## Contents

Table of Cas	es	xxiii
Table of Cas	es in the Court of Justice of the European Union	xxix
	islative Instruments	xxxiii
, 0	aties and Conventions	xxxix
	ns and Special Terminology	xlvii
210010000000	The with Opecant Ici minorogy	7
PART I	Introduction	
Chapter 1	Introduction	3
§ 1.	General Characteristics of Choice-of-Court Agreements	1.03
	§ 1.1 Agreement	1.05
	§ 1.2 Litigation	1.06
	§ 1.3 Parties	1.07
	§ 1.4 Content	1.08
§2.	Choice-of-Court Agreements in English Law	1.10
	§ 2.1 The Fehmarn	1.11
	§ 2.2 Carvalho v. Hull Blyth Ltd	1.18
	§ 2.3 The Hollandia (The Morviken)	1.20
§3.	The US Approach	1.23
	§ 3.1 The Bremen	1.23
	§ 3.2 Carnival Cruise Lines v. Shute	1.25
	§ 3.3 The Sky Reefer	1.26
	§ 3.4 Conclusions	1.28
§ 4.	The European Union	1.29
	§ 4.1 The Brussels Convention	1.29
	§ 4.2 The Brussels Regulation 2000	1.32
	§ 4.3 The Brussels Regulation 2012	1.33
	§ 4.4 Continuity of the Law	1.34
§5.	The Lugano Convention	1.35
	§ 5.1 The Original Lugano Convention (1988)	1.35
	§ 5.2 The New Lugano Convention (2007)	1.37
§ 6.	The Hague Convention	1.45
	§ 6.1 Origins of the Convention	1.46
	§ 6.2 The Hague Conference on Private International Law	1.48
	§ 6.3 Decision-Making Procedure at the Conference	1.50
	§ 6.4 The Basic Principles of the Convention	1.55
	§ 6.5 The Status of the Report	1.57
	§ 6.6 The Status of the Hague Convention in the	
	European Union	1.58
§7.	The Role of the CJEU in Interpreting the Regulation	
	and Conventions	1.59

xii

§8.	When does the Common Law Apply?	1.70
	§ 8.1 The Chosen Court is in England	1.75
	§ 8.2 The Chosen Court is Not in England	1.85
	§ 8.3 Foreign Judgments	1.88
PART II	WHICH INSTRUMENT?	
Chapter 2	Territorial application	35
§ 1.	Parties	2.01
	§ 1.1 Brussels 2000 and 2012	2.02
	§ 1.1.1 Ireland and the United Kingdom	2.03
	§1.1.2 Denmark	2.06
	§1.2 Lugano	2.07
	§ 1.2.1 Present Parties	2.08
	§ 1.2.2 Future Parties	2.09
	§ 1.3 Hague	2.12
	§ 1.3.1 States	2.13
	§ 1.3.2 The European Union	2.19
	§ 1.3.3 Ireland, the United Kingdom, and Denmark	2.23
	§ 1.3.4 European Community and European Union	2.25
0.0	§ 1.3.5 Treaty-making powers of the European Union	2.26
82.	Territories with a Special Status	2.31
	§ 2.1 Brussels 2000 and 2012	2.32
	§ 2.2 The Brussels Convention	2.39
	§ 2.2.1 The Brussels Convention 1978 § 2.2.2 The Lugano Convention 1988	2.41
	§ 2.2.2 The Eugano Convention 1989	2.44
	§ 2.2.4 The Brussels Regulation	2.45
	§ 2.3 The Lugano Convention 2007	2.47
	§ 2.4 The Hague Convention	2.48
	§ 2.5 Conclusions	2.49
§3.	Federal Problems	2.50
	§ 3.1 Brussels 2000 and 2012	2.51
	§ 3.2 Lugano	2.52
	§ 3.3 Hague	2.53
§4.	Conclusions	2.62
Chapter 3	FROM WHAT DATE DO THE INSTRUMENTS APPLY?	56
§1.	Brussels 2000	3.02
	§ 1.1 The General Rule	3.04
	§ 1.2 Subparagraph (a)	3.08
	§ 1.3 Subparagraph (b)	3.12
	§ 1.4 The Wolf Naturprodukte Case	3.13
§ 2.	Brussels 2012	3.14
§3.	Lugano 2007	3.18
	§ 3.1 The General Rule	3.20
	§ 3.2 The Exceptions	3.21

