

THE CIVIL JURISDICTION AND JUDGMENTS ACT 1982

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PREFACE

“... there still appears to be considerable ignorance about the consequences which this Convention will soon have for the jurisdiction of our Courts, and ... these deserve study and preparation in advance” (Lord Justice Kerr in *Citadel Insurance Co v Atlantic Union Insurance Co SA* [1982] 2 Lloyd’s Rep 543 at 549).

The Civil Jurisdiction and Judgments Act 1982 is perhaps the most important piece of legislation relating to civil procedure enacted in this country this century. It, together with the amendments to the Rules of the Supreme Court, will effect fundamental changes in the law relating to jurisdiction and judgments in the United Kingdom. The primary purpose of the 1982 Act is to give effect in the law of the United Kingdom to the Brussels Convention of 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters. It introduces a new concept of domicile for the purposes of jurisdiction. The 1968 Convention is given the force of law and similar (but not identical) rules of jurisdiction for intra-United Kingdom cases are applied. There are new provisions for the enforcement of intra-United Kingdom judgments. For the first time non-money judgments given by courts in other Contracting States will be enforceable, and non-money judgments rendered in one part of the United Kingdom will be enforceable in other parts. It cannot be said that the new system will be simple. Thus the jurisdictional rules of the English courts will differ depending on whether the defendant is domiciled in another part of the United Kingdom (1982 Act, Schedule 4), or is domiciled in another Contracting State (1982 Act, Schedule 1), or is domiciled in a non-Contracting State (Ord. 11, r. 1(1)). Foreign judgments will be enforceable under Part I of the 1982 Act (judgments of Contracting States), Part II of the 1982 Act (judgments of UK courts), the Foreign Judgments (Reciprocal Enforcement) Act 1933 (the Isle of Man, Guernsey, Jersey and some eight foreign and Commonwealth countries), the Administration of Justice Act 1920 (most Commonwealth countries) and at common law (particularly those countries with whom there are no reciprocal arrangements, such as the United States).

The object of this book is to provide a commentary on the Act and the Convention, to indicate some of the main areas of difficulty and offer some solutions to them, and to deal with the main changes to the Rules of the Supreme Court. There have now been over 30 judgments of the European Court of Justice on the Convention and I have endeavoured to take account of them, together with some of the more important judgments in the original Contracting States. The European Court has not made any use of decisions of national courts and it is well to bear in mind that “the persuasive value of a particular court’s decision must depend on its reputation and status, the extent to which its decisions are binding on courts of co-ordinate and inferior jurisdiction in its own country and the coverage of the national law reporting system” (*Fothergill v Monarch Airlines* [1981] AC 251, at 284, per Lord Diplock).

Preface

Dr. J H C Morris QC very kindly read a draft of the manuscript and made many helpful comments and suggestions, and his ideas were as valuable as one would expect from one whose contribution to the conflict of laws has been so great (see *The Hollandia* [1982] QB 872, at 884, per Lord Denning MR). Mr. Ulrich Stahl helped me with the German material to which I refer and raised a number of useful points for inclusion. Maureen Higgins, my secretary, dealt excellently, as always, with a difficult manuscript. This book is dedicated to my wife, Sarah.

London, August 1983

Lawrence Collins

NOTE

At the time this book went to press, the provisions of the Civil Jurisdiction and Judgments Act 1982 relating to the 1968 Convention and to intra-United Kingdom jurisdiction and enforcement of judgments had not been brought into force. But some of the changes to the general law came into force on 24 August 1982, most notably s. 24(1)(a), (2)(a) and (3) (interim relief and protective measures in cases of doubtful jurisdiction); s. 30 (proceedings for torts to foreign immovable property); s. 32 (foreign judgments given in breach of agreement for settlement of disputes); s. 33 (abolition of the rule in *Harris v Taylor* [1915] 2 KB 580 and *Henry v Geoprosco International Ltd* [1976] QB 726 on what constitutes a submission to the jurisdiction of a foreign court); s. 34 (abolition of non-merger rule).

The amendments to the Rules of the Supreme Court were made in July 1983 (S.I. 1983 No. 1181). The amendments which fall within the scope of this book will not come into force until s. 2 of the 1982 Act comes into force, except for the amendment to Ord. 12, r. 8, which came into force on 1 October 1983.

