clauses in Bills of Lading	
	Generally	5.04

	The Position of a Third Party Holder of the	er Gul D
	Bill of Lading	5.06
	The Position of a Shipowner Whose Ship	
	has been Chartered	5.14
	The Position of a Shipowner Sub-Contractor	5.17
	Neither Party is Privy to the Original	
	Contract of Carriage	5.18
13/14	2. The Difficulty in Using Article 5(1) of the	
	Brussels I Regulation	5.19
	Is There a Matter Relating to a Contract?	5.19
	The Place of Performance of the Obligation	
326	in Question	5.29
TOLL	III. The Traditional English Rules	5.31
	1. Establishing a Basis of Jurisdiction	5.31
	Establishing a Ground for Service Out of	0.01
	the Jurisdiction	5.32
	Establishing that there is a Reasonable	0.02
	Prospect of Success (A Serious Issue to	
LFI L	be Tried on the Merits)	5.53
	Forum Conveniens	5.55
	2. Declining Jurisdiction	5.57
	Forum Non Conveniens	5.57
	Foreign Choice of Jurisdiction Agreements	5.58
CT 1.20	3. Restraining Foreign Proceedings	5.69
	IV. Conclusion	5.70
	A trouble and blussed business.	0.70
4 1 7 3		
	Torts Arising out of the International Sale of	
Chapter	Goods: Jurisdiction	
		6.01
	II. Jurisdiction in Tort Cases Generally	6.02
	1. The EC Rules	6.02
THE STATE OF	Non-Specific Bases of Jurisdiction	6.02
	Specific Jurisdiction in Tort: Article 5(3)	0.02
		6.10
	of the Brussels I Regulation The Traditional English Pulse	6.17
	2. The Traditional English Rules Non Specific Bases of Juriediction	
	Non-Specific Bases of Jurisdiction Specific Jurisdiction in Texts Dule (2009)	6.17
	Specific Jurisdiction in Tort: Rule 6.20(8)	600
	of the Civil Procedure Rules	6.22
	III. Conversion	6.33
	1. The Substantive Law Background	6.33
	The Common Law Tort of Conversion	6.33
	Revendication in Civil Law States	6.39

		Contents	xiii
		Fault Based Interference with Goods	
		under German Law	6.41
		2. Application of Jurisdictional Provisions	6.42
		The EC Rules: Article 5(3) of the	Control of the
		Brussels I Regulation	6.42
		The Traditional English Rules: Rule	
		6.20(8) of the Civil Procedure Rules	6.57
		The Traditional English Rules: Rule	'
		6.20(10) of the Civil Procedure Rules	6.66
	IV.	Negligent Misstatement, Negligent and	
		Fraudulent Misrepresentation	6.67
		1. The Substantive Law Background	6.67
		English Law	6.67
		French and German Law	6.72
		2. Application of Jurisdictional Provisions	6.75
		The EC Rules: Article 5(3) of the	
		Brussels I Regulation	6.75
		The Traditional English Rules: Rule	() (
	* *	6.20(8) of the Civil Procedure Rules	6.96
	V.	A Failure to Sell	6.115
		1. The Substantive Law Background	6.116
		2. Application of Jurisdictional Provisions	6.117
		The EC Rules: Article 5(3) of the	(117
.4		Brussels I Regulation	6.117
		The Traditional English Rules:	
		Rule 6.20(8) of the Civil Procedure	6 1 2 2
	T 7T	Rules Induces the Procedure of Contract	6.122
	VI.	Inducement of Breach of Contract	
		1. The Substantive Law Background	6.130
		English Law French and German Law	6.134
			6.134
		2. Application of Jurisdictional Provisions The EC Rules: Article 5(3) of the	0.130
		Brussels I Regulation	6.136
		The Traditional English Rules: Rule	0.100
		6.20(8) of the Civil Procedure Rules	6.141
	VII.	Negligence	6.147
	V II.	1. The Substantive Law Background	6.147
		The Common Law Tort of Negligence	6.147
		French and German Law	6.154
		2. Application of Jurisdictional Provisions	6.160
		The EC Rules: Article 5(3) of the	
		Brussels I Regulation	6.160

	The Traditional English Rules: Rule 6.20(8)	
*	of the Civil Procedure Rules	6.167
	Elister Aust Thomas International Education in the Edigate E	
Chapter 7	Property Matters Arising out of the	
	International Sale of Goods: Jurisdiction	
	I. Introduction	7.01
	II. How Property Disputes Arise	7.02
	1. The Importance of Passing of Property	,
50 -	and of Transfer of Title	7.02
	2. Who Sues Who and for What?	7.05
	3. Claims Raising the Issue of Ownership	7.03
		7.08
	III. How Jurisdictional Problems Arise	
	1. The Shortage of Jurisdiction Cases	7.08
	2. Examples where Jurisdictional Problems	7.00
	Arise	7.09
	IV. The EC Rules	7.11
	1. Bases of Jurisdiction	7.11
	No Specific Provision for Matters	
	Relating to Movable Property	7.11
	Proprietary Matters and Conversion	7.12
	Proprietary Matters and Matters	
	Relating to a Contract	7.19
	V. The Traditional English Rules	7.26
	1. A Basis of Jurisdiction: Service Out of the	
	Jurisdiction	7.26
	Claims Relating to Property Within the	
	Jurisdiction	7.27
	Proprietary Matters and Claims in	
	Conversion	7.46
	Proprietary Matters and Claims in	
	Relation to Contracts	7.56
	A Claim Against the Defendant as	1.00
	Constructive Trustee	7.67
		7.68
	2. Forum Conveniens/Forum Non Conveniens	
	3. No Subject-Matter Limitation on Jurisdiction	7.70
A P. Latz		
Chapter 8	RESTITUTION AND THE INTERNATIONAL SALE OF	
	Goods: Jurisdiction	
	I. Introduction	8.01
	1. Restitutionary Claims and Jurisdiction	8.01
	2. Restitutionary Claims in International Sale	
	of Goods Cases	8.02
	OI OOOMO OMOCO	

	Contents	XV
	3. Restitution for Wrongdoing	8.03
	4. Negotiorum Gestio	8.04
	II. Unjust Enrichment	8.05
	1. The EC Rules	8.05
	Article 23	8.06
	General Jurisdiction: Article 2	8.11
	Special Jurisdiction: Article 5(1)	8.12
	Special Jurisdiction: Article 5(3)	8.32
	2. The Traditional English Rules	8.34
	Service Out of the Jurisdiction	8.35
	III. Restitution for Wrongdoing	8.89
	1. The Substantive Law Background	8.89
	2. Contracts for the International Sale of Goods	8.90
	3. Restitution for Tortious Wrongdoing	8.91
	The EC Rules	8.91
	The Traditional English Rules	8.93
	4. Restitution for Contractual Wrongdoing	8.99
	The EC Rules	8.99
		8.101
	The Traditional English Rules	8.106
	IV. Proprietary Restitution 1. Drawinter Postitution (Mithout a Truct)	8.107
	1. Proprietary Restitution (Without a Trust)	8.107
	Introduction	(
	The EC Rules	8.112
	The Traditional English Rules	8.123
	2. Proprietary Restitution (With a Trust)	8.128
	Introduction	8.128
	The EC Rules	8.130
	The Traditional English Rules	8.133
	3. Tracing	8.136
	the second country the tree section is a	
Chapter 9	Multiple-Party Claims Arising out of the	
	International Sale of Goods: Jurisdiction	0.01
	I. Multi-Defendant Claims	9.01
	1. Multi-Defendant International Sale of	0 0 1
	Goods Cases	9.01
	Multi-Defendant Claims in Contract	9.02
	Multi-Defendant Claims in Tort	9.03
	Multi-Defendant Claims: Against One	The state of
	Defendant in Contract and The Other	
	Defendant in Tort	9.04
	Multi-Defendant Claims in Relation to	
	Associated Contracts	9.07

xvi

	2. The EC Rules	9.09
	Article 6(1)	9.10
	Application to International Sale of	
	Goods Cases	9.13
31/79	3. The Traditional English Rules	9.25
	Rule 6.20(3)	9.26
	Application to International Sale of	
	Goods Cases	9.31
	4. Cases Involving Both Sets of Rules	9.37
	II. Third Party Claims	9.38
	1. Third Party Claims in International Sale of	
	Goods Cases	9.38
1303	2. The EC Rules	9.39
	Article 6(2)	9.39
	Application to International Sale of	
	Goods Cases	9.40
	3. The Traditional English Rules	9.42
	Rule 6.20(3)	9.42
	Application to International Sale of	
	Goods Cases	9.43
	III. Counter-Claims	9.44
UJI 8	1. Counter-Claims in International Sale of	
	Goods Cases	9.44
	2. The EC Rules	9.45
	Article 6(3)	9.45
	Application to International Sale of	
USIN	Goods Cases	9.46
	3. The Traditional English Rules	9.47
	IV. Multi-Party Claims and Declining Jurisdiction	9.49
	1. Declining Jurisdiction Under the	
	Brussels I Regulation	9.49
	Is the Cause of Action the Same?	9.50
	Are the Parties the Same?	9.54
1111	2. Declining Jurisdiction Under the	
	Traditional English Rules	9.55
	and the second of the second o	
	The state of	
	Mult Delendam Claums In The	
Chapter	10 Electronic Commerce: Jurisdiction	
	I. Introduction	10.01
	II. Characteristics of Electronic Commerce	10.03
	1. Territorial Connections	10.04
	Territorial Boundaries and Connections	10.04