			Contents	xiii
84.	Hagu	e		3.22
5			the Convention Comes into Force	
			ationally	3.23
	§ 4.2	When t	the Convention Comes into Force for	
		a Giver		3.25
	§ 4.3		the Convention Applies to a Particular Contract	
		or Part	icular Proceedings	3.26
Chapter 4	Subje	CT-MA	TTER SCOPE	66
§ 1.	Struct	ture of th	ne Texts	4.02
			nmercial Matters	4.03
	§ 2.1	The Ge	neral Concept	4.04
	§ 2.2	Powers	s and Obligations	4.10
		§ 2.2.1	Nature of the claim	4.11
		§ 2.2.2	Governmental powers	4.12
		§ 2.2.3	Public obligations	4.18
§3.	Matte	ers Speci	fically Excluded	4.28
	§ 3.1	Brusse	ls 2000	4.30
	§ 3.2	Brusse	ls 2012	4.31
	§ 3.3	Lugano	$\mathbf{c}$	4.32
	§ 3.4	Hague		4.33
	§ 3.5	Analys	sis: Matters Excluded from All Four	
		Instrur	nents	4.34
		§ 3.5.1	The status or legal capacity of natural	
			persons	4.35
**		§ 3.5.2	Rights in property arising out of a	
			matrimonial relationship	4.36
		§ 3.5.3	Wills and succession	4.37
		§ 3.5.4	Bankruptcy	4.38
		§ 3.5.5	Social security	4.41
		§ 3.5.6	Arbitration	4.42
	0	Mainte		4.47
	§ 3.7		s Excluded from the Hague Convention	4.48
		•	Consumer contracts	4.49
		§ 3.7.2	Contracts of employment, including	4 = 0
			collective agreements	4.50
		7	Carriage of persons and goods	4.51
		_	Maritime matters	4.52
		-	Competition (antitrust) matters	4.53
			Liability for nuclear damage	4.55
		_	Personal injury	4.56
		-	Damage to property	4.57
		83.7.9	Immovable property and other matters	4 50
0.4	D 1	•	subject to exclusive jurisdiction	4.58
§ 4.			under the Hague Convention	4.59
§5.	Preliminary Questions			4.62

