

Mandatory Rules and Other Party Autonomy Limitation

in International Contractual Obligations

(With Particular Reference to the Rome Convention, 1980)

Dr Seyed Nasrollah Ebrahimi

Assistant Professor of International Law



مجمع علمی و فرهنگی مجید

سرشناسه
عنوان و نام پدیدآور
عنوان و نام پدیدآور
Mandatory rules and other party :
autonomy limitation in international contractual obligations (with particular
reference of the Rome) by Nasrollah Ebrahimi.convention, 1980
مشخصات نشر
شاپک
وضعیت فهرست نویسی
یادداشت
آوانویسی عنوان
موضوع
رده بندی کنگره
رده بندی دیویی
شماره کتابشناسی ملی

تهران: مجد، ۱۳۸۹=۲۰۱۰ م.
۹۷۸-۶۰۰-۱۹۳-۰۰۷-۲ :
فیبا :
انگلیسی :
مندیتوری... :
حقوق بین الملل خصوصی :
K۷۳۵۰ / م۸۱۳۸۹ الف ۲ :
۳۴۰ / ۹۲ :
۲۱۴۲۱۹۴ :



گرامی داشت بیستین سال فعالیت «مجد»

Mandatory Rules and Other Party Autonomy Limitation Dr Seyed Nasrollah Ebrahimi

انتشارات مجد

چاپ اول: ۱۳۸۹ شمارهگان: ۵۰۰ نسخه

قیمت: ۱۲۰۰۰ تومان

حق چاپ محفوظ و منحصر به «مجد» است.

دفتر مرکزی:

میدان انقلاب، ابتدای خیابان اردیبهشت (منبری جاوید)، تقاطع شهدای ژاندارمری، پلاک ۵۹

تلفن و دورنگار: ۶۶۴۹۵۰۳۴ - ۶۶۴۰۹۴۲۲ - ۶۶۴۱۲۲۸۶

شاپک: ۹۷۸-۶۰۰-۱۹۳-۰۰۷-۲

ISBN: 978-600-193-007-2

شعبه فروردین: خیابان ۱۲ فروردین، مقابل تمریزات، پلاک ۲۸۳، طبقه دوم تلفن: ۶۶۴۹۰۹۹۸

شعبه اردیبهشت: خیابان اردیبهشت (منبری جاوید)، تقاطع شهدای ژاندارمری، پلاک ۵۷ تلفن: ۶۶۴۸۶۸۷۱

شعبه کریمخان: بلوار کریمخان، بعد از خردمند شمالی، پلاک ۴۳، واحد ۲ - تلفن: ۸۸۸۳۴۳۳۷

شعبه یزد: خیابان فرخی یزدی، مجتمع تجاری شقایق، طبقه هم کف - تلفن: ۶۲۶۸۶۷۰ - ۳۵۱

www.majdlaw.com

E-mail: mailmajd@yahoo.com

فصلنامه حقوقی مجد با ارائه مقالات اساتید میرز حقوق کشور بطور منظم منتشر می شود.

مقدمه نویسنده

اندیشمندان حقوقی دیدگاه‌های جدید راجع به اصل «آزادی قراردادی» پذیرفته‌اند که اصول حاکمیت اراده و آزادی قراردادی از محدودیت‌هایی نظیر دکترین نظم عمومی، اصل حسن نیت، قاعده ثقل نسبت به قانون، و قواعد آمره برخوردار هستند. امروزه اصولاً طرفین انعقاد و اجرای قراردادها و تعهدات بین‌المللی، با واژه‌هایی نظیر قواعد خود محدود کننده، نظم عمومی موضوعه، اوامر عمومی، مقررات با قدرت اعمال سریع و بلاواسطه، قانون حاکم قابل اعمال، مقررات مثبت مطلق، مقررات اجبار کننده، و کلیه قوانین و مقررات دستوری و الزام آور از قبیل قوانین حاکمیتی و حکومتی، حمایتی و صیانتی، مالی و مالیاتی، رقابتی و ضد انحصار، ارزی و پولی، صادراتی و وارداتی و غیره مواجه می‌باشند که خود نقش بسیار مهمی در اعمال محدودیت‌های حقوقی و قراردادی بر حاکمیت اراده افراد و اصل آزادی قراردادی داشته و کنترل‌های بسیاری بر اعمال حاکمیت گسترده فردگرای و منفعت‌گرایی را اعمال نموده است.

در دنیای بسیار پیچیده قراردادهای بین‌المللی، امروزه مفهوم قواعد آمره به عنوان یکی از مفاهیم کلیدی مطرح شده در حقوق بین‌الملل خصوصی و حقوق تجارت بین‌الملل می‌باشد که مقررات آن در نظام‌های حقوقی متعدد و همچنین در برخی از کنوانسیون‌های بین‌المللی منطقه‌ای در حال گسترش می‌باشد، امری که بالطبع تأثیر جدی در کاربرد مفاهیم سنتی حقوق بین‌الملل خصوصی و تجارت بین‌المللی به ویژه قواعد حل تعارض قوانین و صلاحیت‌های محاکم می‌گذارد. اگر چه مفهوم قواعد آمره در حوزه‌های حقوق بین‌الملل خصوصی و تجارت بین‌الملل را می‌توان نه تنها در حقوق کامن لا و حقوق نوشته (سیویل لا) یافت، بلکه چنین مفهومی در کنوانسیون‌های منطقه‌ای و بین‌المللی نیز به نحوی منعکس شده است، اما متأسفانه ابهامات جدی در مفهوم و ماهیت حقوقی آن، طبقه‌بندی و انواع آن، ویژگیها و قلمرو عملکرد آن، ضمانت اجرای آن، تبعات و آثار آن در قرارداد و قانون، وجود دارد. بعبارت دیگر، نظر به اینکه متأسفانه قواعد آمره دارای معیارهای توافقی شفافی نمی‌باشد که بتوان آن‌ها را بدرستی شناسایی نموده و به طور مشخص مقررات آن را طبقه‌بندی کرد، امروزه بحث از شناسایی مفاهیم، مصادیق، حدود و شغور و ویژگیهای قواعد آمره عمومی و قوانین و مقررات انتظامی در این خصوص و همچنین به طور خاص قواعد آمره حمایتی، در سالهای اخیر تبدیل به یکی از موضوعات بحثی و بحث برانگیز حقوق بین‌الملل خصوصی و تجارت بین‌الملل در اروپای قاره‌ای نوشته و جزیره‌ای کاس لا شده است.

نویسنده در این کتاب به بررسی و مطالعه جامع از مفهوم، عملکرد و نحوه اعمال قواعد آمره در قراردادهای بین‌المللی اقدام کرده و توانسته است نحوه ارتباط قواعد و مقررات آمره را با دیگر نهادهای محدود کننده اصل حاکمیت اراده به ویژه در پرتو کنوانسیون اروپایی رم راجع به قانون قابل اعمال بر تعهدات قراردادی مصوب سال ۱۹۸۰ میلادی را به درستی تبیین نماید.

دکتر ابراهیمی که از چهره‌های برجسته حقوقدانان بین‌المللی کشور که سالیان متمادی در حقوق بین‌الملل خصوصی، تجارت بین‌الملل و حقوق انرژی به ویژه نفت و گاز در دانشگاهها و بخش‌های اجرایی صنعت کشور مشغول تدریس و فعالیتهای صنعتی در عرصه حقوق و قراردادهای بین‌المللی می‌باشد، با تالیف این کتاب اشخاص حقیقی و حقوقی جامعه بین‌المللی را مورد خطاب خود قرار داده تا با دقت تمام، تعهدات قراردادی بین‌المللی خود را در قالب‌های حقوقی-قراردادی شناخته شده و قابل قبول و بر اساس دیدگاههای بین‌المللی پذیرفته شده تعریف و ایفا نمایند. وی در این کتاب به سوالات اساسی متعددی می‌پردازد که در انتخاب قانون حاکم بر تعهدات قراردادی بین‌المللی، قانون چه کشوری را بایستی اعمال نمود؟ بعبارت دیگر، تجار بین‌المللی در قراردادهای بین‌المللی می‌بایست کدامیک از قانون کشور محل انعقاد، قانون کشور محل اجراء، قانون کشور محل انجام تعهد شاخص، قانون کشور نزدیکترین ارتباط، قانون کشور

دارنده قواعد آمره، و یا غیره را مدنظر خود قرار دهند؟ آیا اصولاً می‌شود با انتخاب قانون حاکم، قواعد آمره کشورهای را که بنحوی با قرارداد و تعهدات آن مرتبط می‌باشند مستثنی نمود؟ آیا معیار انتخابی در ماده ۷(۱) کنوانسیون رم که به عنوان «الاغ در سازه شناخته شده است قابل قبول است؟ آیا دکتترین نظم عمومی مندرج در ماده ۱۶ کنوانسیون رم که به عنوان «اسب چموش» از آن نام برده شده است جایی برای بازی در تعهدات قراردادی بین‌المللی دارد؟

برای ارائه پاسخ مناسب به سوالات فوق و دهها سوال دیگری که گریبانگیر اطراف قراردادهای و تعهدات بین‌المللی می‌باشد، نویسنده در این کتاب در طول مدت بیش از هشت سال تلاش‌های خستگی ناپذیر با مراجعه به بیش از هزار منبع اعم از کتاب و مقالات، به بررسی قوانین موضوعه، پرونده‌های محاکم، دکتترین‌های حقوقی در این خصوص پرداخته و توانسته است چهره کامل و شفاف از مقررات مندرج در کنوانسیون رم مصوب ۱۹۸۰ میلادی ارائه دهد.

این کتاب علاوه بر بررسی قواعد آمره عمومی و حمایت‌کننده مندرج در کنوانسیون رم، به بررسی کنوانسیون‌های متعدد منطقه‌ای و بین‌المللی نظیر کنوانسیون‌های لاهه راجع به قانون قابل اعمال بر بیع بین‌المللی کالا مصوب سالهای ۱۹۵۵ و ۱۹۸۶ و همچنین کنوانسیون مکزیکوسیتی مصوب ۱۹۹۴ میلادی پرداخته است.