	Contents	xvii
	Problems of Identity and Location of	
	the Parties	10.06
	Problems of Identity and Location of	
	Computers	10.08
	Location of Computers and Location of	
	the Parties	10.10
	Problems in Locating the Place where	
	Events Take Place	10.11
	2. Carrying on Business	10.12
	A Wide Variety of Different Business	
	Activities	10.13
	Unlimited Access	10.14
	Targeting the World	10.15
	Two Active Parties	10.17
	3. The Contract	10.18
	Contracts Made via the Internet	10.19
	Performance Over the Internet	10.20
	Digitized Products as Intangible	
	Property	10.21
	4. The Underlying Policy	10.22
	The Policy of Promoting E-Commerce	10.23
III.	The Substantive Law Background	10.24
	1. The EC Directive on Electronic Commerce	
	and its Implementation in the United	
	Kingdom	10.25
	Internal Market	10.26
	General Information to be Provided	10.27
	Commercial Communications	10.28
	Information to be Provided where	
	Contracts are Concluded by	4000
	Electronic Means	10.29
	Placing of the Order	10.30
	Liability of the Service Provider	10.31
	Liability of Intermediary Service	1000
	Providers	10.32
	No Rules on Private International Law	10.33
	2. The UNCITRAL Model Law on Electronic	1001
TT 7	Commerce of 1996	10.34
IV.	Business-to-Business E-Commerce: Contract	1005
	Claims 1. The EC Deller	10.35
	1. The EC Rules	10.36
	Article 23	10.37
	Article 2	10.40

Ústřední knihovna právnické fakulty MU

Brno

	Article 5(1)	10.41
Will t	Article 5(5)	10.81
	2. The Traditional English Rules	10.88
1111	Service Within the Jurisdiction	10.88
	Service Out of the Jurisdiction	10.98
	Forum Conveniens/Forum Non	
	Conveniens	10.109
1.1	A Foreign Jurisdiction Agreement	10.135
	V. Internet Torts	10.136
	1. Internet Torts Generally	10.136
61.11	The EC Rules	10.137
-1 ()	The Traditional English Rules	10.162
	2. Negligent Misstatement, Negligent and	
71.677	Fraudulent Misrepresentation over the	
	Internet	10.173
	The EC Rules: Article 5(3)	10.174
	The Traditional English Rules	10.179
	3. Conversion over the Internet	10.188
	The EC Rules: Article 5(3)	10.191
	The Traditional English Rules	10.194
	4. A Failure to Sell	10.199
	The EC Rules: Article 5(3)	10.200
	The Traditional English Rules	10.202
	5. Inducement of Breach of Contract	10.206
	The EC Rules: Article 5(3)	10.207
	The Traditional English Rules	10.209
	6. Negligence	10.213
11 11	The EC Rules: Article 5(3)	10.214
	The Traditional English Rules	10.217
	VI. Property Claims	10.221
	1. The EC Rules	10.222
16 11	2. The Traditional English Rules	10.223
	Is a Digitized Product Property?	10.224
	Where is Digitized Property Located?	10.225
	When is it Located in England?	10.226
	Does the Whole Subject-Matter of the	
	Claim Relate to Property?	10.227
122	Is the Property Located Within the	10.22
	Jurisdiction?	10.228
	VII. Restitution and E-Commerce	10.229
	1. The EC Rules	10.220
	2. The Traditional English Rules	10.230
	Service Within the Jurisdiction	10.231
	service vyimin me jurisarchon	10.201

Aller Viller Lee - Miles of the

		Contents	xix
		Service Out of the Jurisdiction	10.232
	VIII. Eva	luation of the Existing Law	10.234
		The EC Rules	10.234
		Uncertainty and Unpredictability	10.235
		Bases of Jurisdiction and Situations	
		where there are no E-Commerce	
		Concerns	10.236
	2. 7	The Traditional English Rules	10.237
		TT 1. 1 . 1 . 1 . 1 . 1 . 1 . 1 . 1 . 1	10.238
		Inappropriate Bases of Jurisdiction	10.239
	And the State of t		
		where there are no E-Commerce	
		Concerns	10.241
	IX. Ref	orm	10.242
	1. I	Leaving it to the Courts	10.243
		The EC	10.244
		England	10.246
		States Outside the EC	10.247
	2. 1	Modification of the Normal Rules	10.250
		The Hague Judgments Convention	10.251
		The EC Rules	10.252
		The Traditional English Rules	10.253
	3. I	ntroduction of a Special Regime of	
	the second second	urisdictional Rules for E-Commerce	10.255
*	4. (Conclusion	10.258
		evient marchens length tourst.	
		RECOGNITION AND ENFORCEMENT	
		OF FOREIGN JUDGMENTS	
		OGNITION AND ENFORCEMENT OF FOREIGN	
	JUDGMEN	TS	
	I. Inti	roduction	11.01
	II. The	Rules of Recognition and Enforcement:	
•	Ger	neral Remarks	11.02
		Recognition or Enforcement?	11.02
	2. 7	The Schemes of Recognition and	
		Enforcement of Foreign Judgments	
		Applicable in the United Kingdom	11.03
		European Regime of Recognition and	
		orcement	11.04
		Scope of Application	11.04
	2. I	Meaning of 'Judgment'	11.06

12. 5 () [

120

11-5-11

11-

117.

3. Automatic Recognition	11.07
4. Defences—Lack of Jurisdictional	
Competence	11.08
5. Substantive Defences	11.09
Recognition would be Manifestly	
Contrary to English Public Policy	11.10
The Judgment was given in Default of	
Appearance	11.11
The Judgment is Irreconcilable with a	
Judgment between the same Parties in	
the Court in which Recognition is Sought	11.13
The Judgment is Irreconcilable with an	
Earlier Judgment given in another	
Member State or in a Third State	11.14
6. A Treaty Based Exception	11.16
7. No Review on the Substance	11.17
8. The Enforcement Procedure	11.18
IV. The Common Law Recognition and	
Enforcement Rules	11.21
1. General Remarks	11.21
2. Recognition Rules: the Jurisdictional	
Competence of a Foreign Court	11.23
The Defendant was Present and/or	
Resident in the Overseas Jurisdiction	11.24
Submission	11.26
3. Judgment Final and Conclusive on the Merits	11.29
4. Further Conditions for Enforcement	11.31
The Judgment must be for a Fixed Sum	
of Money	11.32
The English Court will not Enforce a	
Foreign Penal, Revenue or Public Law	
Judgment	11.33
The Judgment Must not Order the	
Payment of Multiple Damages	11.34
5. Inoperative Defences to Recognition and	
Enforcement	11.35
Error of Law	11.36
The Foreign Court Lacked Jurisdiction by	
the Procedural Law of the State of Origin	11.37
6. Operative Defences to Recognition and	
Enforcement	11.39
The Judgment was Procured by the	
Claimant's Fraud	11.40