xiv

Chapter 5	International Scope	89
§ 1.	Location of the Chosen Court	5.02
	§ 1.1 Brussels and Lugano	5.03
	§ 1.1.1 Jurisdiction under Brussels or Lugano	5.04
	§ 1.1.2 Jurisdiction only under national law	5.22
	§ 1.2 The Hague Convention	5.23
§ 2.		5.24
	§ 2.1 Brussels 2000 and Lugano	5.25
	§ 2.1.1 Jurisdiction-conferring effects	5.26
	§ 2.1.2 Jurisdiction-depriving effects	5.30
	§ 2.2 Brussels 2012	5.32
	§ 2.3 Hague	5.34
§3.	Wholly Domestic Situation	5.35
	§ 3.1 Hague	5.37
	§ 3.1.1 Duty to decline jurisdiction	5.38
	§ 3.1.2 Duty to recognize a judgment	5.39
	§ 3.2 The Regulation and the Lugano Convention	5.41
	§ 3.2.1 What constitutes an international element?	5.43
	§ 3.2.2 Consequences if there is no international	
	element	5.44
§4.	Conclusions	5.47
Chapter 6	Conflict of Instruments	105
§ 1.	Brussels or Lugano?	6.03
	§ 1.1 Jurisdiction	6.06
	§ 1.1.1 Chosen court in an EFTA-Lugano State	6.06
	§ 1.1.2 Chosen court in an EU State	6.07
	§ 1.2 Recognition of Judgments	6.10
§2.	Hague or Lugano?	6.16
	§ 2.1 Interpretation	6.25
	§ 2.2 First "Give-Way" Rule	6.26
	§ 2.2.1 Resident in more than one State	6.27
	§ 2.2.2 Rationale of the rule	6.28
	§ 2.2.3 Parties	6.30
	§ 2.2.4 Illustrations	6.31
	§ 2.2.5 First example	6.32
	§ 2.2.6 Second example	6.33
	§ 2.3 Second "Give-Way" Rule	6.34
	§ 2.3.1 Example	6.38
	§ 2.3.2 Prior treaties	6.39
	§ 2.3.3 Future Parties to the Lugano Convention	6.40
	§ 2.4 Third "Give-Way" Rule	6.41
	§ 2.5 Fourth "Give-Way" Rule	6.44
	§ 2.6 Conclusions	6.47
§3.	Hague or Brussels?	6.48
	§ 3.1 First EU "Give-Way" Rule	6.51
	§ 3.1.1 Resident in more than one State	6.52

	Contents	XV
	§ 3.1.2 Parties	6.53
	§ 3.1.2 Illustrations	6.54
	§ 3.1.4 First example	6.55
	§ 3.1.5 Second example	6.56
	§ 3.2 Second EU "Give-Way" Rule	6.57
	§ 3.2.1 First example	6.61
	§ 3.2.2 Second example	6.62
84	Conclusions	6.63
3	Concrusions	
PART III	VALIDITY AND EFFECT	
Chapter 7	VALIDITY OF CHOICE-OF-COURT AGREEMENTS	129
	Which Law Decides?	7.02
51.	§ 1.1 Brussels	7.03
	§ 1.1.1 Form	7.06
	§ 1.2 Lugano	7.09
	§ 1.2 Hague	7.10
	§ 1.3.1 Form	7.11
	§ 1.3.2 Consent	7.12
§ 2.	Which Court Decides?	7.13
3	§ 2.1 Brussels	7.17
	§ 2.1.1 The court specified in the choice-of-court	
	agreement	7.17
	§ 2.1.2 A court not specified in the choice-of-court	
	agreement	7.22
	§ 2.2 Lugano	7.27
	§ 2.3 Hague	7.28
§3.	Kinds of Agreement Permitted	7.29
	§ 3.1 Brussels	7.30
	§ 3.1.1 Exclusive or non-exclusive?	7.31
	§ 3.1.2 Courts	7.32
	§ 3.1.3 Asymmetric choice-of-court agreements	7.34
	§ 3.1.4 Courts indirectly specified	7.35
	§ 3.1.5 What disputes can be covered?	7.36
	§ 3.2 Lugano	7.38
	§3.3 Hague	7.39
	§ 3.3.1 Exclusive or non-exclusive?	7.40
	§3.3.2 Courts	7.41
	§ 3.3.3 Asymmetric choice-of-court agreements	7.42
	§ 3.3.4 Courts indirectly specified	7.43
	§ 3.3.5 What disputes can be covered?	7.44
§4.	Formal Validity and Consent	7.45
	§ 4.1 Brussels	7.46
	§ 4.1.1 Formal requirements: what the texts say	7.47
	§ 4.1.2 Written form and consent	7.49
	§ 4.1.3 Evidenced in writing	7.56
	§ 4.1.4 Tacit renewal	7.58