REFERENCES AND ABBREVIATIONS

1933 Act	The Foreign Judgments (Reciprocal Enforcement) Act 1933
1968 Convention	The Convention on jurisdiction and the enforcement of judgments in civil and commercial matters signed at Brussels on 27 September 1968
1968 Protocol	The Protocol annexed to the 1968 Convention
1971 Protocol	The Protocol on the interpretation of the 1968 Convention by the European Court signed at Luxembourg on 3 June 1971
1982 Act	The Civil Jurisdiction and Judgments Act 1982
Accession Convention	The Convention on the accession to the 1968 Convention and the 1971 Protocol of Denmark, the Republic of Ireland and the United Kingdom signed at Luxembourg on 9 October 1978
Am J Comp L	American Journal of Comparative Law
Anton	Anton <i>Private International Law</i> (1967)
BYIL	British Yearbook of International Law
Clunet	Journal du droit international (Clunet)
Collins	Collins <i>European Community Law in the United Kingdom</i> (2nd edn, 1980)
Dicey & Morris	Dicey & Morris <i>Conflict of Laws</i> (10th edn, 1980)
Droz	Droz <i>La compétence judiciaire et l'effet des jugements dans la CEE</i> (1972)
Eur Comm Cas	European Commercial Cases
Eur Court Digest	Court of Justice of the European Communities <i>Digest of case-law relating to the European Communities</i> , D Series
Eur L Dig	European Law Digest
Eur L Rev	European Law Review
ICLQ	International and Comparative Law Quarterly
Jenard	Report by Mr. P. Jenard on the 1968 Convention and the 1971 Protocol, Official Journal of the European Communities, OJ C59, 5 March 1979, pp 1, 66
Maxwell Report	Report of the Scottish Committee on Jurisdiction and Enforcement-Scottish Courts Administration (1980)
Mustill and Boyd	Mustill and Boyd <i>Commercial Arbitration</i> (1982)
Neths Int L Rev	Netherlands International Law Review
RIW/AWD	Recht der Internationalen Wirtschaft/Aussenwirtschaftsdienst des Betriebs-Beraters
Rev Crit	Revue critique de droit international privé
Schlosser	Report by Professor Dr. Peter Schlosser on the Accession Convention, Official Journal of the European Communities, OJ C 59, 5 March 1979, p 71
Weser	Weser <i>Convention communautaire sur la compétence judiciaire et l'exécution des décisions</i> (1975)
Yb Eur L	Yearbook of European Law

TABLE OF STATUTES

References in this Table to *Statutes* are to Halsbury's Statutes of England (Third Edition) showing the volume and page at which the annotated text of the Act will be found.

Page references printed in bold type indicate where the Act is set out in part or in full.

	PAGE		PAGE
Administration of Justice Act 1920 (6 <i>Statutes</i> 353)	165, 228	Carriage of Goods by Road Act 1965 (28 <i>Statutes</i> 436)	35
s 10	145, 172	s 4	141, 171
(1)	172	Carriage of Goods by Sea Act 1971 (41 <i>Statutes</i> 1312)	7
14	145, 172	Carriage of Passengers by Road Act 1974 (44 <i>Statutes</i> 1326)	141, 171
Administration of Justice Act 1956 (18 <i>Statutes</i> 20)	146	Child Care Act 1980 (50 (1) <i>Statutes</i> 1054)	57
s 51 (a)	119, 120	s 47-51	209
Administration of Justice Act 1969 (40 <i>Statutes</i> 363)	159	Children and Young Persons Act (Northern Ireland) 1968	209
s 15 (2)	223	s 156, 159	209
Administration of Justice Act 1970 (40 <i>Statutes</i> 233)	116	Civil Aviation (Eurocontrol) Act 1962	217
Sch 8	170	s 7 (3)	127
Administration of Justice Act 1977 (47 <i>Statutes</i> 381)	170	Civil Jurisdiction and Judgments Act 1982 (52 <i>Statutes</i> 381)	7, 157
s 4	223	s 1	7
Administration of Justice (Scotland) Act 1972	139, 168	(1), (3)	7, 105, 158
Air Force Act 1955 (29 <i>Statutes</i> 335)	139	2	5, 6
s 150 (5)	30	(1)	7
Arbitration Act 1950 (2 <i>Statutes</i> 433)	168	(2)	7, 130, 158
s 12 (6)	223	(1)	1, 10, 13
Arbitration Act 1975 (45 <i>Statutes</i> 32)	168	(2), (3)	10
Arbitration Act 1979 (49 <i>Statutes</i> 58)	223	4	5, 115, 158
Arbitration Act (Northern Ireland) 1937	117	(1)	114, 115, 117
s 21 (1)	115	(2), (3)	115
Army Act 1955 (29 <i>Statutes</i> 168)	120	(4)	115, 120
s 150 (5)	5, 159	5	117
Attachment of Earnings Act 1971 (41 <i>Statutes</i> 791)	124	(1)	11
Sch 1	11	(2)	120
Carriage by Air Act 1961 (2 <i>Statutes</i> 604)	11, 13, 118, 119, 159	(3)	11, 119, 124
Carriage by Air and Road Act 1979	106, 115, 160	7	115
Carriage by Air (Supplementary Provisions) Act 1962 (2 <i>Statutes</i> 639)	116, 125, 160	(3), (5)	115
Carriage by Railway Act 1972 (42 <i>Statutes</i> 1567)	141, 171	8	116, 125, 160
s 5	141, 171		