Contents	XX
COTILCTIC	

	The Judgment was in Breach of Natural	
	Justice	11.42
	Recognition would be Contrary to	Jasel 1
	Public Policy	11.44
	The Judgment was in Breach of a Choice	
	of Court or Arbitration Agreement	11.46
	The Judgment is Inconsistent with	
	Another Judgment	11.47
V.	The Statutory Schemes	11.48
	1. The Administration of Justice Act 1920	11.49
	2. The Foreign Judgments (Reciprocal	
	Enforcement) Act 1933	11.51
VI.	Intra-United Kingdom Judgments	11.55
VII.	Judgments In Rem	11.57
VIII.	The Effect of Foreign Judgments upon Litigation	
	in England	11.59
	1. Cause of Action Estoppel	11.60
	2. Issue Estoppel	11.63
	3. Issue Estoppel and the International Sale	
	of Goods	11.65
IX.	The Sale of Goods and Foreign Judgments	
	Conferring Non-Monetary Remedies: Specific	
	Performance, Orders for the Delivery of Goods,	
	etc.	11.70
	1. Enforcement at Common Law and Under	
	the Administration of Justice Act 1920 and	
	the Foreign Judgments (Reciprocal	
	Enforcement) Act 1933 Prohibited	11.70
	2. Cause of Action Estoppel and Non-	
	Monetary Foreign Judgments: the Common	
	Law and the Administration of Justice	4 4 = 4
	Act 1920	11.71
	3. Cause of Action Estoppel and Non-	
	Monetary Foreign Judgments: the	
	Problems Created by the Foreign	
	Judgments (Reciprocal Enforcement)	11 7
	Act 1933	11.75
	4. Could Foreign Judgments which Award	
	Equitable Remedies, such as Specific	
	Performance, ever be Enforceable in	11 70
	England at Common Law?	11.78
Λ.	Conclusion	11.82

PART III CHOICE OF LAW

Chapter 12 I	NTRODUCTION TO CHOICE OF LAW: NATURE OF	
F	ROBLEMS	
	I. The Nature of Sale of Goods Contracts: a Hybrid	
	of Contract and Property	12.01
	II. Sales Specific Choice of Law Questions	12.03
	1. Contract	12.03
	2. Transfer of Contractual Rights and	
	Obligations	12.05
	3. Property	12.06
17.11	4. Other Claims: Tort and Restitution	12.07
	5. Concurrent Claims	12.09
	6. The Impact of Electronic Commerce	12.11
117771	III. Sales Specific Conventions	12.12
	1. The Hague Sales Conventions of 1955	
	and 1986	12.12
	2. The Vienna Convention	12.14
	IV. Classification	12.15
	V. The Potential for a Conflict of Laws in	
	International Sales Transactions	12.17
	1. 'Goods' in Private International Law	12.18
	2. Goods and Tangible Movable Property	12.19
	3. A 'Sale' of Goods	12.20
	4. English Sales Law and the Vienna	
	Convention	12.21
	5. Non-Contractual Claims	12.24
	VI. Limited Harmonization of Choice of Law Rules	12.25
V	II. Conclusion	12.26
Chapter 13	CHOICE OF LAW IN CONTRACT AND THE	
I	NTERNATIONAL SALE OF GOODS	
	I. Synopsis	13.01
	II. Preliminary Issues	13.02
	1. The Legislation	13.02
	2. Time Frame	13.03
	3. Why Common Rules?	13.04
F-17 1 1	4. Territorial Application of the Convention	13.05
	Application Irrespective of the Parties'	
	Domicile and Residence	13.05

	Contents	xxiii
	Application Irrespective of the	
	Applicable Law	13.06
	Intra-UK Contracts	13.07
	5. Official Report	13.08
	6. References to the European Court of	
	Justice	13.09
	7. Subordination to Community Law	13.10
	8. The Future: A Rome Regulation?	13.11
III.	Article 1(1): 'Contractual Obligations Involving	
	a Choice between the Laws of Different	
	Countries'	13.13
	1. 'Contractual Obligations'	13.14
	2. 'Involving a Choice'	13.18
15 1 100	3. The Convention 'Shall Apply'	13.19
	4. 'Different Countries'	13.21
IV.	Specific Exclusions	13.22
	1. Status and Capacity	13.23
	Individuals	13.24
- 1	Companies	13.29
	2. Wills, Succession, Matrimonial Property,	
		13.30
	3. Obligations under Bills of Exchange,	
	Cheques, Promissory Notes and other	
	Negotiable Instruments	13.31
	4. Choice of Court and Arbitration Agreements	13.32
	The Brussels I Regulation; Formal and	
	Essential Validity; Incorporation	13.32
	Common Law	13.34
	Relevance of Jurisdiction Clause to the	
	Applicable Law of the Contract	13.36
	5. Questions Governed by the Law of	
	Companies and other Bodies Corporate or	
	Unincorporate	13.37
	6. The Ability of an Agent to Bind a Principal	13.38
	7. The Constitution of Trusts	13.39
	8. Evidence and Procedure	13.40
	9. Article 1(3)—Exclusion of Certain	
	Insurance Risks	13.42
V.	The Primary Choice of Law Rule: Freedom of	
	Choice	13.43
	1. Express Choice of Law	13.43
	2. Implied Choice of Law	13.44
	Relevant Factors	13.44

-17 / 7

70

HT.ET

Terminology; Standard Forms	13.45
Previous Course of Dealing	13.46
Arbitration and Choice of Court Clauses	13.50
Other Factors	13.53
Surrounding Circumstances	13.54
Implied Choice and Subsequent Conduct	13.55
3. What Law Decides if the Parties have	
Agreed on a Choice of Law at all?	13.56
4. A 'Battle of the Forms' as to the Governing	
Law	13.57
5. Striking down the Choice of Law Clause	13.62
6. The Need to Choose the Law of a	
Recognized Legal System; Freezing a Choice	
of Law in Time; Meaningless Choice of Law	13.65
Recognized Legal System	13.65
Freezing the Law in Time	13.67
Meaningless Choice of Law	13.69
7. Application of the Vienna Convention	13.70
Choice of the Law of a State which is	
Party to the Vienna Convention	13.70
Direct Choice of the Vienna Convention	13.86
Choice of the Law of a State Minus the	
Rules of the Vienna Convention	13.93
Choice of Law and the Uniform Law on	
International Sale of Goods 1964 (ULIS)	
and Uniform Law on the Formation of	
Contracts for the International Sale of	
Goods 1964 (ULFIS)	13.95
8. Limits on the Freedom of Choice	13.99
9. 'Splitting' the Applicable Law	13.103
10. Incorporation of a Foreign Law's Terms by	
Reference	13.106
11. Changing the Applicable Law	13.107
Bilateral Change, Unilateral Change and	
'Floating' Choices of Law	13.107
Implied Change of Law	13.110
Formal and Essential Validity; Effect on	
Third Parties	13.111
I. The Applicable Law in the Absence of Choice:	
Characteristic Performance	13.112
1. The Law of Closest Connection	13.112
Nature of Test	13.112
The Time Factor	13.113

Contents xxv

	2. A Rebuttable Presumption of Closest	
	Connection; Characteristic Performance;	
	Article 4(2)	13.114
	3. The Meaning of 'Habitual Residence',	
	'Central Administration' and 'Principal	
	Place of Business'	13.117
	Habitual Residence	13.117
	Central Administration	13.119
	Principal Place of Business	13.122
	Companies Incorporated in One State	
	but with Branches Elsewhere	13.123
	4. Contracts of Supply and Distribution	13.124
	5. Other Rebuttable Presumptions	13.125
	Rights in Immovable Property;	
	Article 4(3)	13.125
	Contracts for the Carriage of Goods;	
	Article 4(4)	13.126
	6. Exception to the Presumptions in Article	10.120
	4(2), (3) and (4): Article 4(5)	13.127
	Nature and Application of the Exception	13.127
	The Importance of the Place of	10.121
	Performance to the Law Applicable to	
	FOB, CIF and Other Contracts	13.134
	'String' Contracts	13.137
	The Need for Caution in Applying	10.107
	Article 4(5)	13.138
	7. 'Splitting' the Contract in the Absence of	10.100
	Choice	13.140
	Renvoi	13.141
V 11.	1. Exclusion	13.141
	2. The Scope of a State's Domestic Law	13.142
VIII.	Formation of the Sales Contract; the	10.112
V 111.	Essential Validity of the Contract and its	
	Terms	13.143
	1. General Rule: Formation and Essential	1.0.170
	Validity Determined by the Putative	
	Applicable Law	13.143
	Essential Validity of the Contract and	10.170
	its Terms	13.143
	Essential Validity and Implied Choice	IU.ITU
	of Law	13.147
		10.11/
	Essential Validity and the Applicable	13.148
	Law in the Absence of Choice	10.140

FREEZEWAY TO CONTRACT TO A STATE OF THE PARTY OF THE PART

11 - 1

Wat File

-11.5

ECS. FF

CHILL TO

FILE

44.