		§ 4.1.5	Third parties	7.60
		_	Choice-of-court clause in the constitution	
			of a company	7.69
		§ 4.1.7	Subparagraph (c): international trade	
			or commerce	7.73
		§ 4.1.8	Jurisdictional effect of a	
			place-of-performance clause	7.92
		§ 4.1.9	Electronic communications	7.94
	§ 4.2	Lugano		7.95
	§ 4.3	Hague		7.96
§5.	Subst	antive Va	alidity	7.104
	§ 5.1	Brussel	S	7.105
		§ 5.1.1	Renvoi	7.107
	§ 5.2	Lugano		7.113
	§ 5.3	Hague		7.114
		§5.3.1	Renvoi	7.116
		§5.3.2	Capacity	7.119
		§ 5.3.3	Validity on other grounds	7.121
§ 6.	Foreig	gn Judgn	nent on the Validity of a Choice-of-Court	
	Agree	ement		7.122
Chapter 8	EFFEC	TS OF CE	HOICE-OF-COURT AGREEMENTS	172
§ 1.	Dispu	ites Cove	ered	8.02
5	-		s and Lugano	8.03
		Hague		8.09
S 2.	-	es Covere	ed	8.10
			ntial (Asymmetric) Effects	8.13
<b>§3.</b>	-		Court Chosen	8.14
			s 2000 and Lugano	8.15
	_	Brussel		8.17
		Hague		8.18
	U		Multi-unit States	8.19
		_	Subject-matter jurisdiction	8.29
			Internal procedural rules	8.31
84.	Dutie		er Courts	8.32
			s and Lugano	8.33
		Hague		8.35
		O	Null and void under the law of the State	
***		•	of the chosen court	8.37
		\$4.2.2	Capacity	8.38
		_	Manifest injustice or manifestly contrary	
		_	to public policy	8.39
			Agreement cannot be performed	8.41
			Chosen court has decided not to hear the case	8.42
		•	If one of the exceptions applies	8.43
	§ 4.3		ng a Choice-of-Court Agreement: Submission	8.44

	Contents	xvii
§ 5.	§ 4.3.1 Brussels and Lugano § 4.3.2 Hague Judgments Contrary to a Choice-of-Court Agreement	8.45 8.46 8.47
Chapter 9	RECOGNITION AND ENFORCEMENT OF JUDGMENTS	188
§ 1.	Brussels and Lugano § 1.1 Jurisdiction of the Court of Origin § 1.1.1 Insurance, consumers, and	9.04. 9.07
	employment	9.08
	§ 1.1.2 Exclusive jurisdiction	9.10
	§ 1.2 Other Grounds for Non-Recognition	9.11
	§ 1.2.1 Public policy	9.12 9.15
	§ 1.2.2 Notification of the defendant § 1.2.3 Conflicting judgments	9.13
§ 2.	Hague S 1.2.5 Comments judgments	9.23
82.	§ 2.1 General Requirements for Recognition and	7.20
	Enforcement	9.25
	§ 2.1.1 The time when the judgment must be	7.20
	recognized	9.30
	§ 2.1.2 Findings of fact	9.31
	§ 2.2 Refusal of Recognition or Enforcement	9.33
	§ 2.2.1 Substantive validity	9.34
	§ 2.2.2 Capacity	9.35
	§ 2.2.3 Notification	9.36
	§ 2.2.4 Fraud	9.43
	§ 2.2.5 Public policy	9.44
	§ 2.2.6 Conflicting judgments	9.45
	§ 2.3 Preliminary Questions	9.47
	§ 2.4 Damages	9.51
	§ 2.5 Judicial Settlements	9.59
	§ 2.6 Severability	9.61
	§ 2.7 Procedure	9.62
Chapter 10	Remedies	208
§ 1.	Antisuit Injunctions	10.03
5	§ 1.1 Arguments Against Antisuit Injunctions § 1.2 Why Antisuit Injunctions are Sometimes	10.04
	Necessary	10.18
	§ 1.3 Antisuit Injunctions in the European Union	10.20
	§ 1.4 Hague	10.29
§ 2.	Damages	10.31
	§ 2.1 Brussels and Lugano	10.32
	§ 2.1.1 The foreign court declares that it has	
	no jurisdiction	10.33
	§ 2.1.2 The foreign court assumes jurisdiction	
	but holds for the defendant	10.39