از آنجایی که اشخاص حقیقی و حقوقی قادر نخواهند بود در انعقاد و اجرای تعهدات قراردادی بین‌المللی خود نسبت به موضوعات نظم عمومی، تقلب نسبت به قانون، انتخاب قانون حاکم، شرایط حاکم بر فرض فقدان انتخاب قانون حاکم، قواعد آمره و قوانین و مقررات الزام آور کشورهای بی تفاوت باشند، به نظر می‌رسد این کار اندیشمندانه و عالمانه می‌تواند راهنمای جامع و ارزشمندی برای کلیه کسانی باشد که به نحوی از انحاء با موضوعات حقوق بین‌الملل خصوصی، تعارض قوانین، حقوق تجارت و بازرگانی بین‌المللی، حقوق حمایت از مصرف‌کننده، حقوق حمایت از کارگران و مستخدمین، و دیگر حقوق آمره عمومی و خصوصی کشورها در ارتباط می‌باشند. بالاخره آنکه این کتاب تلاشی گسترده برای ارائه پاسخ گویا، مناسب، جامع و کاربردی برای بسیاری از سوالات و مجهولاتی است که امروزه گرد اختلاف و دعوی را بر دامن قراردادهای و تعهدات بین‌المللی اشخاص حقیقی و حقوقی می‌افشاند و قراردادهای بین‌المللی را با چالش‌های جدی در انعقاد و اجرا مواجه می‌سازد. امید است مطالب این کتاب علاوه بر روشنگری‌های آکادمیک و صنعتی خود بتواند در شکل‌گیری چهره جدید قراردادی بین‌المللی نقش اساسی و موثری ایفا کند.

در خاتمه، این کتاب دارای هفت فصل می‌باشد که نویسنده در فصل اول به اصل حاکمیت اراده و محدودیت آنها در حقوق بین‌الملل خصوصی می‌پردازد. فصل دوم کتاب مبحث مهم قانون قابل اعمال در فرض فقدان انتخاب قانون حاکم در قراردادهای بین‌المللی را بحث می‌کند. در فصل سوم، استثنای نظم عمومی و تعامل آن با قواعد آمره مورد بررسی قرار می‌گیرد. قاعده تقلب نسبت به قانون و تعامل آن با قواعد آمره موضوع بحث فصل چهارم می‌باشد. نویسنده در فصل پنجم به بررسی کلیات قواعد آمره در حقوق بین‌الملل خصوصی و تجارت بین‌الملل پرداخته و مفاهیم و اصول و قواعد حاکم در این خصوص را بررسی می‌کند. فصل ششم این کتاب قوانین و مقررات قواعد آمره در کنوانسیون رم سال ۱۹۸۰ میلادی را تحلیل می‌نماید. بالاخره آنکه فصل هفتم این کتاب قواعد آمره حمایت‌کننده از اقلیت ضعیف جامعه به ویژه مصرف‌کنندگان، کارگران و مستخدمان را بررسی کرده و دیدگاه‌های کنوانسیون رم سال ۱۹۸۰ در این خصوص را تبیین می‌کند.

دکتر ابراهیمی
پاییز سال ۱۳۸۹

This work is dedicated to my parents, to my wife,
Soghra Ahmadi, to whom I owe more than I can say,
and to my beloved children, Mohammad, Mehdi,
Mohsen and Meisam

Introduction

Dr SN Ebrahimi (LLB 1990, Iran; LLM 1994, UK; and Ph.D. 1998, UK), is the Associate Professor of International law at Research and Science Unit, Islamic Azad University, Tehran, lecturing private international law, general jurisprudence of law, international commercial arbitration, and international trade law. He is also the director of Legal & Contractual affairs of PEDEC, National Iranian Oil Company; the attorney of law in Iran; member of International Bar Association, UK (2004); associate member of Chartered Institute of Arbitrators, UK (2003); legal Advisor to Bureau of International and Legal Services (1992–1998), engaged in one of the leading case of Iran-US Tribunal Claims, the Hague (1992); member of the British Institution on International Law, UK (1997); member of the International Family Law Institution, Netherlands (1996); member of the Centre of International, Comparative and European Law (CICEL), Faculty of Law, the University of Sheffield, UK (1995).

He has published a textbook in Private International (Introduction, Nationality, Domicile, Status of aliens and Refugees, Extradition and Foreign Investment) law under Iranian law perspective and so many articles in international contractual obligations; private international law; international commercial arbitration; family law and child protection; Iran's oil and gas (buy-back contracts, contractual risk management and NIOC LNG shipping); insurance in developing oil and gas industry; product liability and consumer protection.

(s_n_ebrahimi@hotmail.com/snebrahimi@yahoo.com)

Abstract

Modern views of freedom of contract recognise that the principle of party autonomy has number of restrictions such as the doctrines of public policy [*ordre public*], of good faith [*bona fides*], evasion of law [*fraude à la loi*], and mandatory rules, with various interchangeable expressions such as self-limiting rules, legislative public policy, public order, rules of immediate application, directory binding rules, directory applicable law, strictly positive rules, compulsory rules, perceptive rules, imperative rules, minimum rules, overriding statutes, functionally restricting rules, special substantive rules for multistate problems, spatially conditioning localising limitations, *lois de police*, *lois d'application immédiate*, *lois d'application impérative*, *lois d'application nécessaire*, *lois d'application directe*.

Notwithstanding the concepts of public policy, good faith and evasion of law which have everlasting and debatable presence in the life of academicians and practitioners of both common and civil law systems, the concept of mandatory rules is regarded as one of the key concept in post-war private international law, existing in various legal systems and also in some regional and international conventions, and thus influencing the functioning of conflict of laws rules. It has become in recent years one of the most debated topics, particularly in continental private international law, with no agreed criteria which identify with any precision the rules which qualify for such categorisation.

Although the concept of mandatory rules can be found in both civil and common law systems of private international law, and also in some regional and international conventions, there are no acceptable criteria which identify with any precision the rules which qualify for such categorisation.

This attempt is a comprehensive study of the concept, function and application of mandatory rules in international contracts and their relationship with other institutions restricting a free choice of law and party autonomy, in the light particularly of the Rome Convention on the Law Applicable on Contractual Obligations, 1980.

Since the aim of the Rome Convention is to provide a special regime for consumer contracts and individual employment contracts, in order to ensure that the consumer and employee are well protected, and particularly, do not lose the benefit of protection simply by being a party to an international contracts, thus a comprehensive and conclusive study is also carried out in this book to deal with the mandatory protective rules.

The achievement of this detailed and scholarly work is to explain the conflicting/overlapping terminologies clearly, and use statutes, case law and

academic sources to clarify points of difficulty arising from the articles of the regional and international conventions, particularly the regional and international conventions on private international law particularly the Hague Conventions on the Law Applicable to [Contracts for] International Sale of Goods 1955 and 1986, the Mexico City Convention, 1994, and the Rome Convention, 1980, without of course losing sight of its stated function, namely to unify the business world rather than fragment it.

This book consists of seven chapters which deal in Chapter I with party autonomy and restrictions upon it in private international law; applicable law in the absence of choice in Chapter II; public policy/*ordre public* exception and mandatory rules in Chapter III; evasion of law/*fraude à la loi* and mandatory rules in Chapter IV; a general consideration of mandatory rules in private international law in Chapter V; provisions as to mandatory rules in the Rome Convention, in Chapter VI; mandatory protective rules under the Rome Convention in Chapter VII.

Preface

Academic life still has many delights. One of them is the way in which common interests lead to collaboration between people from different countries, backgrounds and cultures, and the way such collaboration leads to life-long friendships.

Dr Seyed Nasrollah Ebrahimi and I share an interest, an enthusiasm, for what he would call private international law'; as an old-fashioned common lawyer I still prefer 'the conflict of laws'. It was that which brought him to the University of Sheffield to carry out the work which earned him his doctorate. His energy and his keen awareness of the comparative dimension made a large impression, and led to some fruitful collaborative work alongside his own doctoral work.

Private international law is itself concerned with the crossing of national and cultural boundaries, yet there has been a tendency for national systems to tackle its complexities in relative isolation one from another. The English reluctance to learn foreign languages and a proper pride in the common law tradition has served to isolate its approach to private international law from that of its civil law neighbours in Europe. That isolation is breaking down, partly as a result of the development of the European Union, and the younger generation of English scholars have a much greater awareness of the profound theoretical work done by scholars from the civil law tradition.

It is a notable achievement for a scholar from Iran, whose first language is not that of writers in Europe or North America, to enter into these contemporary debates. It is a privilege to applaud and commend his work to a wider audience.

David McClean,
Sheffield, August 2004

Summary of Contents

Dedication	v
Introduction	vii
Abstract	ix
Preface	xi
Summary of Contents	xiii
Table of Contents	xv
Table of Cases	xxix
Table of Statutes	liii
Table of International Conventions	lix
General Introduction	63
I Party Autonomy and Restrictions upon it in Private International Law	67
II Applicable Law in the Absence of Choice	104
III Public Policy/ <i>Ordre Public</i> Exception and Mandatory Rules	145
IV Evasion of Law/ <i>Fraude à la Loi</i> and Mandatory Rules	220
V General Consideration of Mandatory Rules in Private International Law	246
VI Provisions as to Mandatory Rules in the Rome Convention, 1980	307
VII Mandatory Protective Rules under the Rome Convention, 1980	381
General Conclusion	439
Selected Bibliography	443

Table of Contents

Abstract	ix
Summary of Contents	xiii
Table of Contents	xv
Table of Cases	xxix
Table of Statutes	lii
Table of International Conventions	lix
General Introduction	63
Main Text	67

Contents

Chapter I: Party Autonomy and Restrictions upon it in Private International Law

Introduction	67
Section 1: Historical Overview	68
Section 2: Terminological and Theoretical Aspects of Party Autonomy	73
2.1 Party autonomy as a general principle of private international law	73
2.2 'Subjectivism' and 'objectivism'	73
2.3 'Proper law' and applicable law	75
2.4 'International' and 'internal' contracts	76
2.5 'Universalism' and 'particularism'	77
Section 3: Justifications For and Arguments Against Party Autonomy	79
3.1 Freedom of contract	79
3.2 Certainty in international transactions and commercial convenience	81
3.3 Predictability and fulfilment of expectations of parties	83
3.4 More favourable and suitable law	83
3.5 Uniformity	84
3.6 Suitable for growth of international trade	85
3.7 Benefit for developed countries	85
3.8 Choice of law of dominant State on market	85
3.9 Neutral law	85
3.10 Familiarity or similarity	85
Section 4: Party Autonomy and Conventions	86
4.1 Party autonomy: basic dominant rule of conventions	87