Table of Statutes

	PAGE
Civil Jurisdiction and Judgments Act 1982— <i>contd</i>	
s 9	160
(1)	32
(2)	36
10	65, 161
(2)	128
(3)	76, 128
(7)	76
11	117, 118, 161
(1), (3)	118
12	118, 161
13	123, 162
14	7, 162
15	162
(1)	105
(2)	122
16	5, 134, 135, 163
(1)	127, 128
(2)	129
(3)	10, 11
17	129, 163
18	131, 132, 133, 135, 164
(2)–(6)	131
(7)	106, 117, 132
(8)	132
19	131, 133, 135, 165
20	5, 165
(1)	134
(5)	10, 14, 134
21	134, 166
22	166
(1), (2)	134
23	167
24	93, 102, 137, 138, 167
(2)	138
25	6, 49, 101, 137, 138, 167
(1)	138
(2)	102
(3)	102, 138, 139
26	137, 139, 168
27	101, 137, 138, 169
(1), (3)	138
28	137, 138, 170
29	170
30	6, 51, 79, 137, 139, 140, 170
31	137, 140, 141, 170
(2)–(5)	141
32	29, 112, 137, 141, 142, 143, 146, 171
(1)	142, 143
(2)	142
(3)	142, 143
(4)	30, 112
(5)	142
33	91, 113, 137, 143, 144, 146, 172
(2)	113, 144
34	6, 114, 137, 144, 172

	PAGE
Civil Jurisdiction and Judgments Act 1982— <i>contd</i>	
s 35	137, 145, 172
36	173
37	101, 146, 173
(1)	125
38	146, 174
39	174
40	175
(1)	122
41	5, 38, 39, 40, 176
(1)	39
(2)	39, 40
(3)	40
(4)	40, 65
(5)	40
(6), (7)	39, 40
42	5, 41, 43, 176
(2)	41
(4), (5)	42
(6), (7)	41
(8)	43
43	43, 80, 177
(2), (3)	43, 81
(4)	81
(5)–(7)	43, 81
(8)	43
44	42, 62, 71, 178
(2)	76, 128
45	44, 65, 128, 151, 178
(3)	44
46	44, 179
47	14, 179
48	6, 180
(3)	58
49	46, 97, 140, 180
50	42, 81, 105, 181
51, 52	182
53	182
(1)	6, 31, 40
(2)	6
54	145, 183
55	183
Sch 1	5, 7, 9, 34, 39, 130, 147, 183
Sch 2	5, 7, 9, 11, 200
Sch 3	5, 7, 9, 40, 52, 202
Sch 4	5, 14, 36, 37, 43, 60, 127, 128, 129, 130, 147, 148, 205
Sch 5	129, 130, 208
Sch 6	131, 132, 133, 135, 210
Sch 7	6, 131, 132, 133, 135, 212
Sch 8	5, 14, 43, 93, 134, 135, 214
Sch 9	134, 217
Sch 10	137, 145, 217
Sch 11	125, 146, 219
Sch 12	223
Sch 13	226