xviii

	§ 2.1.3 The foreign court assumes jurisdiction	
	and gives judgment for the claimant	10.40
	§ 2.1.4 Conclusions	10.42
	§ 2.2 Hague	10.43
§3.	Interim Measures	10.44
	§ 3.1 Brussels and Lugano	10.45
	§3.2 Hague	10.47
Chapter 11	Concurrent Proceedings	223
§ 1.	Brussels 2000	11.02
	§ 1.1 Both Courts in Member States	11.03
	§ 1.2 Non-Designated Court Outside the European	
	Union	11.11
§ 2.	Brussels 2012	11.12
	§ 2.1 Both Courts in Member States	11.12
	§ 2.2 Non-Designated Court Outside the European	
	Union	11.22
§3.	Lugano	11.23
§ 4.	Hague	11.25
	§ 4.1 Both Courts in Hague States	11.26
	§ 4.2 Non-Designated Court in a Non-Hague	
	State	11.31
TO TET		
	SPECIAL TOPICS	
Chapter 12	Insurance	237
§ 1.	Brussels and Lugano	12.03
	§ 1.1 Complete Code	12.04
	§ 1.2 Special Jurisdictional Rules	12.08
	§ 1.3 Choice-of-Court Agreements	12.10
	§ 1.4 Contracts to Which Choice-of-Court	
	Agreements May Apply	12.12
	§ 1.4.1 Large risks	12.13
	§ 1.5 Domicile Outside the EU/Lugano Area	12.15
	§ 1.5.1 Branch, agency, or other	
	establishment	12.16
	§ 1.5.2 Insurer domiciled outside the EU/	
	Lugano area	12.18
	§ 1.5.3 Policyholder domiciled outside the	
	EU/Lugano area	12.23
§ 2.	Hague	12.28
Chapter 13	CONSUMER CONTRACTS UNDER BRUSSELS AND LUGANO	249
	Policy and Structure of the Provisions	13.04
§1. §2.	Definition of "Consumer"	13.04
3 4.		13.11
	§ 2.1 Autonomous Interpretation	13.13
	§ 2.2 The Supplier	10.14

	Contents	xix
	§ 2.3 The Claimant	13.17
	§ 2.4 Future Professional	13.18
	§ 2.5 Partly for Private Use	13.19
	§ 2.6 A Natural Person	13.20
§3.	Transactions Covered	13.21
	§ 3.1 Structure of the Text	13.22
	§ 3.2 Sale of Goods on Instalment Credit Terms	13.26
	§ 3.3 Credit to Finance the Sale of Goods	13.27
	§ 3.4 Subparagraph (c)	13.28
	§ 3.4.1 Structure	13.29
	§ 3.4.2 Independent interpretation	13.32
	§ 3.4.3 Pursuing activities	13.33
	§ 3.4.4 Directing activities	13.35
	§ 3.4.5 Examples	13.45
§4.	Exceptions	13.46
	§ 4.1 Insurance	13.47
	§ 4.2 Exclusive Jurisdiction	13.48
	§ 4.3 Contracts of Transport	13.49
	§ 4.4 Package Travel	13.50
§5.	Domicile Outside the EU/Lugano Area	13.54
	§ 5.1 Consumer Domiciled Outside the EU/Lugano	
	Area	13.55
	§ 5.1.1 Consumer is the defendant	13.56
	§ 5.1.2 Consumer is the claimant	13.57
	§ 5.2 Supplier Domiciled Outside the EU/	
	Lugano Area	13.58
	§ 5.2.1 Meaning of "branch, agency or other	
	establishment"	13.60
	§ 5.2.2 Dispute arising out of the operations	
	of the establishment	13.62
	§ 5.2.3 Other requirements	13.63
	§ 5.2.4 Consequences where the "establishment"	
	provision is applicable	13.65
	§ 5.2.5 "Establishment" provision not	40.44
	applicable	13.66
Chapter 14	INDIVIDUAL CONTRACTS OF EMPLOYMENT UNDER	
	Brussels and Lugano	273
0.1		
	Subject-Matter Scope	14.02
§ 2.	The Special Jurisdictional Rules	14.03
	§ 2.1 Employer Sued	14.04
	§ 2.2 Employee Sued	14.05
	§ 2.3 Counterclaims	14.06
	§ 2.4 Exceptions	14.07
	§ 2.4.1 Brussels 2000 and Lugano	14.08
	§ 2.4.2 Brussels 2012	14.09
§ 3.	Choice-of-Court Agreements	14.11