4.2	Express or implied choice of law	88
4.3	<i>Dépeçage</i> (dismemberment)	91
4.4	Posterior choice of law	93
Section 5: Restrictions on Party Autonomy		95
5.1	Background to the development of restrictions	96
5.1.1	<i>Inequality of bargaining power</i>	97
5.1.2	<i>Economic legislation</i>	98
5.1.3	<i>International standard codifications</i>	99
5.2	Restrictions in conventions	99
5.2.1	<i>Mandatory rules</i>	99
5.2.2	Public policy/ <i>ordre public</i>	100
5.2.3	Evasion of law/ <i>fraude à la loi</i>	100
Conclusion		100

Chapter II: Applicable Law in the Absence of Choice

Introduction	104
Section 1: Doctrine of 'Most Close Connection': Basic Principle of Article 4(1)	105
1.1 Article 4(1) of the Rome Convention	108
1.2 Supervening (post contract) events	109
1.3 <i>Dépeçage</i> (severability of contract)	110
1.4 'Law of country' rather than 'system of law'?	111
1.5 Critical evaluation of Article 4(1)	114
Section 2: Rebuttable Presumptions of 'Characteristic Performance' Test: an Undefined Innovation of Article 4(2)	115
2.1 Notion and function of undefined innovation of 'characteristic performance'	117
2.2 General presumptions	122
2.2.1 Habitual residence in case of natural persons (outside a trade or profession)	122
2.2.2 Law of place of central administration in case of bodies corporate or unincorporate	124
2.2.3 Two different applicable laws in case of party's trade or profession	125
2.2.3.1 <i>Law of principal place of business</i>	125
2.2.3.2 <i>Law of another place of business through which contract performed</i>	126
2.3 Special consideration in the sale of goods (buyer or seller?)	126
2.4 Critical evaluation of Article 4(2)	128
Section 3: Special Presumptions for Two Types of Contract	130
3.1 Immovable property	130
3.2 Contract of carriage	131

Section 4: Non-Applicability of Presumptions	132
4.1 Where 'characteristic performance' of a contract cannot be determined	133
4.2 Where contract is more closely connected with another country	134
4.3 Critical evaluation of Article 4(5)	135
Section 5: General Evaluation and Suggestions	137
5.1 Evaluation of Article 4	137
5.1.1 Advantages of the 'characteristic performance' presumption	137
5.1.2 'Objectivity' or 'subjectivity' of the test in the absence of choice?	138
5.1.3 Two opposite approaches	139
5.2 Suggestions	140
Conclusion	142

Chapter III: Public Policy/*Ordre Public* Exception and Mandatory Rules

Introduction	145
Section 1: Historical Overview of Notion of Public Policy/ <i>Ordre Public</i> Exception	147
1.1 Roman law	147
1.2 Continental law	148
1.3 Common law	148
1.3.1 English law	148
1.3.2 American law	150
1.4 Post-war private international law	151
Section 2: Terminological and Theoretical Aspects of Public Policy/ <i>Ordre Public</i>	153
2.1 Public policy/ <i>ordre public</i> as a 'general principle of law' in private international law	153
2.2 Public policy/ <i>ordre public</i> in various legal systems	154
2.3 Different approaches to notion of public policy/ <i>ordre public</i>	156
2.3.1 <i>Public policy/ordre public as an exception to choice of law rules</i>	156
2.3.2 <i>Public policy/ordre public as an alternative application of choice of law rules</i>	156
2.3.3 <i>Public policy/ordre public as a matter of international concept</i>	156
2.4 Definition or non-definition of public policy/ <i>ordre public</i> ?	157
2.4.1 Definitions of public policy/ <i>ordre public</i>	157
2.4.2 Non-definition of public policy/ <i>ordre public</i>	159
2.4.3 Identification via precedent illustrations	160
2.4.3.1 Contracts that involve trading with the enemy	161
2.4.3.2 Deliberate violation of foreign law, in particular a friendly foreign country's law	161
2.4.3.3 Champertous contracts	163

2.4.3.4	Contracts in restraint of trade	163
2.4.3.5	Cases against fundamental notions of justice and morality	163
2.4.3.6	Contract contrary to foreign legislation which is discriminatory or oppressive	164
2.4.3.7	Contract to deceive a third party	165
2.5	Public policy and <i>ordre public</i> : different connotation, or just interchangeable use?	165
Section 3:	The Dilemma of Positivity and/or Negativity of Regarding Public Policy/ <i>Ordre Public</i>	167
Section 4:	Grounds and Purposes of Application of Public Policy/ <i>Ordre Public</i>	170
4.1	Bases and grounds of application of public policy/ <i>ordre public</i>	170
4.1.1	Sovereignty of forum	170
4.1.2	Familiarity with national legal system	171
4.1.3	Political perspective	171
4.1.4	Implementation of justice	171
4.2	Purposes of application of public policy/ <i>ordre public</i>	171
4.2.1	Protection of national public interest	171
4.2.2	Protection of basic values of the forum state	172
4.2.3	Protection of justice and morality	172
4.2.4	Protection of its own international coherence	172
Section 5:	Public Policy/ <i>Ordre Public</i> and Comity	172
Section 6:	Problems of the Notion of Public Policy/ <i>Ordre Public</i>	175
6.1	No established criteria for public policy/ <i>ordre public</i>	176
6.2	Variety with lack of certainty based on individual opinion	176
6.3	Variety and relativity of public policy/ <i>ordre public</i> in space and time	177
6.3.1	Variety and relativity in space	177
6.3.2	Variety and relativity in time	177
6.4	Public policy/ <i>ordre public</i> as an obstacle to uniformity	178
6.5	Critical evaluation	179

Section 7: <i>Ordre Public Interne, Ordre Public International and Réal Ordre Public International</i>	179
7.1 <i>Ordre public interne</i>	180
7.2 <i>Ordre public international</i>	181
7.3 <i>Réal ordre public international (transnational public policy)</i>	184
Section 8: Relationship between Public Policy/ <i>Ordre Public</i> and Mandatory Rules	186
8.1 Types and purposes of rules	188
8.2 Distinction between mandatory rules and public policy/ <i>ordre public</i>	189
Section 9: Public Policy/ <i>Ordre Public</i> and Private International Law Conventions	194
9.1 Public policy/ <i>ordre public</i> and conventions	194
9.2 Public policy/ <i>ordre public</i> in Article 16 of the Rome Convention	196
9.2.1 Language of Article 16 of the Rome Convention	196
9.2.1.1 'The application of a rule of law'	197
9.2.1.2 'may be refused if only'	199
9.2.1.3 'manifestly incompatible'	199
9.2.1.4 Contrary to 'the public policy of the forum'	202
9.2.1.5 Adoption of both terms public policy and <i>ordre public</i>	203
9.2.2 Relationship between Article 7 and Article 16	204
9.2.2.1 What is the distinction between Article 16 and Article 7(2)?	204
9.2.2.2 Is it necessary to enact both Articles 7(2) and 16?	204
9.2.2.3 What is a proper solution in case of conflict between Article 16 and Article 7(1)?	205
9.2.3 Two main points in the application of Article 16	206
Section 10: Evaluation and Suggestions	206
Conclusion	214

Chapter IV: Evasion of Law/*Fraude à la Loi* and Mandatory Rules

Introduction	220
Section 1: Concept and Elements of Evasion of Law/ <i>Fraude à la Loi</i> in Private International Law	221
1.1 Historical background	221
1.2 Concept and nature of evasion of law/ <i>fraude à la loi</i> in private international law	222
1.3 Elements of evasion of law/ <i>fraude à la loi</i>	223
1.3.1 Voluntary utilisation of conflict of laws rules	223
1.3.2 Fraudulent intention to evade law	223
1.3.3 <i>Fraude</i> must be directed against law	224
Section 2: Evasion of Law/ <i>Fraude à la Loi</i> and Legal Systems	225
2.1 French law	226
2.2 English law	226
2.2.1 Party autonomy and law	226
2.2.2 Objectivity of law rather than subjectivity	227
2.2.3 Fidelity to the rule of law	227
2.2.4 Jurisdictional limits	227
2.2.5 Domicile as a connecting factor	227
2.2.6 Public policy/ <i>ordre public</i>	227
2.3 American law	229
2.3.1 Contract law	230
2.3.2 Corporate law	231
2.3.3 Carriage of goods by sea	231
2.3.4 Marriage law	231
2.3.5 Divorce law	231
Section 3: Evasion of Law/ <i>Fraude à la Loi</i> and Other Institutions	232
3.1 Evasion of law/ <i>fraude à la loi</i> and good faith/ <i>bona fides</i>	232
3.2 Evasion of law/ <i>fraude à la loi</i> and avoidance	235
3.3 Evasion of law/ <i>fraude à la loi</i> and public policy/ <i>ordre public</i>	236

Section 4: Policy behind and Justifications for Evasion of Law/ <i>Fraude à la Loi</i>	236
4.1 Legal system is harmed if it is evaded	236
4.2 Legal system has the right to defend its enactments and court orders	237
4.3 Evasion connotes the essence of moral guilt and unfairness	237
4.4 Legal systems have standards of justice of equal values	238
4.5 Evasion as a source of inequality among members of society	238
4.6 Doctrine of evasion of law/ <i>fraude à la loi</i> protects weaker parties	238
4.7 Doctrine of evasion of law/ <i>fraude à la loi</i> protects public or national interests of forum	238
Section 5: Evasion of Law/ <i>Fraude à la Loi</i> and Mandatory Rules	239
Section 6: Evasion of Law/ <i>Fraude à la Loi</i> and Codifications	240
Section 7: Evaluation and Suggestions	242
Conclusions	244

Chapter V: General Consideration of Mandatory Rules in Private International Law

Introduction	246
Section 1: Historical and Theoretical Sketch of Mandatory Rules	248
1.1 Historical overview	248
1.2 Theoretical sketch of mandatory rules	249
1.2.1 Contribution of three scholars	249
1.2.1.1 <i>Wachter</i>	249
1.2.1.2 <i>Savigny</i>	250
1.2.1.3 <i>Mancini</i>	252
1.2.2 French scholars in post-war private international law:	254
1.2.2.1 <i>Pillet</i>	254
1.2.2.2 <i>Francescakis</i>	255
Section 2: Various Expressions and Definition of Mandatory Rules	256
2.1 Various expressions of mandatory rules	256
2.1.1 Anglo-American terminology	256
2.1.2 Continental terminology	257
2.1.2.1 <i>Règles d'application immédiate</i>	258
2.1.2.2 <i>Lois de police</i>	259
2.2 Definition and characterisation of mandatory rules	260
Section 3: Terminological Distinctions when One Deals with Mandatory Rules	263
3.1 <i>Jus cogens</i> v. <i>jus dispositivum</i>	263
3.2 <i>Lois de police</i> v. <i>dispositions impératives</i>	263
3.3 Substantive law rules v. conflict of laws rules	264
3.4 Optional rules v. mandatory rules	266
3.5 Private interest v. public interest	267
Section 4: Identification and Determination of Mandatory Rules	268
4.1 Express intention of legislation	269