Table of Statutes

	PAGE		PAGE
Civil Jurisdiction and Judgments Act 1982— <i>contd</i>		Law Reform (Miscellaneous Provisions) (Scotland) Act 1940	
Sch 13— <i>contd</i>		s 4 (3)	224
Pt I	6, 31, 134	Legal Aid Act 1974 (44 <i>Statutes</i> 1035)	
Pt II	6, 135, 139, 140, 141, 143, 144	s 20 (4A)	175
Sch 14	145, 228	Legal Aid (Scotland) Act 1967	
Companies Act 1948 (5 <i>Statutes</i> 110) . .	81, 208	s 15 (4A)	175
s 332	28	Magistrates' Courts Act 1980 (50 (2) <i>Statutes</i> 1433)	
Companies Act 1981	81	s 65 (1), (2)	223
Companies Act (Northern Ireland) 1960 . .	208	III	120, 124, 159
Consumer Credit Act 1974 (44 <i>Statutes</i> 746)		Maintenance Affiliation Orders Act (Northern Ireland) 1966	146, 226
s 141	77	s 9	225
(3)–(3B)	224	10	223
Contempt of Court Act 1981 (51 <i>Statutes</i> 495)		(1A)	225
s 16	131, 165	11	173, 219, 221, 225
Continental Shelf Act 1964 (22 <i>Statutes</i> 587)		(3)–(3B)	219
s 3	209, 217	(4)	221
Court of Exchequer (Scotland) Act 1856 . .	131	11A	160, 173, 220, 221, 225
s 13	164	(4)	221
Criminal Justice Act 1972 (42 <i>Statutes</i> 99)		12 (1)	221
s 6	61	13 (7A)	225
Criminal Justice Act 1982		14 (2), (3)	173, 225
s 37, 46	159	16 (2)	221
Cyprus Act 1960 (4 <i>Statutes</i> 285)		Maintenance Orders Act 1950 (17 <i>Statutes</i> 235, 280)	132, 146, 173, 226
s 2 (1)	174, 182	15	173
Employment Protection (Consolidation) Act 1978 (48 <i>Statutes</i> 452)		(1)	163, 224
s 140	8, 88	16	165
Foreign Judgments (Reciprocal Enforcements) Act 1933 (6 <i>Statutes</i> 365)	3, 137, 165, 171, 172	18	220
s 1	217	(1)–(1B)	220
(1), (2), (2A)	217	(3A),	219, 224
(5)	218	(3B)	224
2 (2)	115	21 (2)	224
(3)	116	22	220
(6)	115	24 (3)	224
4 (2)	144, 228	Maintenance Orders Act 1958 (17 <i>Statutes</i> 293)	146, 220, 225
(3)	140, 141, 143, 146, 228	s 1	223
5	121	2	173, 219, 220
6, 9	218	(3)	219, 220
10	146, 218	(3A), (3B)	219
(1)–(3)	218	(4)	220
10A	146, 218	2A	125, 160, 173, 220, 221
11 (1)	218	3 (1)	220
Foreign Tribunals Evidence Act 1856	18	5 (1)–(4A)	173
Inferior Courts Judgments Extension Act 1882 (6 <i>Statutes</i> 347)	127, 131, 227	6A	173
International Transport Conventions Act 1983		23 (2)	225
s 6	141, 171	Maintenance Orders (Reciprocal Enforcement) Act 1972 (42 <i>Statutes</i> 714)	35, 58, 123, 137, 141, 146, 165, 223, 228
Interpretation Act 1978 (48 <i>Statutes</i> 1296) .	182	s 2 (1), (4)	222
Judgments Extension Act 1868 (6 <i>Statutes</i> 341)	127, 131, 227	4 (1), (3)–(5)	224
		6 (2), (4)	222
		8 (5)	222

Table of Statutes

	PAGE		PAGE
Maintenance Orders (Reciprocal Enforcement) Act 1972 (42 <i>Statutes</i> 714)— <i>contd</i>		Protection of Trading Interests Act 1980 (50 (1) <i>Statutes</i> 258)	
9	167, 220	s 5	23
(1A)	220, 222	(3)	174
(1B)	222	6	146, 209, 217
10	222	(1), (1A)	174
10 (2), (3), (5)–(7)	222	7	146, 174
11 (1)	222	(1)	174
16	125	Restrictive Trade Practices Act 1976 (46 <i>Statutes</i> 1955)	
21	220	s 35 (2)	22
(1)	222	Sheriff Courts (Scotland) Act 1907	166
24	222	Social Work (Scotland) Act 1968	
27 (1)	174	s 80	214
40, 47	222	81 (1)	214
Matrimonial Homes Act 1983	26	State Immunity Act 1978 (48 <i>Statutes</i> 85)	
Merchant Shipping Act 1974 (44 <i>Statutes</i> 1415)		s 2–11	141, 170
s 6 (4)	142, 171	12	171
Merchant Shipping (Oil Pollution) Act 1971 (41 <i>Statutes</i> 1345)		13	141, 171
s 13 (3)	141, 171	14 (3), (4)	141, 171
National Assistance Act 1948 (23 <i>Statutes</i> 636)		Supplementary Benefits Act 1976 (23 <i>Statutes</i> 695)	
s 43	209	s 18	209
44 (7)	214	19	209
Naval Discipline Act 1957 (29 <i>Statutes</i> 42)		(8)	214
s 101 (5)	223	Supreme Court Act 1981 (51 <i>Statutes</i> 590)	
Nuclear Installations Act 1965 (37 <i>Statutes</i> 430)	149	s 20, 22	35
s 17	35	140	131, 165
(4)	141, 171	Theft Act 1968 (8 <i>Statutes</i> 782)	
		s 28	61
		Third Parties (Rights Against Insurers) Act 1930 (3 <i>Statutes</i> 175)	72
		Trusts (Scotland) Act 1921	
		s 24A	214

TABLE OF 1968 CONVENTION, ANNEXED
PROTOCOL, 1971 PROTOCOL AND ACCESSION
CONVENTION

Page references in bold type indicate where the Convention or Protocol is set out in part or in full.