+FT.T

13 3.1

ELTEI

3.1.5

2. Exception: Use of the Law of a Party's	
Habitual Residence to show Lack of Consent	
to the Contract or a Term of the Contract	13.150
3. Vitiating Factors	13.154
IX. Scope of the Applicable Law	13.156
1. Interpretation	13.157
2. Performance	13.159
The Applicable Law	13.159
The Role of the Law of the Place of	
Performance; Article 10(2)	13.160
Performance of the Key Obligations of	•
the Buyer and the Seller	13.167
Exclusion of the Implied Undertakings	
in the Sale of Goods Act 1979	13.186
Currency of Account	13.187
Currency of Payment	13.192
Inspection	13.194
Risk	13.196
Licences	13.201
Exchange Control	13.203
3. Within the Limits of the Powers Conferred	
on the Court by its Procedural Law, the	
Consequences of Breach, Including the	
Assessment of Damages in so far as it is	
Governed by Rules of Law	13.205
General Principle	13.205
Specific Performance	13.206
Damages Claims by the Seller or Buyer;	
Heads of Damages, Quantification,	
etc.	13.208
Currency of Judgment	13.211
Interest Upon the Judgment	13.215
Contractual or Proprietary Remedy?	13.217
Lien	13.223
Stoppage in Transit	13.227
Rescission	13.230
Right of Resale	13.233
Rejection of the Goods or Documents	13.234
Termination for Breach	13.236
Fundamental Breach of Contract and its	
Effect on the Operation of a Choice of	
Law Clause	13.237
4. The Various Ways of Extinguishing	
Obligations and Prescription and	
Limitation of Actions	13.240

	Contents	xxvii
	Extinguishing Obligations by	
	Performance	13.240
	Discharge by Frustration	13.241
	Discharge by Illegality,	
	Impossibility, etc.	13.243
	Discharge by Bankruptcy	13.244
	Prescription and Limitation	13.245
	5. The Consequences of Nullity of a Contract	13.247
	of Sale	13.249
	1. Extended Warranties	13.249
	2. Claim by Original Seller Against Sub-	
	Purchaser	13.251
	3. Rights of Third Parties Under a Contract	13.252
	4. Agent's Liability Under the Contract of	
	Sale	13.255
	XI. The Formal Validity of the Contract	13.256
	1. General Rule	13.256
	2. Consumer Contracts	13.259
	3. Contracts for the Sale of Rights in	
	Immovable Property	13.260
	4. Burden of Proof; Presumptions; Acts	
	Intended to have Legal Effect	13.261
	Burdens of Proof	
	Presumptions	13.263
	Acts Intended to have Legal Effect	13.264
	XII. Particular Contracts	13.265
	1. Consumer Contracts	13.265
51 -	2. Contracts of Sale and Manufacture,	10000
	Construction or Service	13.269
	XIII. Mandatory Rules and Public Policy	13.271
	1. Nature	13.271
	2. Mandatory Rules	13.274
	Domestic Mandatory Rules	13.275
	International Mandatory Rules	13.276
	Domestic Mandatory Rules and the	12 277
	Rome Convention	13.277
70+1	International Mandatory Rules and the	12 270
801 -1	Rome Convention	13.279
1141	3. Public Policy The Public Policy of the Forum	13.282 13.282
TTT	The Public Policy of the Forum	13.282
	Nature of Public Policy?	13.292
	Whose Public Policy? 1. The Effect of Illegality Upon a Contract	13.292
	4. The Effect of Illegality Upon a Contract	10.270

	XIV.	The Application of the Unfair Contract Terms	
114-5 - 1		Act 1977 to International Commercial	
		Contracts of Sale	13.301
		1. Introduction	13.301
		2. International Supply Contracts to which	
		the Provisions of the Unfair Contract	
		Terms Act 1977 are Inapplicable,	
7.T. 2	Table Field	Regardless of the Governing Law of the	
		Contract	13.302
U.S.		3. International Contracts of Supply Falling	
14.5.		Outside the Scope of the s 26 Exclusion: The	
	d	Ambit of the Unfair Contract Terms Act	7
		1977	13.309
	3777.777	Contracts Governed by the Law of the	
		United Kingdom Only by Virtue of a	
		Choice of Law by the Parties	13.309
		Application of the Unfair Contract	
577		Terms Act 1977 Notwithstanding a	
VALUE E		Choice of the Law of a Foreign State	13.315
		Consumer Contracts	13.320
MARCHE !	XV.	Concluding Remark	13.321
		i Buiden a Proof Treamagnific	
		modifie is yet a sound of Potential	
Chapter 1	14 Trai	NSFER OF CONTRACTUAL RIGHTS AND	
4.00	Obli	GATIONS: CHOICE OF LAW	
1	I.	Scope of Discussion	14.01
	II.	Does the Rome Convention Apply? Article 1(1)	
		and 'Contractual Obligations'	14.02
		1. Obligations between the Shipper and Carrier	14.02
THE ST		2. Obligations between the Transferee of the	
		Bill of Lading and the Carrier; s 2 of the	
		Carriage of Goods by Sea Act 1992	14.03
		3. An Action between a Consignee and a Sub-	
		Carrier	14.06
	III.	Specific Exclusions from the Rome Convention	14.07
		1. Obligations Arising under Bills of	
		Exchange, Cheques and Promissory Notes	
	West for	and other Negotiable Instruments	14.07
		2. Agent's Ability to Bind Principal	14.08
	IV.	The Law Applicable to the Bill of Lading	14.09
CALSI	V.	Express Choice of Law	14.11
	VI.	Incorporation of a Choice of Law Contained in	
		a Charterparty	14.14
FPC (

Contents	XXIX

VII.	Implied Choice of Law; Incorporation of a	
	Choice of Court or Arbitration Clause	
	Contained in the Charterparty	14.15
	1. The Inference to be Drawn from an	
	Exclusive Jurisdiction or Arbitration Clause	14.15
	2. Non-Exclusive Jurisdiction or Arbitration	
	Clauses	14.17
2111	3. Incorporation and Choice of Law	14.18
	4. Incorporation of the Terms of the	
11151	Charterparty with no Express Reference to	
	a Choice of Law, Jurisdiction or Arbitration	
	Clause	14.19
	5. No Incorporation of the Terms of the	
	Charterparty	14.20
	6. A Previous Course of Dealings	14.21
VIII.	A 'Floating' Choice of Law	14.22
V AAA.	1. Nature of Problem	14.22
	2. The Effect of Article 3(2)	14.24
6.737	3. Unilateral Choice	14.25
	4. Conclusion	14.28
TX	Construction of a Choice of Law Clause in the	1 1.20
	Bill of Lading	14.29
	1. Must the Applicable Law be Evident on the	
	Face of the Bill?	14.29
117	2. Construction of a Choice of Law Clause; a	
	Bootstraps Problem	14.30
X	Applicable Law in the Absence of Choice	14.33
	1. Contracts for the Carriage of Goods; Article	
	4(4)	14.33
	2. Where the Conditions in Article 4(4) are	
	not Met	14.35
	3. Displacement of the Presumption; Article	
	4(5)	14.36
	Relevance of the Law Applicable to the	
	Contract of Sale	14.36
	Relevance of the Law Applicable to the	
	Charterparty	14.37
	Identity of the Carrier	14.38
	1. General Principles of English Law; The	
	Starsin	14.38
	2. Identity of the Carrier and Choice of Law	14.39
	3. A Bootstraps Problem	14.41
91	4. Can there be more than one Carrier?	14.43
	ri triti privrd u vivi ed varel ed varel ed vivi	

agains and the

1.1

district.

P. P.

62.1.