§4.	International Scope	14.14
	§ 4.1 Employer Sued	14.15
	§ 4.1.1 Brussels 2012	14.16
	§ 4.1.2 Brussels 2000 and Lugano	14.18
	§ 4.2 Employee Sued	14.23
	§ 4.3 Domicile of the Claimant	14.25
	§ 4.4 The Samengo-Turner Case	14.26
	§ 4.5 The Mahamdia Case	14.32
Chapter 15	Immovable property	287
§ 1.	Brussels and Lugano	15.02
	§ 1.1 Location of the Property	15.03
	§ 1.2 Rights in Rem in Immovable Property	15.05
	§ 1.3. Tenancies of Immovable Property	15.06
	§ 1.3.1 Exception concerning short tenancies	15.07
§ 2.	When Does Lugano Apply?	15.09
§ 3.	Hague	15.10
Chapter 16	Companies	292
§ 1.	Brussels and Lugano	16.02
	§ 1.1 Entities Covered	16.03
	§ 1.2 Determination of the Seat	16.04
	§ 1.2.1 Seat in two or more EU (or Lugano)	
	States	16.06
	§ 1.2.2 Courts in two or more EU (or Lugano)	
	States having exclusive jurisdiction	16.08
	§ 1.3 Seat Outside the EU or Lugano Area	16.10
	§ 1.4 Proceedings Covered	16.11
§ 2.	When Does Lugano Apply?	16.14
§ 3.	Hague	16.15
Chapter 17	Intellectual Property	298
§ 1.	Brussels and Lugano	17.02
3	§ 1.1 Rights Registered Outside the EU or Lugano	17.02
	Area	17.05
	§ 1.2 Proceedings Covered	17.06
§ 2.	When Does Lugano Apply?	17.12
§ 3.	Hague	17.13
30.	§ 3.1 Copyright and Related Rights	17.15
	§ 3.1.1 Related rights	17.16
	§ 3.2 Rights Other Than Copyright and Related Rights	17.17
	§ 3.2.1 Validity	17.18
	§ 3.2.1 Validity § 3.2.2 Infringement	17.10
	§ 3.2.2 The contractual exception	17.21
	§ 3.2.4 Recognition of judgments	17.24
§ 4.	The Instruments Compared	17.29
3 1.	THE THE MILLER CONTINUES	- 1 tom /

	Contents	xxi
Appendix 1	Choice-of-Court Provisions in the Brussels Convention, Brussels 2000, Brussels 2012, the Lugano Convention of 1988, and the Lugano Convention of 2007	313
Appendix 2	Text of Brussels 2012: Regulation (EU) No 1215/2012	319
Appendix 3	The Hague Convention of 30 June 2005 on Choice of Court Agreements (p. 363) and the Hartley/Dogauchi Report (p. 377)	363
Appendix 4	Report of the Special Commission Drawn Up by Peter Nygh and Fausto Pocar (August 2000) (Extracts)	468
Select Bibliogi	raphy	477
Index		479

W.

+