	PAGE		PAGE
1968 Convention		1968 Convention— <i>contd</i>	
Preamble	15, 183	Title II— <i>contd</i>	
Title I	184	Section 3	45, 46, 47, 69, 70, 71, 128, 186
Art 1	15, 17, 19, 20, 21, 29, 45, 64, 82, 116, 128, 138, 184	Art 7	69, 70, 71, 72, 186
(1)	21	8	69, 71, 72, 73, 186
(2)	22, 23, 27, 28, 57, 73	(1)	37, 47, 69, 70, 71
Title II	14, 32, 33, 45, 47, 128, 129, 184	(2)	37, 42, 47, 61, 64, 69, 70, 71, 73
Section 1	45, 46, 184	(3)	69, 71
Art 2	47, 51, 67, 74, 80, 127, 184 , 205	9	69, 71, 72, 73, 186
(1)	37, 46	10	69, 71, 72, 73, 186
(2)	46, 129	(1)	69, 70, 71
3	21, 27, 36, 37, 46, 48, 67, 100, 128, 184 , 205	(2)	72
(1)	47	(3)	70, 72
(2)	46, 47, 49, 50, 91, 105, 129	(6)	93
4	46, 49, 50, 61, 67, 70, 71, 76, 77, 80, 128, 129, 185	11	37, 69, 70, 72, 73, 186
(1)	37, 51, 69, 70	(1)	70
(2)	37, 47, 50, 51	(2)	69, 70
Section 2	45, 46, 47, 185 , 205	12	51, 69, 72, 74, 84, 186
Art 5	37, 47, 51, 67, 185 , 205	(1)	70, 73
(1)	9, 10, 15, 32, 51, 52, 53, 54, 55, 56, 57, 64, 74, 87, 128, 130	(2)	69, 70, 73
(2)	22, 24, 26, 31, 37, 47, 57, 58, 128	(3)	37, 69, 70, 73
(3)	15, 53, 58, 59, 60, 128, 129, 150	(4)	37, 70, 73
(4)	61, 128	(5)	70, 73
(5)	15, 42, 61, 62, 63, 64, 69, 70, 76, 77, 128, 130, 152	12A	69, 72, 73, 74, 187
(6)	27, 44, 64, 65, 128, 150	Section 4	45, 46, 47, 56, 74, 75, 76, 130, 187 , 206
(7)	65, 128	Art 13	15, 56, 74, 75, 77, 187 , 206
(8)	36, 129	(1)	37, 75, 76, 77
5A	130, 206	(2)	37, 42, 62, 76, 128
6	37, 67, 185 , 206	(3)	37, 75, 77
(1)	65, 66, 128	14	37, 56, 74, 188 , 207
(2)	66, 67, 128	(1)	47, 76, 128
(3)	67, 68, 69, 76, 90, 128	(2), (3)	76
(4)	90	15	37, 51, 56, 76, 77, 84, 87, 188 , 207
6A	186 , 206	(3)	77
		Section 5	45, 46, 47, 188 , 207
		Art 16	15, 46, 47, 51, 77, 78, 79, 80, 84, 91, 94, 95, 127, 128, 129, 130, 188 , 207

Table of 1968 Convention, etc

	PAGE
1968 Convention— <i>contd</i>	
Title II, Section 5— <i>contd</i>	
Art 16 (1)	15, 51, 78, 79, 80, 140
(2)	27, 42, 43, 78, 80, 81, 82, 97, 130
(3)	82
(4)	82, 83, 129, 130
(5)	83
Section 6	45, 46, 47, 188, 207
Art 17	8, 22, 32, 37, 47, 51, 52, 55, 56, 66, 72, 73, 76, 83, 84, 85, 86, 87, 89, 90, 91, 99, 112, 130, 188, 207
(1)	86
(2)	84
(4)	85, 130
18	9, 51, 69, 76, 90, 91, 92, 93, 108, 112, 113, 144, 189, 208
Section 7	45, 189, 208
Art 19	94, 147, 189, 208
20	35, 37, 38, 94, 113, 147, 148, 189, 208
(1)	94, 147
(2)	94, 109
Section 8	45, 189
Art 21	40, 60, 96, 97, 110, 130, 189
(1)	147
22	40, 68, 97, 98, 110, 130, 189
(1)	98
(3)	98
23	78, 97, 110, 130, 190
Section 9	45, 190, 208
Art 24	30, 49, 60, 90, 97, 98, 99, 100, 101, 102, 137, 138, 190, 208
Title III	190
Art 25	15, 106, 123, 190
(1)	105
Section I	190
Art 26	110, 113, 190
27	92, 107, 113, 119, 190
(1)	92, 112
(2)	15, 96, 108, 109
(3)	97, 110
(4)	107, 110, 124
(5)	110, 111
28	77, 92, 107, 108, 111, 112, 113, 119, 190
(1)	112
29	191
30	15, 120, 121, 191
(2)	121
Section 2	191
Art 31	114, 124, 191
32	37, 115, 116, 122, 191
(2)	37, 117
33	35, 117, 122, 152, 191
34	77, 118, 119, 192
(1)	118
(2)	107, 111, 113, 119