18+

1-1-1-1

Total El

FF PI

-17 - 7 1

115 1-1

1 1

	5. Liability of the Seller to Enter into a	
	Reasonable Contract of Carriage	14.45
XII.	The Operation of s 2 of the Carriage of Goods	
	by Sea Act 1992: Substance or Procedure?	14.46
XIII.	The Position of the Transferee of a Bill of Lading;	
	Assignment, Novation and Sui Generis	
	Obligations	14.49
	1. Nature of Transfer of Contractual Rights	
	and Duties	14.49
	2. The Position in English Law: a Sui Generis	
	Solution	14.52
	3. Choice of Law: Assignment and Sui Generis	1 1.0
	Transfers	14.53
	4. Choice of Law: Novation	14.56
	5. FOB Contracts—Carrier Contracts as	1 1.00
	Principal and 'Assigns' to the Buyer	14.57
	6. The Shipper's Obligations	14.58
	7. Insurance	14.59
XIV.	The Effect of a Choice of Law Clause on a	11.07
ALL V.	Transferee of the Bill of Lading	14.60
-7	1. General Principles	14.60
	2. A Bootstraps Problem; does the Transferee	11.00
	have a Claim in Contract?	14.64
	3. Benefit and Burden	14.66
XV	Consent of the Transferee to the Choice of Law	11.00
/\ V.	Consent of the manistered to the Choice of Law Clause	14.68
	1. The Validity of the Choice of Law Clause	14.68
	2. The Consent of the Transferee of the Bill of	17.00
	Lading to a Choice of Law Clause or	
	Arbitration Clause: Article 8(1)	14.72
	3. Article 8(2) and the Effect of the	17.72
	Choice of Law or Arbitration Clause	
	on the Transferee	14.76
YVII	The Effect of a Choice of Law Clause on Other	17.70
/\ V I.	Parties	14.77
	1. Can a Shipowner who is not Party to the	17.7
7119	Bill of Lading Rely upon and be Bound by a	
	Choice of Law Clause in the Bill of Lading?	14.77
	2. Can a Shipowner who is a Sub-Contractor	17.77
	Rely upon a Choice of Law Clause in its	
	Contract with the Carrier Against a Cargo	
	Owner?	14.79
	3. Effect of a Choice of Law Clause where	17.1)
	Neither Party is Privy to the Original Contract of Carriage	14.81
	Commact of Camage	II.OI

Contents	XXX1
CUILLIA	

		4. Direct Claims Against a Cargo Owner's	
		Insurers	14.82
	XVII.	Choice of a Law with no Connection to the	
		Contract between the Carrier and the	
		Transferee of the Bill of Lading: Application	
		of Article 3(3)	14.84
	XVIII.	Formal Validity of the Contract between the	
		Carrier and the Transferee of the Bill of Lading	14.88
		1. Nature of Problem	14.88
		2. The Need to Determine Separately the	
		Formal Validity of the Contract between	
		Carrier and Transferee	14.90
	XIX.	Performance of the Carrier's Obligations: Article	
	D. I b. T	10(1)(b) and 10(2) of the Rome Convention	14.94
	XX.	Mandatory Rules	14.97
	1-1-7	1. Is the Carriage of Goods by Sea Act 1992	
		an International Mandatory Rule of the	
		Forum?	14.97
		2. The Carriage of Goods by Sea Act 1992 as	
		a Domestic Mandatory Rule	14.101
		3. Other Mandatory Rules; The Hague and	
		Hague-Visby Rules	14.102
	XXI.	The Effect of a Himalaya Clause in a Bill of	
		Lading	14.104
		1. Nature of a Himalaya Clause	14.104
		2. The Law of Agency	14.105
		3. The Extent of the Protection Afforded by	
		the Terms of the Himalaya Clause to	
L.C.		Servants, Agents and Independent	
		Contractors	14.109
g.		4. Does a Himalaya Clause Extend to a Choice	
		of Law Clause?	14.110
		5. The Effect of a Choice of Law Clause on	
		Servants, Agents and Independent	1 1 1 1 0
		Contractors	14.112
	3 (3 (TT	6. Contractual Defences to Tort Claims	14.113
	XXII.	Other Means of Getting Around Privity of	11111
		Contract	14.116
		1. Does the Governing Law of the Contract	
		Confer an Enforceable Benefit Upon a	
		Third Party? The Impact of the Contracts	11111
		(Rights of Third Parties) Act 1999	14.116
		General Principles	14.116
		The Position of Subsequent Holders of the	
		Bill of Lading	14.118

8, F.

		2. The Pioneer Container	14.121
		3. Brandt v Liverpool Contracts	14.124
	XXIII.	Conclusion	14.126
		Hit bris toma Dodliniew Entrement	
		ilger grund in Nill out to men	
Chapte	r 15 THE	HAGUE SALES CONVENTIONS OF 1955 AND 1986	
		Introduction	15.01
1452	MATERIAL III.	The Inter-Relationship of the 1955 and 1986	
		Hague Sales Conventions	15.04
	III.	The Inter-Relationship of the Hague Sales	
		Conventions with the Rome Convention	15.05
00.33		1. The Hague Sales Convention 1955 and the	
	sibilia. R.	Rome Convention	15.05
		2. The Hague Sales Convention 1986 and the	
		Rome Convention	15.06
		3. Conclusion on the Inter-Relationship of the	
		Hague Sales Conventions and the Rome	
		and Vienna Conventions	15.09
	IV.	The Hague Sales Convention 1955	15.10
1011		1. Contracting States	15.10
	DHE	2. Scope	15.11
		'Goods'	15.12
		'Sale'	15.15
75 F 1 1 1 1 1		'Contract'	15.17
1-111		3. 'International' Sales	15.19
		4. Exclusions	15.21
		5. The Choice of Law Rules	15.28
		Express or Implied Choice	15.28
		Consent to the Choice of Law Clause	15.34
		Applicable Law in the Absence of Choice;	
		General Rule	15.38
		The Role of the Law of the Buyer's	
		Habitual Residence	15.40
		6. Auction Sales	15.47
		7. The Role of the Law of the Place Where the	
Cilli		Goods are to be Inspected	15.49
	10.7	The Provision	15.49
AFFE		Choice of Law Clauses	15.50
		Nature of the Rule in Article 4	15.51
		Delimiting the Scope of Article 4	15.52
		The Place of Inspection	15.53
1111		Application of Article 4	15.56
		8. Consumer Contracts	15.59
	11/1/2015	bloH fras eduzato reinzato reinzatan.	
		geriland la Iliël	

Contents	xxxiii
9. Public Policy	15.60
10. Concluding Remarks on the 1955	
Convention	15.62
V. The Hague Sales Convention 1986	15.65
1. Introduction	15.65
2. Scope of the 1986 Convention; the	
Meaning of 'Sale of Goods'	15.68
The Requisite Cross-Border Element	15.68
Meaning of 'Sale of Goods'	15.71
3. Specific Exclusions	15.76
4. Determining the Governing Law	15.83
Express or Implied Choice	15.83
Splitting the Contract	15.86
Changing the Governing Law	15.87
The Applicable Law in the Absence of	
Choice	15.88
5. Exclusion of Renvoi	15.99
6. Auction Sales	15.100
7. The Essential Validity of the Contract and	
its Terms	15.102
8. Formal Validity	15.106
9. Scope of the Applicable Law	15.109
Interpretation and Performance	15.109
Entitlement to Products, Fruits and	4 = 4 4 6
Income	15.110
Risk	15.111
Retention of Title	15.112
Consequences of Non-Performance	15.116
The Ways of Extinguishing Obligations	15.119
The Consequences of Nullity or	1 - 100
Invalidity of the Contract	15.120
Conclusion	15.121
10. The Role of the Law of the Place of	15 100
Inspection	15.122
11. Mandatory Rules and Public Policy	15.124
Mandatory Rules	15.124
Public Policy 12. Concluding Domarks on the 1096	15.126
12. Concluding Remarks on the 1986	15 107
Convention	15.127
VI. Conclusion	15.130