4.2	Nature and purposes of legislation	270
4.3	Collective approach and the role of courts	271
Section 5:	Public/Private Law Dichotomy and Mandatory Rules	272
5.1	Theory of public/private law dichotomy in civil law and common law perspectives	272
5.2	Definition and characteristics of public and private laws	274
5.3	Public/private laws and mandatory rules	275
Section 6:	Classification and Categorisation of Mandatory Rules	277
6.1	Mandatory rules of public interests	277
6.1.1	Rules relating to competition	277
6.1.2	Rules relating to antitrust law	278
6.1.3	Rules relating to confiscation and nationalisation	278
6.1.4	Rules relating to fiscal regulations and exchange control	278
6.1.5	Rules relating to taxation law	279
6.1.6	Rules relating to contracts generally	280
6.1.7	Rules relating to landed property	280
6.1.8	Rules relating to penalty clauses	280
6.1.9	Rules relating to criminal law	281
6.2	Mandatory protective rules of private interests	281
6.2.1	Rules relating to protection of employees	282
6.2.2	Rules relating to protection of consumers	282
6.2.3	Rules relating to protection of a weaker party	282
6.3	Mandatory rules of double purposes	282
Section 7:	Statutory Mandatory Rules in English Law	284
7.1	Section 27(2) of the Unfair Contract Terms Act, 1977	284
7.1.1	<i>'notwithstanding any contract term'</i>	285
7.1.2	<i>'applies or purports to apply...'</i>	286
7.1.3	<i>'imposed wholly or mainly for the purpose of...'</i>	286
7.1.4	<i>'one of the parties dealt as consumer'</i>	286
7.1.5	<i>'habitually resident in the United Kingdom'</i>	287
7.1.6	<i>'the essential steps necessary for the making of the contract'</i>	287
7.2	Other statutory mandatory rules	287

Section 8: Extraterritoriality of Rules and Mandatory Rules	288
8.1 Distinction between extraterritorial and territorial rules	288
8.2 Extraterritorial effects of mandatory rules in American legislation	289
8.2.1 American case law	289
8.2.2 American Presidential Order	290
Section 9: Domestic, International and Community Mandatory Rules	293
9.1 Domestic mandatory rules	294
9.2 International/internationally mandatory rules	294
9.3 Community mandatory rules	296
Section 10: Which Mandatory Rules – <i>Lex Fori</i> , <i>Lex Causae</i> , or Third State?	297
10.1 Forum mandatory rules: <i>lex fori</i>	297
10.2 Foreign mandatory rules: <i>lex causae</i> or third State	298
10.2.1 Common law and civil law considerations	298
10.2.2 Justification of non-application of a foreign mandatory rule	301
10.2.2.1 <i>Uncertainty v. certainty</i>	301
10.2.2.2 <i>Party autonomy</i>	301
10.3 A better approach	303
Conclusion	304

Chapter VI: Provisions as to Mandatory Rules in the Rome Convention, 1980

Introduction	307
Section 1: Mandatory Rules Subject to the Provision of Article 3(3) of the Rome Convention	309
1.1 The Language of Article 3(3)	310
1.1.1 <i>'where all the other elements relevant to the situation...'</i>	310
1.1.2 <i>'shall not... prejudice the application of rules of the law of that country which cannot be derogated from by contract, hereinafter called mandatory rules'</i>	311
1.1.2.1 Definition of Mandatory rules under Article 3(3)	312
1.1.2.2 <i>'hereinafter called mandatory rules'</i>	313
1.2 Purely domestic or international situation	314
1.3 Evaluation of Article 3(3)	314
Section 2: Mandatory Rules Subject to the Provision of Article 7(1) of the Rome Convention	315
2.1 <i>Sonderstatut</i> theory	316
2.2 The Dutch <i>Alnati</i> case	317
2.3 The Language of Article 7(1)	319
2.3.1 <i>'applying... the law of a country'</i>	319
2.3.2 <i>'effect may be given to...'</i>	320
2.3.3 <i>'with which the situation has a close connection'</i>	321
2.3.3.1 Which connection? 'Close connection', 'significant connection' or 'closest connection'?	322
2.3.3.2 Notion of close connection	323
2.3.4 <i>'if... under the law of the latter country, those rules must be applied whatever the law applicable to the contract'</i>	324
2.3.5 <i>'...regard shall be had to their nature and purpose and to the consequences of their application or non-application'</i>	326
2.3.5.1 Nature and purposes of rules	336
2.3.5.2 Consequences of their application or non-application	328
2.3.5.3 American doctrine of 'interest analysis'	329

2.4	Right of reservation on Article 7(1)	331
2.4.1	Germany's reservation on Article 7(1)	332
2.4.2	The United Kingdom's reservation on Article 7(1)	332
2.4.3	Article 7(1) in practice: reservation or acceptance?	333
2.5	Problems and shortcomings of Article 7(1)	336
2.5.1	<i>Difficult to find and determine foreign mandatory rules</i>	336
2.5.2	<i>Conflict of interests and various mandatory rules</i>	337
2.5.3	<i>Vagueness and uncertainty</i>	338
2.5.4	<i>Inconsistency and non-uniformity of results</i>	338
2.5.5	<i>No security for parties</i>	339
2.5.6	<i>A heavy and daunting task for judges</i>	340
2.6	Some justifications for the provision of Article 7(1)	342
2.7	Evaluation of and suggestions concerning Article 7(1)	344
2.7.1	Suggestions	344
2.8	Evaluation of Article 7(1)	346
Section 3: Mandatory Rules Subject to the Provision of Article 7(2) of the Rome Convention		347
3.1	The Language of Article 7(2)	348
3.2	Mandatory rules subject to Article 7(2)	349
3.3	The necessity of Article 7(2)'s enactment	350
3.4	Article 7(2) and choice of law rules of the Convention	352
3.5	Relationship between Article 7(2) and Article 7(1)	352
3.6	Evaluation of and suggestions concerning Article 7(2)	354
Section 4: Mandatory Rules Subject to Article 9(6) of the Rome Convention		356
Section 5: Public and Private Law Dichotomy and the Rome Convention		358
Section 6: Mandatory Rules in Private International Law Conventions and National Legal Systems		361
6.1	Mandatory rules in regional and international conventions	362
6.2	Mandatory rules in national legal systems	367
6.2.1	Anglo-American law	367

6.2.1.1 <i>English law</i>	367
6.2.1.2 <i>American law</i>	370
6.2.2 <i>Continental law</i>	372
6.2.2.1 <i>Swiss law</i>	372
6.2.2.2 <i>German law</i>	373
6.2.2.3 <i>Danish law</i>	373
Section 7: Final Evaluation and Suggestions on Provisions as to Mandatory Rules in the Rome Convention	374
Conclusions	377

Chapter VII: Mandatory Protective Rules under the Rome Convention, 1980

Introduction	381
Section 1: Overview of Conventions	382
Section 2: Mandatory Protective Rules on Consumer Contracts	384
2.1 Article 5 of the Rome Convention on 'certain consumer contracts'	384
2.2 Definition of consumer contracts in private international law conventions	385
2.3 Matters which are covered by Article 5	390
2.3.1 Contracts for the supply of services and goods	390
2.3.2 Provision of credit in relation to contracts with such objects	392
2.3.3 Package tours	392
2.4 Matters which are excluded from Article 5	393
2.4.1 Contracts made by traders, manufacturers or persons in their professional role	393
2.4.2 Unknown circumstances in a transaction	394
2.4.3 Contracts of carriage	394
2.4.4 Supply of services in a country other than consumer's habitual residence	395
2.5 Consumer contracts and limitation of freedom of choice	396
2.5.1 Requirements of limitation of freedom of choice in consumer contracts	396
2.5.1.1 First requirement	396
2.5.1.2 Second requirement	399
2.5.1.3 Third requirement	400
2.6 Consumer contracts and mandatory protective rules	401
2.7 Consumer contracts and habitual residence	402
2.8 Applicable law in the absence of choice	405

Section 3: Mandatory Protective Rules on Employment Contracts	406
3.1 Article 6 of the Rome Convention on 'individual employment contracts'	406
3.2 Definition and subject matter of individual employment contracts	407
3.3 Individual employment contracts and collective agreements	410
3.4 Employment contracts and mandatory protective rules	411
3.5 Employment contracts and habitual place of work	414
Section 4: Relationship between Choice of Law and Mandatory Protective Rules	419
4.1 Chosen law is strictly inconsistent with mandatory protective rules	420
4.1.1 <i>Chosen law is less protective</i>	420
4.1.2 <i>Chosen law is more protective</i>	420
4.2 Chosen law is not strictly inconsistent with mandatory protective rules	421
4.2.1 <i>Application of mandatory protective rules</i>	422
4.2.2 <i>Application of chosen law</i>	423
4.2.3 <i>Application of a cumulative approach</i>	423
4.2.4 <i>Application of most favourable approach</i>	425
4.2.5 <i>Final evaluation</i>	425
Section 5: Relationship between Mandatory Protective Rules and other Mandatory Rules of the Rome Convention	426
5.1 Relationship between Articles 5 and 6 and Article 3	426
5.2 Relationship between Articles 5 and 6 of the Rome Convention	426
5.3 Relationship between Articles 5 and 6 and Article 7(1)	427
5.4 Relationship between Articles 5 and 6 and Article 7(2)	429
Section 6: Evaluation and Suggestions	431
6.1 Shortcomings	431
6.2 Suggestions for the future	433
Conclusion	436