	PAGE
1968 Convention— <i>contd</i>	
Title III, Section 2— <i>contd</i>	
Art 34 (3)	119
35	40, 118, 122, 192
36	37, 118, 120, 124, 192
37	11, 118, 124, 192
(1)	118
(2)	11, 119
38	15, 118, 119, 120, 121, 124, 192
(1), (2)	121
39	115, 118, 120, 124, 193
40	118, 119, 124, 193
41	11, 118, 119, 124, 193
42	30, 106, 122, 193
43	23, 116, 122, 193
44	122, 194
45	37, 102, 122, 194
Section 3	194
Art 46	117, 122, 152, 194
(1)	102
(2)	118
47	117, 118, 152, 194
(2)	102
48, 49	117, 194
Title IV	194
Art 50	123, 194
51	123, 195
Title V	195
Art 52	15, 37, 38, 39, 195
(1)	38
(2)	39, 40
(3)	39
53	15, 37, 80, 195
(1)	42
(2)	43
Title VI	195
Art 54	33, 195
Title VII	32, 195
Art 55	32, 33, 195
56	33, 196
57	34, 58, 123, 196
(1)	34, 35
58	197
59	35, 36, 50, 105, 112, 197
(2)	36
Title VIII	197
Art 60	197
61, 62	198
63	1, 198
64-67	198
68	9, 198
Annexed Protocol	
Art I	37, 52, 87, 198
II	22, 61, 199
III	199
IV	95, 199
V	67, 72, 199
VA	105, 199

Table of 1968 Convention, etc

	PAGE		PAGE
Annexed Protocol— <i>contd</i>		1971 Protocol— <i>contd</i>	
Art VB	52, 65, 199	Art 7-13	202
VC	200	14	9, 202
VD	82, 200	Accession Convention	
VI	200	Art 25 (2)	34
1971 Protocol		Title V	202
Art 1	11, 200	Art 34	31, 202
2	200	(1)	31
(1)	11, 12, 13	(3)	32
(2)	11, 12	35	31, 32, 52, 203
(3)	11	36	65, 203
3	11, 201	Title VI	204
(1)	11	Art 37	204
(2)	11	(2)	9
4	12, 201	38	204
(2)	12	39	31, 204
5	14, 201	40	204
6	201	41	9, 205