, and the permitting of the state of the sta

CREAT WE WITH THE SHEET TO SEE THE

FURTHER MINERAL TOTAL

4

OF THE

L = , , , t

05.31

508 112

54.31

1-131

7

74.01

1671

16.73

16.75

16.76

16.82

xxxiv Contents

Chapter 16	UNIFO	RM AND HARMONIZED SALES LAW: CHOICE OF	
	Law Is	SUES	
	I. I	ntroduction	16.01
	1	. Choice of Law and Uniform Law	
		Distinguished	16.02
	2	. Features of Uniform Law	16.04
	3	. Harmonization of Law	16.06
	4	. Harmonized Law and Choice of Law	16.09
	II. T	he United Nations Convention on the	
	I	nternational Sale of Goods 1980	16.10
	1	. The History of the Vienna Convention	16.10
	2	. The Use of Choice of Law in Determining	
		the Scope of the Vienna Convention	16.12
735		The Uniform Law on the International	
	1 / 40 200 0	Sale of Goods	16.12
		Application of the Vienna Convention	16.16
		Article 1(1)(a) and Dual Contracting	
MILE.		State Residence	16.23
	1. 14 V 11 'S	An Incomplete Rule of Private	
		International Law?	16.24
		Article 1(1)(b) and Private International	
		Law	16.26
		How the Forum Applies the Convention	
		under Article 1(1)(b)	16.28
		The Place of Business	16.32
	3	. The Use of Private International Law in	
		Filling Gaps in the Vienna Convention	16.42
		General	16.42
		Private International Law and	
		Interpretation	16.45
		Defining the Scope of the Convention	16.46
		The Unidroit Principles of International	
		Commercial Contracts	16.47
		General Principles on which the	
		Convention is Based	16.56
		Exclusion Clauses and Penalty Clauses	16.62
		Validity and Misrepresentation	16.71
		Validity and Property	16.73
	4	. The Boundaries of Sale in the Vienna	2007
	_	Convention	16.75
		The Convention and National Law	16.76
		Tort Law	16.77
		Misrepresentation	16.82
		The Outer Boundary of Sale	16.83
		The Outer Doublary of Sale	TO.Or

	Contents	XXXV
040	Sale Contracts Excluded from the	
CLT	Convention	16.84
	The Definition of Sale under the	
17.52	Convention	16.89
17.53	Contracts Akin to Sale	16.91
E3.51	Framework Contracts	16.95
	5. Conflicts and Overlaps Between the	
76	Vienna Convention and the Rome and	ν.
	Hague Conventions	16.96
	The Rome Convention	16.98
	Hague Sales Convention 1955	16.114
17.62	Hague Sales Convention 1986	16.118
	6. The Effect of Reservations and	
	Declarations	16.121
	General	16.121
17.74	The Article 92 Declaration	16.123
	The Article 93 Declaration	16.125
	The Article 94 Declaration	16.126
17.85	The Article 95 Declaration	16.128
	The Article 96 Declaration	16.137
17.88	Article 28 and Specific Performance	16.142
17.88	7. Limitation Periods and International Sale	16.146
	en'i ozanite i pot meno il oveni ozani.	
17.89		
Chapter 1	7 Torts Arising out of the International Sale of	
	Goods: Choice of Law	
	I. Introduction	17.01
1017	II. The Choice of Law Rules Outlined	17.02
17.112	1. The Common Law	17.03
	The Rule of Double Actionability	17.03
	Exceptions	17.04
17.122	Evaluation	17.06
17.122	Common Law Rules Applicable to	
	Defamation Claims and Torts	
17.125	Pre-Dating the Act	17.10
	2. Statutory Reform: the Private International	
17.126	Law (Miscellaneous Provisions) Act 1995,	
17.135	Part III	17.14
	General Comment	17.14
17 137	The Scope of the Act; Classification;	
	'Issues Relating to Tort'	17.16
17,139	The Governing Law of the Tort	17.26
17.146	Displacement of the General Rule	17.35
17.146		

xxxvi Contents

	Exclusion of the Doctrine of Renvoi	17.40
50 01	Limits on the Role of the Governing Law	17.42
	III. Application to Specific Torts Related to the Sale	
3.01	of Goods	17.52
P.01	1. Conversion	17.53
W.di	Substantive Law Background	17.53
	Classification	17.54
	Claims Founded Upon a Foreign Law	17.55
35-131	A Preliminary Question of Property Law	17.59
(d.a)	The Significance of the Remedy Sought:	
1.01	A Subsequent Question of Property	
	Law?	17.62
	The Governing Law of a Claim for	
	Conversion	17.67
STAT	Displacement of the General Rule	
	Under s 12	17.74
101	The Influence of the Law Applicable to	
	the Contract of Sale Under s 12	17.76
151.81	Public Policy	17.85
Cl.ni	2. Negligent Misstatement, Negligent and	
The Late	Fraudulent Misrepresentation	17.88
11.	Nature of Claims in English Law	17.88
	Civil Law Claims Relating to Pre-	
	Contractual Conduct	17.89
	Classification	
	The Governing Law of a Claim for	1,000
	Negligent Misstatement, Fraudulent	
	or Negligent Misrepresentation	17.101
	Conclusions on Application of s 11(2)(c)	17.112
	Displacement of the General Rule	110112
4771	Under s 12	17.119
1/1 1	3. Failure to Sell	17.122
	Classification	17.122
	Is the Claim Excluded by s 13 of the	11.12
1		17.125
	The Governing Law of a Claim for	17.120
	Failure to Sell	17.126
	4. Inducement of Breach of Contract	17.125
		17.135
	Substantive Law Background Classification	17.137
	Classification The Coverning Lawy of a Claim for	17.10/
	The Governing Law of a Claim for	17.139
	Inducement of Breach of Contract	
	5. Negligence	17.146
	Substantive Law Background	17.146

		Contents	xxxvii	1
		Classification	17.148	
	GF RI	The Governing Law of a Claim for		
		Negligence	17.150	
	PLAT	Property Law Issues	17.164	
	7481	IV. Reform on the Horizon: A Proposed European		
		Regulation on Choice of Law for Non-		
	17.81	Contractual Obligations (the 'Rome II'		
		Regulation)	17.165	
	77.71	1. Proposed Choice of Law Rule	17.165	
		2. Exceptions	17.169	
	d2 81	Parties have the Same Habitual Residence		
		A General Exception	17.170	
	VF 81	3. A Right to Choose the Governing Law of a		
	08.81	vigga anTort over med was beginned as	17.173	
	18.61	4. Mandatory Rules and Public Policy	17.175	
		5. Conclusion	17.177	
	86 63	V. Concluding Remarks	17.183	
	80.81	v. Concidents	11.100	
	83.81			
		r 18 Property and Title: Choice of Law		
	Chapte	I. Introduction	18.01	
	17.2	II. Property Issues in Sale of Goods Transactions	18.02	
	18.74	1. Property Terminology	18.02	
-	27.8	2. Contractual Obligation and Property	18.04	
4	15.76	3. Movable and Immovable Property	18.06	
	777	4. Importance of Property and Title	18.07	
	87.81	5. Transfer of Title in Substantive Law	18.10	
	87.41	6. Bilateral (Property) and Trilateral (Title)		
	18.81	Issues	18.11	
	E8.81	7. Reservation of Title	18.12	
	18.86	8. Ancillary Property Issues in Sale of Goods	18.13	
		9. Artificial Sale Transactions	18.16	
		III. Choice of Law Theories	18.18	
	1031	1. The Owner's Personal Law	18.19	
	50.61	2. Problems with the Personal Law	18.22	
•		3. Merits of the Personal Law	18.23	
	18.94	4. The Law of the Transfer	18.24	
	70.21	5. Judicial Support for the Law of the		
	00.8	Transfer	18.26	
		6. The Law of the Situs	18.29	
		7. Modern Authorities	18.34	
	111111	8. The Law of the Situs and Property and Title		
	801.81	Issues	18.38	

		9. Criticism of the Law of the Situs for Passing	
		of Property	18.39
		10. Problems with the Law of the Situs in	
		Hybrid Cases	18.45
		11. Passing of Property in Substantive Laws	18.47
		12. Law of the Situs: Further Problems	18.49
		13. Assessing the Case for the Law of the Situs	18.51
		14. Exceptions to the Law of the Situs: Casual	
		Location	18.55
		15. Exceptions to the Law of the Situs: Bad	
		Faith and Public Policy	18.56
		16. Remaining Exceptions to the Law of the	10.00
		Situs	18.57
		17. Governing Law where Exceptions Apply	18.59
		18. Foreign Judgments	18.61
		19. Transfer of Title and Passing of Property in	10.01
		Dispersed Transactions	18.63
	IV.		18.66
	V.	Renvoi	18.68
	VI.		
TE RE	V I.	Property	18.71
	VIII	The Control Exercised by the Governing Law	18.74
	V II.	1. Essential Requirements	18.74
		2. Trilateral Relations	18.75
		3. Bilateral Relations	18.76
		4. Capacity and Formalities	18.77
	VIII.		18.78
			18.78
		1. Documentary Sales 2. Issues Presented by Documents	18.81
		2. A Decument of Title	18.83
		3. A Document of Title 1. Delivery Duty and Contractual Duties	
		4. Delivery Duty and Contractual Duties 5. Bills of Ladina in Soto	18.86 18.87
		5. Bills of Lading in Sets	
		6. An Unsatisfactory Authority 7. Micdelineary and the Holder's Ontions	18.88
		7. Misdelivery and the Holder's Options 9. Descine of Property Jesuse to be Received	18.91
	TV	8. Passing of Property Issues to be Resolved	18.92
	IX.		18.93
		1. Simple Reservation of Title	18.94
		2. Time of Reservation of Title	18.97
		3. Time of Reservation and Foreign Law	18.99
		4. Reservation of Title and Subsequent	10 100
		Situses	18.102
	1.1	5. Late Payment Directive	18.104
		6. Complex Reservation of Title	18.108