General Conclusion	439
Selected Bibliography	443

www.ketab.ir

Table of Cases

Cases	Chap(s)
A	
<i>Adams v. Lindsell</i> [1818] 1 B. & Aid 681	VII
<i>Addison v. Brown</i> [1954] 2 All E.R. 213; [1954] 1 W.L.R. 779	III
<i>Allstate Ins. Co. v. Flague</i> 101 S.Ct. 633 (1981)	VI
<i>Alnati</i> 13 May 1966, [1977] <i>Nederlands Jurisprudentie</i> , No. 3, <i>Revue critique</i> 522, <i>Journal Clunet</i> 1969 1010	V
<i>American Express v. Mackay Hoge Raad</i> 8 January 1971; N.J. 1971, 129	VI
<i>Amin Rasheed Shipping Corporation v. Kuwait Insurance Co.</i> [1983] 2 All E.R. 884; [1983] 3 W.L.R. 241; [1984] A.C. 50	I, II
<i>Anglo-Austrian Bank, Re</i> [1920] 1 Ch. 69; 89 L.J.Ch. 86	VII
<i>Antunes v. Bakhyoko Rev. Crit.</i> [1981], 81	III
<i>Arab Bank Ltd. v. Barclays Bank (Dominion Colonial Overseas)</i> [1954] 2 All E.R. 226; [1954] 2 W.L.R. 1022; [1954] A.C. 495	III
<i>Associated Japanese Bank International Ltd. v. Crédit du Nord S.A.</i> [1988] All E.R. 902; [1989] 1 W.L.R. 255	II
<i>Assunzione, The</i> [1954] 1 All E.R. 278; [1954] 2 W.L.R. 234; [1954] P. 150	II
<i>Atlantic Star, The</i> [1973] 2 All E.R. 175; [1973] 2 W.L.R. 795; [1974] A.C. 436	III
<i>Attock Cement Co. Ltd. v. Romanian Bank for Foreign Trade</i> [1989] 1 All E.R. 1189; [1989] 1 W.L.R. 1147	II
<i>Attorney-General for New Zealand v. Ortiz</i> [1901] <i>Clunet</i> , 372	III
<i>Auten v. Auten</i> , [1954], 308 N.Y. 155, 124 N.E. 2d 99	I
B	
<i>Babcock v. Jackson</i> , [1963] 12 N.Y. 2d 473, 191 N.E. 2d 279	VI
<i>Baindail v. Baindail</i> [1946] 1 All E.R. 342; [1946] P. 122	III
<i>Bamgbose v. Daniel</i> [1954] 3 All E.R. 263; [1954] 3 W.L.R. 561; [1955] A.C. 107	III
<i>Banco de Vizcaya v. Don Alfonso de Borbon y Austria</i> [1935] 1 K.B. 140, 104 L.J.K.B. 46	IV
<i>Bank of Montreal v. Snoxell</i> (1953) 143 D.L.R. (3d) 349	IV

Barcelo v. Electrolytic Zinc Co. of Australia [1932] 48 C.L.R. 391	V
Bernhard v. Harrah's Club 16 Cal 3d 313, 546 P. 2d 719, (1976)	VII
Bertrand v. Ott Case 140/77 [1978] E.C.R. 143	VII
Besant v. Wood [1878] 12 Ch. D. 605	III
Boissevain v. Weil [1950] 1 All E.R. 728; [1950] A.C. 327; [1949] 1 K.B. 482	III, IV, V, VI
Bonacina, Re [1912] 2 Ch. 394; 81 L.J. Ch. 674	III, V
Bonython v. Commonwealth of Australia [1951] A.C. 201	I, II
Boucher v. Lawson, (1735) Cunn 144	III
British Nylon Spinners Ltd. v. Imperial Chemical Industries Ltd. [1952] 2 All E.R. 780; (1953) Ch. 19	III, V
Brockmeyer v. Dun & Bradstreet, [1983] 335 N.W. 2d 834, 840	III
Brodin v. AVR Seljan 1973 S.C. 213, 1973 S.L.T. 198	V, VII
Brokaw v. Seatrain (U.K.) Ltd. [1971] 2 All E.R. 98; [1971] 2 Q.B. 476	IV
Buchanan (Peter) Ltd. v. McVey [1955] A.C. 516n; [1954] I.R. 89	III
Bulk Carriers Corp v. Kasmu Laeva Omanikud, 43 F. Supp. 761, S.D.N.Y. (1942)	III
Bullen v. Wisconsin, 240 U.S. 625, 630 (1916)	IV
C	
Caltex Oil (Australia) Pty Ltd. v. The Dredge Willemstad [1977] 50 ALJR 270, 284	III
Carnival Cruise Lines v. Shute, 499 U.S. 585	IV
Cesena Sulphur Co. v. Nicholson [1876] 1 Ex. D. 428	II
Chatenay v. Brazilian Submarine Telegraph Co. [1891] 1 Q.B. 79; 60 L.J.Q.B. 295	II
Chemins de fer Portugais v. Ash S. [1945]. 1. 77	III
Cheni v. Cheni [1962] 3 All E.R. 873, [1965] P. 85	III
Citadel Insurance Co. v. Atlantic Union Insurance Co. S.A. [1985] 2 Lloyd's Rep. 543	II
Cities Serv. Co. v. Gardinier, Inc., 344 A.2d 254, Del. Super. Ct. [1975]	I
Cleveland Museum of Art v. Capricorn Art International S.A. [1990] 2 Lloyd's Rep. 166	II
Club Méditerranée v. Caisse des congés spectacles, July 4 [1975] Cour d'appel de Paris (4e Ch.), [1976] 65 R.C.D.I. P. 485	III
Clugas v. Penalarúa (1791) 4 Term Rep. 466, 2 R.R. 442	IV, V

Coast Lines Ltd. v. Hudig & Veder Chartering N.V. [1972] All E.R. 451; [1972] 2 W.L.R. 280; [1972] 2 Q.B. 34	I, II
Coleman v. Shang [1961] 2 All E.R. 406; [1961] 2 W.L.R. 562; [1961] A.C. 481	III
<i>Compagnie Tunisienne de Navigation S.A. v. Compagnie d'Armement Maritime S.A.</i> [1970] 3 All E.R. 71; [1970] 3 W.L.R. 389; [1971] A.C. 572	I, II
Controlled Oil Fields v. Stagg [1921] W.N. 319	I
Coupland v. Arabian Gulf Oil Co. [1983] 3 All E.R. 226; [1983] 1 W.L.R. 1151	VII
Cox v. E.L.G. Metals Ltd. [1985] I.C.R. 310, C.A.	VII
Cruse v. Chittum [1974] 2 All E.R. 940	VII
D	
De Wütz v. Hendricks (1824) 2 Bing. 314	III
<i>Della Cultura Ecuatoriana v. Danusso</i> , RDIPP 18 (1982) 635	III
Denny v. Denny [1919] 1 K.B. 583, 587	III
Diamond Match Co. v. Rober [1887], 13 N.E. 419, 406, N.Y. 473	III
Dimskal Shipping Co. S.A. v. International Transport Workers Federation [1991] 4 All E.R. 871, H.L.; [1991] 3 W.L.R. 875; [1992] 2 A.C. 152, 168	III
Dougherty v. Equitable Life Ass. Soc. [1934] 266 N.Y. 71 90, 193 N.E. 897, 903	III
Drexel v. Drexel [1916] 1 Ch. 251, 85 L.J. Ch. 235	IV
Dubai Electricity Co. v. Islamic Republic of Iran Shipping Lines; <i>The Iran Vojdan</i> [1984] 2 Lloyd's Rep. 380	II
Duncan v. Motherwell Bridge and Engineering Co. 1952 S.C. 131; 1952 S.L.T. 433	VII
Duncan, Fox v. Schrempft and Bonke [1915] 3 K.B. 355; 84 L.J.K.B. 2206	III
Dunlop Pneumatic Tyre Co. v. A/G Cudwell & Co. [1920] 1 K.B. 342; 71 L.J.K.B. 284	II
Dutch Buyer v. Austrian Seller (1982) 7 Y.B.Com. Arb. 141	V
Dym v. Gordon, 16 N.Y. 2d 120, 209 N.E. 2d 792, 796 (1965)	III
Dynamit A/G v. Rio Tinto Co. [1918] A.C. 260, 292; 87 K.J.L.B. 549	III, V

E

- Egerton v. Brownlow (Earl) [1853] 4 H.L.C. 1; 23 L.J. Ch. 348 III
- Egyptian Delta Land and Investment Co. v. Todd [1929] A.C. 1;
98 L.J.K.B. 1 II
- Elefanten Schuh GmbH v. Jacqmain* 150/80 [1981] E.C.R. 1671, [1982]
3 C.M.L.R. 1 III
- Elias Seigelman v. Cunard White Star Limited, 221, F. 2nd I
- Emery's Investment Trusts, Re [1959] 1 All E.R. 577;
[1959] 2 W.L.R. 461; [1959] Ch. 410 III
- Empresa Exportadora De Azúcar (CUBAZUCAR) v. Industria Azucarera
Nacional S.A. (IANCA); The Playa Larga and Marble Islands*,
[1983] 2 Lloyd's Rep. 171, 189-190; [1983] Com.L.R. 58, C.A. V
- Enderby Town Football Club Ltd. v. Football Association Ltd. [1971]
All E.R. 215; [1970] 3 W.L.R. 1021; [1971] Ch. 591, 606 III
- English Spinners Ltd. v. Imperial Chemical Industries Ltd.
[1953] 1 Ch. 19 III
- English v. Donnelly 1958 S.C. 494 III, IV, V, VI, VII
- Entores Ltd. v. Miles Far East Corporation [1955] 2 All E.R. 493;
[1955] 3 W.L.R. 48; [1955] 2, Q.B. 327 VII
- Esposito v. Bowden (1857) 7 E. & B. 763, 779; 27 L.J.Q.B. 17 III
- Etler v. Kertesz (1960) 26 D.L.R. (2d) 209 III
- Euro-Diam Ltd. v. Bathurst [1988] 2 All E.R. 23;
[1988] 2 W.L.R. 517; [1990] 1 Q.B. 1 III, VI
- Européenne des Pétroles S.A. v. Sensor Nederland B.V.* 1982 (1983)
23 Int. Leg. Mat. 66 VI
- Evans Marshall & Co. Ltd. v. Bertola S.A. [1973] 1 All E.R. 992;
[1973] 1 W.L.R. 349; [1973] 1 Lloyd's Rep. 453 II, VII
- # F
- Federal Trade Com. v. Klesner, 280 U.S. 19, 74 L. Ed. 138 V
- Fender v. St. John-Mildmay [1937] 3 All E.R. 402, H.L.; [1938] A.C. 1 III
- Folliot v. Ogden, (1789) 1 Hy. Bl. 123; 3 T.R. 726 III
- Forsikringsaktieselskapet Vesta v. Butcher [1988] 2 All E.R. 43;
[1988] 3 W.L.R. 565; [1986] 2 Lloyd's Rep. 179;
[1989] A.C. 852, H.L. I
- Foster v Driscoll [1929] 1 K.B. 470; 98 L.J.K.B. 282; 140 L.T. 479 III, VI
- Freehold Land Investments Ltd. v. Queensland Estates Pty. Ltd.
(1970) 123 C. L.R. 418; affirming [1969] Qd.L.R. 378 VI