TABLE OF CASES

	PAGE
Aeronave SpA v Westland Charters Ltd [1971] 3 All ER 531, [1971] 1 WLR 1445, CA . . .	103
Almacoa SA v Moteurs Cérés, France 1978, 1979 Clunet 623	107
Atlantic Duke, The, Rotterdam 1980 [1982] ECC 348	91
Audi-NSU v Adelin Petit, Belgian Cour de Cassation 1979 [1980] ECC 235	56
BvT v General Accident, Netherlands 1977, Eur Court Digest DI-8-B1, 1978 Netherlands Int L Rev 82	97
Banque Nationale de Paris v Société Felk, Court of Appeal, Paris, 1978 Eur Court Digest DI-6-B4, 1979 Rev Crit 444	66
Bavaria & Co KG and Germanair GmbH & Co KG v Eurocontrol: 9 and 10/77 [1977] ECR 1517, [1980] 1 CMLR 566	13, 15, 18, 19, 31, 33
Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591, [1975] 1 All ER 810	7, 10, 114
Blancaert and Willems PVBA v Trost: 139/80 [1981] ECR 819, [1982] 2 CMLR 1	62, 64
Boissière & Co v Brockner & Co (1889) 6 TLR 85	144
Bonacina, Re, Le Brasseur v Bonacina [1912] 2 Ch 394, 81 LJ Ch 674, CA	53
Boussac Saint-Frères SA v Gerstenmeier: 22/80 [1980] ECR 3427, [1982] 1 CMLR 202	103
Bremen M/S v Zapata Off-Shore Co (1972) 407 US 1	84
British South Africa Co v Companhia de Mocambique [1893] AC 602, 63 LJQB 70	139, 140
Buchanan (James) & Co Ltd v Babco Forwarding and Shipping (UK) Ltd [1978] AC 141, [1977] 3 All ER 1048	7, 9
CHW v GJH: 25/81 [1982] ECR 1189, [1983] 2 CMLR 125	25, 27, 30, 91, 93
CILFIT Srl v Minister of Health: 283/81 [1982] ECR 3415, [1983] 1 CMLR 472	9, 12, 13
Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2) [1967] 1 AC 853, [1966] 2 All ER 536	114, 145
Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 3) [1970] Ch 506, [1969] 3 All ER 897	96
Carmel Exporters (Sales) Ltd v Sea-Land Services Inc [1981] 1 All ER 984, [1981] 1 WLR 1068	152
Castanho v Brown & Root (UK) Ltd [1981] AC 577, [1981] 1 All ER 143	46
Castree v E R Squibb & Sons Ltd [1980] 2 All ER 589, [1980] 1 WLR 1248, CA	59, 151
Chief Constable of Kent v V [1983] QB 34, [1982] 3 All ER 36, CA	101, 138
Citadel Insurance Co v Atlantic Union Insurance Co SA [1982] 2 Lloyd's Rep 543, CA	71
Colt Industries Inc v Sarlie [1966] 1 All ER 673, [1966] 1 WLR 440	49
Commerzbank v Giangrande, Turin 1980 [1982] ECC 207	120
Compagnie Française de Télévision v Thorn Consumer Electronics [1981] 3 CMLR 414, [1981] FSR 306	103
Consortium General Textiles SA v Sun and Sand Agencies Ltd [1978] QB 279, [1978] 2 All ER 339, CA	23
Cook Industries Inc v Galliher [1979] Ch 439, [1978] 3 All ER 945	102
Cotonfil v Chemitex, Italy Ct of Cass 1980 [1983] ECC 8	12
Créations Davos SPRL v Katag Gruppe Top Textil AG, Brussels 1977, Eur Court Digest DI-5.1.2-B12	56
Crédit Chimique v James Scott Engineering Group Ltd 1982 SLT 131	45
Davy v Spelthorne Borough Council (1983) Times, 10 February, CA	17
De Bloos SPRL v Bouyer SA: 14/76 [1976] ECR 1497, [1977] 1 CMLR 60	15, 54, 62, 64
De Cavel v De Cavel (No 1): 143/78 [1979] ECR 1055, [1979] 2 CMLR 547	13, 22, 24, 30, 57, 98, 102, 106