		Contents	XXXIX
		7. Complex Reservation and	
		Recharacterization	18.110
	Χ.	Conditional Sales	18.112
		1. Failure to Register	18.113
		2. Registration of Conditional Sales and	
		Priority Issues	18.118
	XI.	The Incidental Question	18.119
		The Insolvency Regulation	18.122
	7	1. Conduct of Insolvency Proceedings	18.123
		2. A Substantive Choice of Law Rule	18.124
37	XIII	The Cape Town Convention	18.126
		1. Application of Convention	18.128
		2. The Convention and the Law of the <i>Situs</i>	18.129
		3. Sale of Equipment	18.131
		T) · 1	18.132
	AIV.		10.102
Chapter		TITUTION AND THE INTERNATIONAL SALE OF	
		DS: CHOICE OF LAW	
17.35		Synopsis	19.01
19.37		Restitution and Sale of Goods Contracts	19.03
TE D		Classification	19.04
14.01		The Choice of Law Rule for Restitutionary	
CLOF		Claims: General Rule; Dicey and Morris;	
81 B1		Rule 200(1)	19.07
	V	Application of the Restitution Choice of Law	17.01
05.01	V •	Rule to Specific Claims Arising in Connection	
		with a Sale of Goods Contract	19.10
		1. Dicey and Morris; Rule 200(2)(A)	19.10
		2. Evaluation	19.11
			19.13
82.01		 Limited Exception Scope of Rule 200(2)(A) 	19.14
		5. How is the Governing Law of the 'Contract'	1,223,23
			19.15
19,62		Determined? Contract Instalidated by a Larry other than	19.10
19.64		6. Contract Invalidated by a Law other than	10 16
	X 7 T		19.16
19.69		Justification for Use of the Law Governing the	10 17
14.69		Contract	19.17
19 74		1. General Remarks	19.17
		2. Logistical Objections—the Independence	10.00
		of the Choice of Law Clause	19.20
		The Objection that the Choice of Law	1000
		Clause Fails if the Contract Itself Fails	19.20

1.1 -11

311.81

1-361

VY E

1 - 1-

111 61

Tit.

2 1 1-1

	Objection not Present in all Cases	19.21
	Contract is Rescinded Ab Initio	19.22
	The Problem of Void Contracts	19.23
	Surmounting the Logical Objection: Can	
	the Choice of Law Clause be Regarded	
	as Separate to the Contract Itself?	19.25
	The Governing Law of the Contract	17.20
	should Determine if a Choice of Law	
	Clause Survives the Contract's	
	Invalidity	19.30
	Conclusion	19.31
	igmatism—Predictability and Uniformity	19.32
	The Pragmatic Argument	19.32
	Cases where the Pragmatic Justification	17.02
	does not Exist	19.33
		19.34
	The Vienna Convention	17.04
1 1	cation of the Choice of Law Rules in	
	actor to I artical about I interest and	10.25
	national Sale of Goods	19.35
,	ne Aftermath of) Void Contracts	19.35
	stitution for Wrongdoing	19.37
	Breach of Contract	19.37
	Tortious Wrongdoing	19.40
	scharge by Frustration	19.42
4. Dis	scharge by Acceptance of Repudiation	19.48
	stake	19.49
6. Ille	gality	19.50
	ress	19.53
	e Aftermath of Rescission for	
	srepresentation	19.57
I	Personal Claims for Restitutionary	
	Damages	19.58
Author D' Sand I	Rescission of the Transfer Itself	19.60
9. Ov	erpayments of Money	19.62
10. Ov	ersupply by the Seller	19.64
11. De	livery or Payment to the Wrong Person	19.67
VIII. Claim	s Asserting a Proprietary Interest	19.69
1. Pro	prietary Interests in Goods or Payments	19.69
2. Int	erests under a Trust	19.74
With the Control of	General Principles	19.74
. A	Application of the Hague Trusts	
	Convention	19.76
do I Moeti to	The Trust in Operation: Retention of Title	
	Clauses and the Proceeds of Sale	19.81

		Contents	xli
		3. Tracing	19.88
		General Remarks	19.88
		Tracing and the Hague Trusts Convention	19.90
77 1177		Tracing where the Hague Trusts	17.70
		Convention does not Apply	19.96
	TV	4. Proprietary Defences to Restitutionary Claim	S 17.77
		The Proposed European Regulation on Choice	1
	MINI STEE	of Law for Non-Contractual Obligations (the	10.00
	3.7	'Rome II' Regulation)	19.98
	Χ.	Conclusion	19.101
	PER L	alverte de sur engliste en	
3.1			
		ta maintennal- elogona tra terribalia.	
Chapte	r 20 Con	CURRENT CLAIMS: CHOICE OF LAW	
HA DE	I.	Introduction	20.01
20.52	II.	Multiple Claims which Might Arise from a	
		Sales Contract	20.03
973 37		1. Distinct Causes of Action	20.03
		2. Related but Separate Claims	20.04
		3. Alternative, Mutually Exclusive Claims	
		Arising from the Same Facts	20.05
12 00		4. Consecutive Claims	20.06
		5. Parallel Claims Arising from a Single Act	20.07
		6. Parallel Claims Arising Solely by Virtue of	20.07
		Different Private International Law Classifications of a Single Demostic Course of	
		Classifications of a Single Domestic Cause of	
80, 11	TTT	Action	20.12
411.	111.	Concurrent Claims: Examples from Different	20 1 1
		Branches of Law	20.14
	To the same	1. Concurrent Claims in Contract and Tort	20.14
111		2. Concurrent Claims in Contract and	0015
		Restitution	20.15
		3. Concurrent Claims in Contract and in	
		Property or Trusts	20.16
		4. Concurrent Claims in Property and Tort	20.17
		5. Concurrent Claims in Tort and Restitution	20.18
TILL	IV.	Are the Obligations of a Party to the Sales	
		Contract Contractual? If so, does the	
		Contractual Claim Extinguish the Non-	
		Contractual Claim?	20.19
	V.	Effect of a Choice of Law Clause Where	
		Concurrent Actions are Brought	20.21
		1. Application of Choice of Law Clauses to	
		Non-Contractual Claims	20.21
		- IVAR - VARVAVAVAVAVA VAVALALA	

		2. Tort		TITTE A *	20.22
		3. Resti	tution	157-0023	20.27
	VI.	Possible	Approaches to	Parallel Claims	20.28
			ptions		20.28
			ally Exclusive		20.29
			2	nitted to Choose	but to
	HOW THE	Pursi	ie One Cause o	f Action Only	20.35
				irsue Contractual	l Claim 20.37
250 101		5. Force	Claimant to Pu	ırsue Non-	
		Cont	ractual Claim	ERWING TO THE TAXABLE TO THE PARTY OF THE PA	20.41
		6. Perm	it Claimant to I	Pursue Multiple (Causes
		of Ac	tion		20.45
		7. A Co	herent Approac	h—Rejection of A	All of
				n Favour of a Mo	
11111		Flexil	ole Solution	many burn	20.48
	VII.	Conclus	ions on Paralle	Claims	20.52
	VIII.	Contrac	tual Clauses Pu	rporting to Exclu	ide or
		Limit a	Party's Liability	in Tort	20.53
		1. A Co	nerent Solution		20.53
	no the	2. Cont	actual Exclusion	n of Liability in	
		Negli	gence and the I	Jnfair Contract T	erms
73(3.1)5			977		20.54
125			The State State		
	liv mint		Del Militario - Th	J 2 PHILLE 1 30	
Chapter			COMMERCE: CHO		
			ction		21.01
			tronic Comme		21.08
				J Ingrury.	
E F III				ned in the Direct	
				e Country of Orig	_
			iple		21.10
			rm Laws		21.11
		4. The N	Jeaning of 'Esta	ablished	21.14
			Country of Orig		21.15
			Choice of Law R		21.15
			United Kingd		
			Regulations		21.17
				Field'	21.19
				cts and the Count	9
			Origin Rule		21.20
	(ective on the Part	
				he Governing La	
		Conti	act		21.22
				TARREST STATE OF THE STATE OF T	