Fried Krupp A.G., Re [1917] 2 Ch. 188; 86 L.J. Ch. 689	III
Frischke v. Royal Bank of Canada (1977) 80 D.L.R. (3d) 393	III

G

Garner v. Teamsters, Chauffeurs and Helpers Local Union No. 776, 348 U.S. 485; 98 L. Ed. 228 (1953)	V
Gill & Duffus Landauer Ltd. v. London Export Corp. GmbH [1982] 2 Lloyd's Rep 627	VII
Goldberg v. Housing Authority of the City of Newark (1962) 186 A. 2d 291, per Weintraub C.J.	III
Golden Acres Ltd. v. Queensland Estates Pty. Ltd.: see Freehold Land Investments Ltd. v. Queensland Estates Pty. Ltd.	I, III, IV, V
Government of India v. Taylor [1955] 1 All E.R. 292; [1955] 2 W.L.R. 303; [1955] A.C. 491	IV
Grant v. Collet [1883] 4 N.L.R. 32	III
Grell v. Levy [1864] 16 C.B.; 9 L.T. 721	III

H

Hack v. Hack (1976) 6 Fam. Law	II, VII
Hamlyn & Co. v. Talisker Distillery [1894] A.C. 202; 71 L.T. 1	II
Hammonds v. Aetna and Cas. & Sur. Co. [1965] 243 F. Supp. 793, 796, N.D. Ohio	III
Hartford Insurance Co. v. California (1993) 113 S.Ct. 2891	VI
Helbert Wagg & Co.'s Claim, Re [1956] 1 All E.R. 129; [1956] 2 W.L.R. 183; [1956] Ch. 323	III, V
Henningsen v. Bloomsfield Motors Inc. (1960) 32 N.J. 358 379 161 A 2d 69 90	III
Henthorn v. Fraser [1892] 2 Ch. 27; 61 L.J.Ch. 373; 8 T.L.R. 459	VII
Hewitson v. Hewitson [1995] All E.R. 472; [1995] 2 W.L.R. 287, 292; [1995] Fam 100	III
Hilton v. Guyot 159 U.S. 113, (1895)	III
Hoekstra (née Unger) v. BBDA, Case 75/63 (1964) ECR 177	VII
Hoffmann v. Krieg; 145/86 [1988] E.C.R. 645, 668; [1991] I.L.Pr. 4; European Ct	III
Hollandia, The [1982] 3 All E.R. 1141; [1982] 3 W.L.R. 1111; [1983] 1 A.C. 565; [1982] Q.B. 872, C.A.	V, VI
Holman v. Johnson (1775) 1 Cowp. 341	III, IV, V

Holwell Securities Ltd. v. Hughes [1974] 1 All E.R. 61; [1974] 1 W.L.R. 155	V, VII
Hope v. Hope (1857) De G.M. & G. 731; 26 L. J. Ch. 417	III
Huet & Kovar, <i>Bulletin de Jurisprudence Française</i> , 106. <i>Journal du Droit Int'l.</i> 599, [1979]	III
Huntington v. Attrill [1893] A.C. 150; 8 T.L.R. 341	IV
Hyde v. Hyde & Woodmansee (1866) L.R. 1 P.&D. 130; 35 L.J.P. & M. 57	III
I	
Indyka v. Indyka [1967] 2 All E.R. 689; [1967] 3 W.L.R. 510; [1969] 1 A.C. 33	IV
International Shoe Co. v. State of Washington, 326 U.S. 310 (1945)	IV
Israel Discount Bank of New York v. Hadjipateras [1983] 3 All E.R. 129; [1984] 1 W.L.R. 137; [1983] 2 Lloyd's Rep. 497, C.A.	III
Ivenel v. Schwab: 133/81 [1982] E.C.R. 1891; [1983] 1 C.M.L.R. 538; European Ct	VII
J	
J.J.J. Contractors Ltd. v. Marples Ridgway Ltd. (1985) 31, Build. L.R. 104	II
Jacobellis v. Ohio 378 U.S. 184 [1964]	III
Jacobs v. Crédit Lyonnais (1884) 12 Q.B.D., 589; 53 L.J.Q.B. 156	I, II
James Buchanan & Co. v. Bahr Forwarding and Shipping (U.K.) Ltd. [1977] 1 All E.R. 518, 529; [1977] 2 W.L.R. 107; [1978] A.C. 141	III
James Miller & Partner Ltd. v. Whitworth Street Estates (Manchester) Ltd., [1970] 1 All E.R. 726; [1970] 2 W.L.R. 728; [1970] A.C. 583	I, II
Jonson v. Driefontein Consol. Mines [1902] A.C. 484	III
K	
Kahler v. Midland Bank Ltd. [1949] 2 All E.R. 621, H.L.; [1949] 1 L.J.R. 1687; [1950] A.C. 24 (Ch. 4)	V
Kapur v. Kapur [1984] F.L.R. 920	VII
Kaufman v. Gerson [1904] 73 L.J.K.B. 320; 1 K.B. 591 C.A.	III
Kay's Leasing Corporation Pty. Ltd. v. Fletcher (1964) 116 C.L.R. 124, [1964-65] 38 A.L.J.R. 335	IV, VI

Kharagitsingh v. Sewrajsingh Hoge Raad, 12 January 1979, [1980] N.J. 256	VI
Kilberg v. Northeast Airlines Inc. [1961] 2 Lloyd's Rep. 406; 172 N.E. 2d 526	III
Kirchner & Co. v. Gruban [1990] 1 Ch. 413; 78 L.J. Ch. 117.	VII
Kleinwort, Sons & Co. Ltd. v. Ungarische Baumwolle Industrie A/G [1939] 3 All E.R. 38; [1939] 2 K.B. 678	V
Kloeckner & Co A.G. v. Gatoil Overseas Inc. [1990] 2 Lloyd's Rep. 177	I
Kuwait v. Aminoil (1984) 66 I.L.R. 518	V
L	
<i>Laurie-Blum v. Land Baden-Württemberg</i> : 66/85 [1987] 3 C.M.L.R. 389	VII
Lemenda Trading Co. Ltd. v. African Middle East Petroleum Co. Ltd. [1988] 1 All E.R. 513; [1988] 2 W.L.R. 735; [1988] Q.B. 448	III, IV, VI
<i>Levin v. Staatssecretaris van Justitie</i> : 53/81 [1982] E.C.R. 1035	VII
Libyan Arab Foreign Bank v. Banker's Trust Co. [1989] 3 All E.R. 252; [1989] 3 W.L.R. 314; [1989] Q.B. 728	II, V, VI
Libyan Arab Foreign Bank v. Manufacturers Hanover Trust Co. (No.2) [1989] 1 Lloyd's Rep. 608	VI
Lilienthal v. Kaufman (1964), 239, O.R. 1, 395 P. 2d 543	III, VI
Lilley Construction Ltd. v. Dunn [1984] I.R.L.R. 483 (EAT)	VII
Liucks v. Standard Oil Co., N.Y. [1918] 120 N.E. 198, 201-202	III
Lloyd v. Guibert (1865) L.R. 1 Q.B. 79, 115; 35 L.J.Q.B. 74	I, II
Loucks v. Standard Oil Co. of New York, 224 N.Y. 99; 120 N.E. 198 (1918)	III
Luther v. Sagor & Co. [1921] 3 KB 532, 90 L.J.K.B. 1202	III
M	
M/S Bremen v. Zapata Offshore Co., 407 U.S. 1 (1972); [1972] 2 Lloyd's Rep. 315	IV
Mackender v. Feldia [1966] 3 All E.R. 847; [1967] 2 W.L.R. 119; [1967] 2 Q.B. 590, 601	V, VII
Mannington Mills Inc. v. Congoleum Corporation, 595 F. 2d 1287 (1979)	V
Mansouri v. Singh [1986] 2 All E.R. 619; [1986] 1 W.L.R. 1393	V
Martorana v. Morley [1958] C.L.Y. 2943	V

Matthews v. Kuwait Bechtel Corporation [1959] 2 All E.R. 345, C.A. [1959] 2 W.L.R. 702; [1959] 2 Q.B. 57	VII
Merten v. Nathan, [1982] 321 N.W. 2d 173	III
Miller v. Sevamp, Inc. [1987] 362 S.E. 2d 915	III
Mitsubishi Corporation v. Alaounzoz, [1988] 1 Lloyd's Rep. 191; [1988] 1 F.T.L.R. 47	III
Moggre Big Dutchman International AG [1989] ELD 454	VII
Monterosso Shipping Co. Ltd. v. International Transport Workers Federation [1982] 3 All E.R. 841; [1982] 2 Lloyd's Rep. 120 C.A., [1982] I.C.R. 675	II
Moses H. Cone Memorial Hospital v. Mercury Construction Corp., [1983], 461 U.S. 1, 24	III
Mostek Corp. Co. v. Chemetron Corp., 642, S.W. 2d 20, Tex. Ct. App. [1982])	I
Mount Albert Borough Council v. Australasian Temperance and General Mutual Life Assurance Society Ltd. [1937] 4 All E.R. 206 [1938] A.C. 224, 240	II
N	
Nashville C. & St. L. Ry v. Browning, [1940] 310 U.S. 362	III
National Surety Co. v. Larsen [1929] 4 D.L.R. 918; 3 W.W.R. 299	III
Ndse Co. for the Export of Agricultural Crops v. H. & J.M. Bennett (Commodities) Ltd., [1986] 1 Lloyd's Rep. 555	VI
Netherlands v. Sweden 1958 I.C.J. Rep. 53 (Ch. 3)	V
Neumeier v. Kuehner 31 N.Y. 2d 121; 286 N.E. 2d 454; 335 N.Y.S. 2d 64 (1972)	VI
Newmarch v. Newmarch [1978] 1 All E.R. 1; [1977] 3 W.L.R. 832; [1978] Fam. 79	III
Nike Informatic System Ltd. v. Avac System Ltd. (1979) 105 D.L.R. (3d) 455	IV
O	
Ocean S.S. Co. Ltd. v. Queensland State Wheat Board [1940] 1 All E.R. 158, [1941] 1 K.B. 402; 110 L.J.K.B. 688, C.A.	I
Offshore International S.A. v. Banco Central S.A. [1983] 1 All E.R. 749; [1977] 1 W.L.R. 399	II
Ommang's Estate, Re 235 NW 529 (1931)	IV
Oppenheimer v. Cattermole [1975] 1 All E.R. 358, H.L.; [1975] 2 W.L.R. 347; [1976] A.C. 249	III