	Contents	xliii
	Effect upon the Country of Origin	
0.19	Principle	21.22
G 10	Effect upon the Uniform Law	
	Provisions	21.24
	7. The Application of the E-Commerce	
	Directive where the Law Applicable to a	
	Contract is Determined in the Absence of	
	Choice Choice	21.26
	Nature of the Problem	21.26
219	Does the Country of Origin Rule Still	
	Apply?	21.28
	Do the Uniform Rules of the Directive	
	Still Apply?	21.30
	8. Conclusion	21.32
	III. Choice of Law in Contract	21.35
BIE	1. Introduction; the Dominance of the Law	
	Expressly Chosen by the Parties	21.35
	2. Consent to Choice of Law Clause: Clause too	
CIT.	Small, not Visible on Screen, etc.	21.36
	3. Choice of a Law with No Objective	
	Connection to the Contract: Article 3(3)	21.40
	4. Implied Choice of Law	21.46
	Article 4(2)	21.49
	General Principle	21.49
	The Attraction of Article 4(2) and the	
	Possibility of Rebutting the	
	Presumption that the Law of the Place	
	where the Characteristic Performer has	
	its Central Administration will Apply:	
	Article 4(5)	21.54
11.11	The Strength of the Presumption in	
	Article 4(2)—Relevance of the Habitual	
	Residence or Place of Business of the	
	Parties	21.55
TIE	The Exception in Article 4(5)	21.58
	The Exception in Article 4(5): which Law	
	Determines where a Sales Contract	
	Involving Electronic Commerce was	
CLIT	Concluded and to be Performed?	21.59
	Assessing the Relevance of Certain	
	Connecting Factors for the Purposes	
51	of Article 4(5)	21.64

	Conclusion on the Applicable Law in the	
Sal E	Absence of Choice	21.90
	6. Performance and Remedies	21.91
	Article 10(1)(c) of the Rome Convention	
	and the E-Commerce Regulations:	
	Rescission for Lack of Opportunity to	
	Correct Input Errors	21.91
	Article 10(2)—Relevance of 'Manner of	
5 [5	Performance' and the Law of the Place	
	of Performance	21.93
	7. Formalities for the Conclusion of a Contract	
	by Electronic Means	21.97
115	Introduction	21.97
	Article 9 of the Rome Convention:	
F 15	where is the Place of Conclusion	
	of a Contract?	21.98
	The Brussels I Regulation Contrasted: a	
	Special Provision on E-Commerce and	
E. 15	Choice of Court Clauses	21.102
	The Content of a State's Formality Rules	
P FC	on E-Commerce	21.103
	EC Directive on a Community	
	Framework for Electronic Signatures	21.104
1-15	The E-Commerce Directive: the	
1-1-	Conclusion of Contracts by Electronic	
	Means	21.105
	The E-Commerce Directive: Permission	
	to Pursue Activities as an Information	
	Service Provider	21.108
	Conclusion	21.109
21.5	8. Mandatory Rules and Public Policy	21.110
	E-Commerce Directive	21.110
	Where the E-Commerce Directive is	
	Inapplicable	21.112
	The Unfair Contract Terms Act 1977	21.113
6.15	9. Capacity	21.119
	IV. Choice of Law in Tort	21.120
	1. Introduction	21.120
	2. A Special Set of Rules for E-Commerce	
	Torts?	21.121
	3. The Place of the Tort: Place of	
	Acting, Place of Damage, or Some	
	Other State?	21.124

Contents	xlv
COILLCILLO	\(\tau \)

	4. A Case Study: Dow Jones & Company Inc v	
	Gutnick	21.125
202.15	The Decision	21.125
MICH E	What can We Learn from Dow for Other	
MI F	Torts?	21.131
	5. The Governing Law—is there a Need for a	
500	Separate Approach for Each Tort?	21.133
OCE IE	6. Section 11(1)—the Applicable Law of the	1
DECT	Tort where All the Elements of the Events	
*	Occur in a Single State	21.135
115.	7. Section 11(2)—The Applicable Law of the	
	Tort where Elements of the Events Occur	
11515	in More than One State	21.138
	Personal Injury	21.138
3 [1]	Damage to Property	21.139
015.10	Economic Loss	21.146
	8. Ascertainment of the Applicable Law of	
VICIO	the Tort for the Purposes of s 11(2)(c)	21.150
	Law of the Forum	21.150
81515		21.151
USZ 115	The Place where the Service Provider is	
	Located when it Uploads the	
	Information	21.155
23.32	The Place where the Recipient is when	
P.C.C. 15	he Downloads the Information	21.157
022.15	The Place where the Service Provider	
	is Established or Habitually	
	Resident	21.163
21 232	The Place where the Recipient is	
881.13	Established or Habitually Resident	21.166
485.IS	Conclusion: A Preference for the Law of	
08818	the Place where the Recipient is when	
	he Downloads the Information as the	
	Most Significant Element of the Events	
	Constituting the Tort	21.172
	9. Specific Torts	21.175
21.241	Negligent Misstatement, Negligent and	
	Fraudulent Misrepresentation	21.175
71515	Conversion	21.183
845.15	Failure to Sell	21.191
125.15	Inducement of Breach of Contract	21.193
1800	Negligence	21.198
1635.15	10. Mandatory Rules and Public Policy	21.201

	11. The Proposed European Regulation on	
	Choice of Law for Non-Contractual	
5115	Obligations (the 'Rome II' Regulation)	21.203
	Proposed Choice of Law Rule	21.203
	Exceptions	21.206
	A Right to Choose the Governing Law	
	of a Tort	21.208
	Mandatory Rules and Public Policy	21.209
	Conclusion	21.210
	V. Inter Vivos Property Transfers of Digitized	
	Products	21.211
	1. The Difficulty of Determining where	
F1.18	Digitized Products are Located	21.211
	2. The Situs of Digitized Products: the	
	Possibilities	21.216
	General Remarks	21.216
	Habitual Residence or Principal Place	
	of Business of the Recipient	21.217
21.15	Habitual Residence or Principal Place	
	of Business of the Service Provider	21.218
	The Place of Downloading	21.220
	The Place where the Service Provider	
31.15	is Located when it Uploads the	
	Information	21.222
711	The Place of Uploading	21.224
	The Law of Closest Connection	21.229
	3. Preferred Solution: A General Rule in	
0115	Favour of the Place of Uploading Coupled	
	with an Exception	21.232
	A.	21.238
	VI. Restitution	21.239
	1. Personal Claims	21.239
	Cases where it may be Necessary to	
	Determine the Place of Enrichment	21.239
The state of	Payment of Money: the Provision of	
	Credit or Debit Card Details by	
	Electronic Means	21.241
El E	Transfer of Digitized Products	21.246
	Conclusion	21.247
HILL	2. Proprietary Restitution	21.248
	VII. Evaluation and Options for Reform	21.251
	1. Options for Reform	21.251
	2. Leaving Reform to the Courts	21.254

	Contents	xlvii
	General Comment	21.254
	No Real Case for any Reform of Choice	
	of Law in Contract Rules	21.255
	Clarification by the Courts of the	
	Applicable Law in the Case of	
	E-Commerce Torts and the Situs of	
	Digitized Products	21.257
	3. Legislative Reform: Limited Provisions for	
	E-Commerce Cases within a General	
	Legislative Framework	21.258
	Clarification by Legislative Provision	
	of the Applicable Law in the Case of	
	E-Commerce Torts	21.258
	Harmonization of Choice of Law Rules	21.264
	4. Legislative Reform: Specific Legislation for	
	E-Commerce	21.265
VIII	. Conclusion	21.268
Bibliography		1323
ndex		1337

.

--