Oppenheimer v. Louis Rosenthal & Co. A.G. [1937] 1 All E.R. 23, C.A.	VII
Oundjian v. Oundjian [1979] 1 F.L.R. 198	VII

P

Pacific Associates v. Baxter [1989] 2 All E.R. 159; [1989] 3 W.L.R. 1150; [1990] 1 Q.B. 993	III
Pearce v. Brooks (1866) L.R. 1 Ex. 213; 35 L.J.Ex. 134	III
Pellecat v. Angell (1835) 2 Cr.M. & R. 311; 4 L.J.Ex. 326	IV, V
Peninsular and Oriental Steam Navigation Co. v. Shand (1865) 12 L.T. 808; (1865) 3 Moo.P.C. (N.S.) 272	I, II
Pittsburg C.C. & St. L. Ry. v. Kinney (1918) 115 N.E. 505; 95 Ohio St. 64	III
Playa Larga, The [1983] 2 Lloyd's Rep. 171; [1983] Com.L.R. 5, C.A.	III, VI
Pope Mfg Co. v. Gormull, [1982] 144 U.S. 224	III
Princess de Bauffremont Cass. Civ. 18.3.1878, S. 1878.1.193	IV
Printing and Numerical Registering Co. v. Sampson [1875] L.R. 19 Eq. 462; 44 L.J. Ch. 705	III

R

R. v. Horseferry Road Magistrates' Court, ex parte Bennett [1993] 3 W.L.R. 90	IV
R. v. Barnet London Borough Council, ex parte Nilish Shah [1983] 1 All E.R. 226, H.L.; [1983] 2 W.L.R. 16; [1983] 2 A.C. 309	VII
R. v. International Trustee for the Protection of Bondholders A/G [1937] 2 All E.R. 164; [1937] A.C. 500; 106 L.J.K.B. 236	II, VI
R. v. Surrey (North-Eastern Area) Assessment Committee, ex parte Surrey County Valuation Committee [1974] 2 All E.R. 276	VII
R.A.E. v. Southern Pacific Properties Limited and Southern Pacific Properties (Middle East), Clunet, [1985] 129	III
Ralli Bros. v. Compania Naviera Sota y Aznar, [1920] 1 K. B. 614; 2 K.B. 287; [1920] 2 Lloyd's Report 550, C.A.; [1920] 89 L.J.K.B. 999	III, IV, V, VI
Ready Mixed Concrete (South East) Ltd. v. Minister of Pensions and National Insurance [1968] 2 Q.B. 497	VII
Regazzoni v. K.C. Sethia (1944) Ltd. [1957] 3 All E.R. 286; [1957] 3 W.L.R. 752; [1958] A.C. 301; [1956] 2 Q.B. 490	III, IV, VI
Reich v. Purcell, 67 Cal. 2d 551, 432 P. 2d 727 (1967)	VI
Reue v. Hauptzollamt Kiel: 150/80 [1981] E.C.R. 805	VII
Rex v. Williams 26 How. St. Tr. (1979) 653	III

<i>Riabouchinski v. Riabouchinski</i> , <i>Rev. dr. int.</i> [1924]. 403	III
Richardson v. Mellish, (1824), 2 Bing. 229; 3 L.J.C.P. 265	III
<i>Rivière v. Roumiantzeff</i> , <i>Rev. Crit.</i> [1953]	III
Robinson v. Bland (1760) 2 Burr. 1077; 1 Wm. Bl. 256	I, II, III
Robson v. Premier Oil & Pipe Line Co., [1915] 2 Ch. 124; 84 L.J. Ch. 629, C.A.	III
Rodriguez v. Speyer Bros. [1919] A.C. 59; 88 L.J.K.B. 147	III
<i>Rohman v. Kellerhals</i> , <i>Clunet</i> [1936] 399	III
Rossano v. Manufacturers' Life Insurance Co. [1962] 2 All E.R. 214; [1961] 3 W.L.R. 157; [1963] 2 Q.B. 352	I, II, III
Rousillon v. Rousillon (1880) 14 Ch.D. 351; L.J. Ch. 338	III, V
S	
Saxby v. Fulton [1909] 2 K.B. 208; 78 L.J.K.B. 781	III
Sayers v. International Drilling Co. [1971] 3 All E.R. 613; [1971] W.L.R. 1176; [1971] 2 Lloyd's Rep. 105, C.A.	II, III, V, VII
<i>Schabel v. Bogenschütz</i> , <i>Cass Civ. May 1 1945</i> , C.F. (1945) II 2895	III
Schering Ltd. v. Stockholms Enskilda Bank A/B [1946] 1 All E.R. 36; [1946] A.C. 219	III
Scherk v. Alberto Culver Co. 417 U.S. 506 (1974)	V
Scott v. Att.-Gen. (1886) 11 P.D. 128; 55 L.J.P. 57	III
Scott v. Brown & Co. [1982] 2 Q.B. 724; 61 L.J.Q.B. 738	III
Seeman v. Philadelphia Warehouse, 274 U.S. 403 (1927)	IV
Seidler v. Schallhofer [1982] N.S.W.R. 80	III
Seneo Trading Co v. Dammers N.V. Rechtbank, Rotterdam 1967 N.J. 1969	VI
Settebello Ltd. v. Banco Totta & Açores [1985] 2 All E.R. 1025; [1985] 1 W.L.R. 1050; [1985] 2 Lloyd's Rep. 448	III
Seyfang v. C. D. Searle & Co. [1973] 1 All E.R. 290; [1973] 2 W.L.R. 17; [1973] 1 Q.B. 148	III
SGIO v. Triggwell [1979] 53 A.L.J.R. 656	III
Shahnaz v. Rizwan [1964] 2 All E.R. 993; [1964] 3 W.L.R. 759; [1965] 1 Q.B. 390	III
Sharif v. Azad [1966] 3 All E.R. 785, C.A.; [1966] 3 W.L.R. 1285; [1967] 1 Q.B. 605	V
Shaw v. Gould (1868) L.R. 3 H.L. 55; 37 L.J. Ch. 433	IV

<i>Shenavai v. Kreischer</i> , 266/85 [1987] E.C.R. 239; [1987] 3 C.M.L.R. 782	II, VII
<i>Six Constructions Ltd. v. Humbert</i> : 32/88 [1989] E.C.R. 341; [1990] I.L.Pr. 206; European Ct	VII
<i>Société Berrand v. Paul Ott K.G.</i> (Case 150/77) [1978] E.C.R. 1431; [1978] 3 C.M.L.R. 499, European Ct	VII
<i>Société Jansen v. Heurtey, Rev. Crit.</i> (1955).	II
<i>Sommer v. Mayer, Rev. Crit.</i> [1955] 133	III
<i>South African Breweries v. King</i> [1899] 2 Ch. 173; [1900] 1 Ch. 273	VII
<i>Southern International Sales Co. v. Potter & Brumfield Division</i> , 410 F. Supp. 1339 (S.D.N.Y. 1976)	VI
<i>Stanley Kerr Holdings Pty. Ltd. v. Gibor Textile Enterprises Ltd.</i> [1978] 2 N.S.W.L.R. 373	II
<i>Sternaman v. Metropolitan Life Ins. Co</i> [1902] 170 N.Y. 13	III
<i>Structural Dgn. Res. Corp. v. Engineering Mech. Res. Corp.</i> , 401 F. Supp. 1102 E.D. Mich. [1975]	I
T	
<i>Taylor v. Chester</i> (1869) L.R. 4 Q.B. 309; 38 L.J.Q.B. 225	III
<i>Tenn. Carolina Transp. Inc. v. Strick Corp.</i> 16 N.C. App. 498, 192 S.E.2d 702, (1972)	I
<i>The Estate of Hall v. Knight and Baxter</i> [1914] P. 1, C.A.	III
<i>Theodoros, The</i> [1977] 2 Lloyd's Rep. 428	II
<i>Thorne v. Motor Trade Association</i> [1937] 3 All E.R. 157; [1937] A.C., 797	III
<i>Tooker v. Lopez</i> , 24 N.Y. 2d 569; 301 N.Y.S. 2d 519; 249 N.E. 2d 394 (1969)	VI
<i>Toprak v. Finagrain</i> [1979] 2 Lloyd's Rep. 98, C.A.	VI
<i>Torri, The</i> [1932] P. 78; 101 L.J.P. 44, C.A.	V
<i>Trendtex Trading Corporation v. Crédit Suisse</i> [1981] 3 All E.R. 520; [1981] 3 W.L.R. 766; [1982] A.C. 697	III
<i>Trepca Mines, (no. 2), Re</i> [1962] 3 All E.R. 351, C.A.; [1962] 3 W.L.R. 955; [1963] Ch. 199	III
<i>Timberlane Lumber Co. v. Bank of America</i> , 549 F. 2d 597 (<i>Timberlane I</i>), 574 F. Supp. 1543 (<i>Timberlane II</i>), 749 F. 2d 1384 (<i>Timberlane III</i>)	V

Tzortzis v. Monarch Line A/B	I
Tzortzis v. Monarch Line A/B [1968] 1 All E.R. 949, [1968] 1 W.L.R. 406; [1968] 1 Lloyd's Rep. 337, C.A.	I
U	
United City Merchants (Investments) and Glass Fibres and Equipments v. Royal Bank of Canada, Vitroefuertos S.A. and Banco Continental S.A.; <i>American Accord, The</i> [1982] 2 All E.R. 720; [1982] 2 W.L.R. 1039; [1983] 1 A.C. 168; [1982] 2 Q.B. 208	V
United Construction Co. Ltd. v. Bullock [1959] 3 All E.R. 831; [1959] 3 W.L.R. 1022; [1960] A.C. 351	II
United Dominions Trust (Commercial) Ltd. v. Eagle Aircraft Services Ltd. [1968] 1 All E.R. 104; [1968] 1 W.L.R. 74	II
United Railways of Havana and Regla Warehouses, Re [1960] 2 All E.R. 332, H.L.; [1960] 2 W.L.R. 969; [1961] A.C. 1007	II
United States of America v. Harden (1963) 41 D.L.R. (2nd) 721	III
V	
Valentinis v. Valentinis Rev. Crit. [1959] 691	III
Van Duyn v. Home Office: 41/74 [1974] E.C.R. 1337	III
Van Nievelt, Goudriaan and Co's Stoomvaartmij N. v. Hollandsche Assurantie Societeit and Others, 13 May 1966	VI
Vandyke v. Hewzn (1800) 1 East 96	IV, V
Vervaeke v. Smith [1982] 2 All E.R. 144; [1982] 2 W.L.R. 855; [1983] 1 A.C. 145	III
Vita Food Products, Inc. v. Unus Shipping Co. Ltd. [1939] 1 All E.R. 513; [1939] A.C. 277	I, IV, V, VI
Vladikashsky R.C. v. New York Trust Co [1934] 263, N.Y. 369, 189, N.E. 456	III
W	
Waymell v. Reed (1794) 5 T.R. 599; 2 R.R. 675	IV, V
Wayman v. Southard, [1825] 10 Weat, 1, 48	I
Weston's Settlements, Re [1968] 3 All E.R. 338; [1968] 3 W.L.R. 786; [1969] 1 Ch. 223, C.A.	IV
Whitworth Street Estates (Manchester) Ltd. v. James Miller & Partner Ltd. [1969] 2 All E.R. 210; [1969] 1 W.L.R. 377; [1970] A.C. 583	I, II

Williams & Humbert Ltd. v. W. & H. Trade Marks (Jersey) Ltd. [1985] 2 All E.R. 208; [1986] 2 W.L.R. 24, [1986] A.C. 368	III, IV
Wilson v. Maynard Shipbuilding Consultants A.B. [1978] 2 All E.R. 78; [1978] 2 W.L.R. 466; [1978] Q.B. 665, C.A.	VII
Wilson Smithett & Cope Ltd. v. Terruzzi [1976] 1 All E.R. 817; [1976] 2 W.L.R. 418; [1976] Q.B. 703	V
Wolff v. Oxholm [1817] 6 M. & S. 92	III
X	
X A.G. v. A. Bank [1983] 2 All E.R. 464; [1983] 2 Lloyd's Rep. 535	II
Y	
Young & Woods Ltd. v. West [1980] I.R.L.R. 201	VII
Z	
Zivnostenska Banka National Corporation v. Frankman [1949] 2 All E.R. 671; [1950] A.C. 57	II, IV

Table of Statutes

Countries	Section(s) or Article(s)	Chap(s)
<i>United Kingdom</i>		
Carriage by Air Act 1961	1(1)	V
Carriage of Goods by Road Act 1965	1	V
Carriage of Goods by Sea Act 1971	1(2)	V
Carriage of Passengers by Road Act 1974	1(1)	V
Contracts (Applicable Law) Act 1990		IV
	2(2), Sch.	VII
	3	
	6	VII
Consumer Credit Act 1974	67	V
Consumer Protection Act 1987	7	V
Emergency Powers (Defence) Act 1939	3(1)	V
Employment Protection (Consolidation) Act 1978	141, 141(2)	VII
	153(5)	I, V, VII
Equal Pay Act 1970	1(1), (11)	V, VII
Factories Act 1961	51(3)(c)	VII
Family Law Act 1986		III
Health and Safety at Work etc. Act 1974		VII
Law Reform (Miscellaneous Provisions) Act 1970	1(1)	V
Law Reform (Personal Injuries) Act 1948	1(3)	V, VII
Merchant Shipping Act 1979	14(1)	V
Private International Law (Miscellaneous Provisions) Act 1995		VI
Offices, Shops and Railway Premises Act 1963		VII
Patents Act 1977	39-43, 43(2)	V, VII
Protection of Trading Interests Act 1980		V
Race Relations Act 1976	4, 8	V, VII

Recognition of Divorces and Legal Separations Act 1971	(2)(b)	III
Recognition of Trusts Act 1987		VI
Rent Act 1977	126(1)	V
Sale of Goods Act 1893	14, 55	I
Sale of Goods Act 1979	12, 15, 56	V
Security of Exchange Act 1934		V
Sex Discrimination Act 1975	8, 6, 10(1)	V, VII
State Immunity Act 1978	19(1)(a)	III
Supply of Goods (Implied Terms) Act 1973	3, 4	I
Trade Union and Labour Relations Act 1974	530(6)	V, VII
Unfair Contract Terms Act 1977	12	III,
	26	I
	27	I, V
	27(2)(a)	IV
	27(2)(b)	VII
	30	VII
Wages Act 1986		
Other Countries		
<i>Australia</i>		
COMMONWEALTH		
Carriage of Goods by Sea Act 1991	11, 16	IV
Contracts Review Act 1980	7	IV
Trade Practices Act 1974	67	I, IV
NEW SOUTH WALES		
Credit Act 1984	3(1)	I
SOUTH AUSTRALIA		
Consumer Transaction Act 1972-1973	6(6)	V
<i>Austria</i>		
Private International Law Statute	18(1) §2	VII
<i>Canada</i>		
ONTARIO		
Insurance Act, R.S.O. 1980, c.218	99-100	I

<i>Denmark</i>		
Statute on Maritime Law	200	VI
<i>France</i>		
Civil Code	3(1) 6, 1131	V III
<i>Germany</i>		
Civil Code	138	III
Code of Civil Procedure	6, §328	III
Commercial Code	92c, §1	VI
Introductory Law of the Civil Code 1986		VI
	6	III
	14(1)	VII
	27(3), 34	VI
<i>Guatemala</i>		
Judiciary Act	23	III
<i>Hungary</i>		
Private International Law Statute	39(2)	VII
<i>Iran</i>		
Civil Code	975	III
<i>Italy</i>		
Civil Code 1865	11	V
Private International Law Statute 1995	29(2)	VII
<i>Netherlands</i>		
Civil Code	1638X	VII
<i>Paraguay</i>		
Civil Code	22	III
<i>Portugal</i>		
Civil Code	21	IV

Switzerland

Swiss Federal Act on International Private Law, 1987	13	V
	17	III, VI
	18	VI
	19, 19(1),	V, VI
	19(2)	
	117	II
	118(2)	V
	120, 120(2)	V, VII
	121, 121(3)	V, VII
	122	VII

Turkey

Private International Law Statute	12(2)	III
-----------------------------------	-------	-----

United States of America

FEDERAL

Arbitration Act of 1925		III
-------------------------	--	-----

LOUISIANA

Law on Private International Law, 1991	3516, 3537	VI
--	------------	----

UNIFORM ACTS

Uniform Marriage and Divorce Act 1971 (amended in 1973)	210	IV
--	-----	----

Venezuela

Constitution	196	IV
--------------	-----	----

European Legislation

EC Treaty	36, 48(3), 85	III
	48	VII

Council Directives

of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents, O.J., 86/653/EEC	5	V
of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products, O.J., 85/374/EEC	12	V

of 5 April 1993 on unfair terms in consumer contracts, 93/13/EEC	2(b)(c), 6(2)	VII
of 22 December 1986 for the approximation of the laws regulations and administrative provisions of the Member States concerning consumer credit, O.J. 87/102/EEC	2(a)	VII
<i>European Conventions</i>		
Brussels Convention on Jurisdiction and Enforcement of Judgment, 1968,	4(4) 5(1) 13, 13(3) 17 27(1), 29(1)	VII II, VII VII VI III
Lugano Convention:	5(1) 17	II VII
Rome Convention on the Law Applicable on Contractual Obligations, 1980 ¹		

¹See for references to Articles of the Rome Convention throughout the work.

Table of International Conventions

Date	Title of Convention	Article(s)	Chap(s)
1889	Montevideo Treaty on International Procedural Law		III
1902	Hague Convention on the Guardianship of Minors		V
1927	Geneva Convention on the Extension of Foreign Arbitral Awards	1(c)	III
1940	Montevideo Treaty on International Procedural Law		III
1944	International Monetary Fund (Bretton Woods) Agreement	VIII(2)(b)	III, IV
1945	Charter of the International Court of Justice	38 (1)(c)	III
1951	Benelux Uniform Law on Private International Law	17(1)	VI
1955	Hague Convention on International Sale of Goods		II, VI, VII
		1, 2	I
		3(2)	VII
		6	III
1956	Hague Convention on the Law Applicable to Maintenance Obligations in Respect of Children	11	III, VII
1956	Convention on the Contract for the International Carriage of Goods by Road		V
1961	Convention on the Jurisdiction and the Law Applicable in the Field of Protection of Minors		VII
		2(1), 4	VI
1961	Hague Convention on Conflict of Laws Relating to the Forms of Testamentary Dispositions		VII
		7	III
1964	Uniform Law on the International Sale of Goods	1	I

1965	Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions	15	III, VI
1965	Convention on the Settlement of Investment Disputes between States and Nationals of Other States		III
1969	Benelux Treaty Uniform Act on Private International Law	13(2), 15(3)	VI
1970	Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property		III
1970	Hague Convention on the Recognition of Divorces and Legal Separations	10	III
1970	Inter-American Convention on General Rules of Private International Law, Montevideo	5 6	III IV
1972	Convention on the Protection of the World Cultural and Natural Heritage		III
1973	Hague Convention on Maintenance	11(1)	III
1978	Hague Convention of the Law Applicable to Agency	5 16 17	I VI III
1978	Hague Convention on Celebration and Recognition of the Validity of Marriages	5	III
1980	Draft Hague Articles on the Law Applicable to Certain Consumer Sales	1, 6, 7	VII
1980	United Nations Convention on Contracts for the International Sale of Goods	2, 2(a), (b) 10(a), (b) 24	V, VII VII II
1985	Hague Convention of the Law Applicable to Contracts for International Sale of Goods	7, 7(1) 8, 8(1), (2)-(5) 9 17 18	VI, VII I I I, II I, III, V, VI I, III