Table of Cases

	PAGE
De Cavel v De Cavel (No 2): 120/79 [1980] ECR 731, [1980] 3 CMLR 1	13, 22, 24, 30, 31, 57, 98
Denilauler v Snc Couchet Frères: 125/79 [1980] ECR 1553, [1981] 1 CMLR 62	16, 30, 98, 102, 106, 109, 116, 119
De Wolf v Cox BV: 42/76 [1976] ECR 1759, [1977] 2 CMLR 43	8, 15, 97, 114
Distillers Co (Biochemicals) Ltd v Thompson [1971] AC 458, [1971] 1 All ER 694, PC	59
Doyle v Taoiseach: 36 and 71/80 [1981] ECR 735, [1981] 2 CMLR 455	13
Effer SpA v Kantner: 38/81 [1982] ECR 825	10, 53, 79
Elefanten Schuh GmbH v Jacqmain: 150/80 [1981] ECR 1671, [1982] 3 CMLR 1	8, 9, 10, 16, 88, 89, 90, 91, 92, 98, 144, 152
Ellerman Lines Ltd v Read [1928] 2 KB 144, 97 LJKB 366, CA	83
Ellinger v Guinness Mahon & Co [1939] 4 All ER 16, 83 Sol Jo 924	150
Estasis Salotti v RÜWA GmbH: 24/76 [1976] ECR 1831, [1977] 1 CMLR 345	15, 86
Evans Marshall & Co Ltd v Bertola SA [1973] 1 All ER 992, [1973] 1 WLR 349, CA	84, 138
Ferronato v Barth and Pohl, Italy 1976, Eur Court Digest DI-21-B1	97
Foglia v Novello (No 1): 104/79 [1980] ECR 745, [1981] 1 CMLR 45	13
Foglia v Novello (No 2): 244/80 [1981] ECR 3045, [1982] 1 CMLR 585	13
Forge v Fantu Food, Netherlands, 1975, Eur Court Digest DI-5, 3-B1	60
Fothergill v Monarch Airlines Ltd [1981] AC 251, [1980] 2 All ER 696	1, 7, 9
Galleries Segoura Sprl v Bonakdarian: 25/76 [1976] ECR 1851, [1977] 1 CMLR 361	15, 86
Garden Cottage Foods Ltd v Milk Marketing Board [1983] 2 All ER 770, [1983] 3 WLR 143, HL	22
Geobra Brandstätter GmbH v Big Spielwarenfabrik, Netherlands 1977, Eur Court Digest DI-5, 3-B5, 1978 Netherlands Int L Rev 86	60
Golden Trader, The [1975] QB 348, [1974] 2 All ER 686	139
Gourdain v Nadler: 133/78 [1979] ECR 733, [1979] 3 CMLR 180	15, 19, 28, 106
Gross, Re, ex p Treasury Solicitor [1968] 3 All ER 804, [1969] 1 WLR 12	18
Handelskwekerij G J Bier BV v Mines de Potasse d'Alsace SA: 21/76 [1978] QB 708, [1976] ECR 1735, [1977] 1 CMLR 284	15, 59, 69, 71, 150
Harris v Taylor [1915] 2 KB 580, 84 LJKB 1839, CA	6, 91, 143
Henry v Geoprosco International Ltd [1976] QB 726, [1975] 2 All ER 702, CA	6, 91, 143
Hesperides Hotels Ltd v Aegean Turkish Holidays Ltd [1979] AC 508, [1978] 1 All ER 277	139
Heyman v Darwins Ltd [1942] AC 356, [1942] 1 All ER 337, HL	88
Hollandia, The [1983] 1 AC 565, [1982] 3 All ER 1141	7
Industrial Diamond Supplies v Riva: 43/77 [1977] ECR 2175, [1978] 1 CMLR 349	15, 121
Industrie Tessili Italiana Como v Dunlop AG: 12/76 [1976] ECR 1473, [1977] 1 CMLR 26: 14, 15, 47, 55	47, 55
IRC v Stype Investments (Jersey) Ltd [1982] Ch 456, [1982] 3 All ER 419	21
Intpro Properties (UK) Ltd v Sauvel [1983] 2 All ER 495, [1983] 2 WLR 908, CA	79
Intraco Ltd v Notis Shipping Corp'n of Liberia, The Bhoja Trader [1981] 2 Lloyd's Rep 256, CA:	102, 116
Irish Creamery Milk Suppliers Association v Government of Ireland: 36 and 71/80 [1981] ECR 735, [1981] 2 CMLR 455	13
Italcconf v Andreae, Florence 1976, Eur Court Digest DI-5.1.2-B7	56
Iveagh v IRC [1954] Ch 364, [1954] 1 All ER 609	44
Ivenel v Schwab: 133/81 [1982] ECR 1891, [1983] 1 CMLR 538	10, 22, 54, 55
Kendall v Kendall [1977] Fam 208, [1977] 3 All ER 471	108
Klöchner v Società Tazzetti, Italy Ct of Cass 1980, [1980] I Foro It 1687, [1981] ELD 71	56
Klomps v Michel: 166/80 [1981] ECR 1593, [1982] 2 CMLR 773	15, 16, 37, 38, 96, 106, 109, 110
Kohn v Rinson & Stafford (Brod) Ltd [1948] 1 KB 327, [1947] 2 All ER 839	103
LTU GmbH & Co KG v Eurocontrol: 29/76 [1976] ECR 1541, [1977] 1 CMLR 88	15, 18, 20, 106
Landi den Hartog v Stopps [1976] 2 CMLR 393, [1976] FSR 497	103
Les Assurances Nationales v Levy, Italy Ct of Cass, [1980] I Foro It 1861, [1981] ELD 80	12
McFee Engineering Pty Ltd v CBS Constructions Pty Ltd (1980) 44 FLR 340, 28 ALR 339	53
MacKender v Feldia AG [1967] 2 QB 590, [1966] 3 All ER 847, CA	88
MacShannon v Rockware Glass Ltd [1978] AC 795, [1978] 1 All ER 625	45, 49, 96
Maharanee of Baroda v Wildenstein [1972] 2 QB 283, [1972] 2 All ER 689, CA	49
Manheim & Zoon v Tasselli, Amsterdam 1977, Eur Court Digest DI-5.1.2-B14	56

Table of Cases

	PAGE
Mantovani v Carapelli SpA [1980] 1 Lloyd's Rep 375, CA	139
Matthews v Kuwait Bechtel Corp [1959] 2 QB 57, [1959] 2 All ER 345, CA	60
Mecoma v Stahlhandel, Netherlands, 1978, Eur Court Digest DI-5, 3-B7, 1981 Netherlands Int L Rev 72	60
Medical Defence Union v Department of Trade [1980] Ch 82, [1979] 2 All ER 421	70
Meeth v Glacetal Sarl: 23/78 [1978] ECR 2133, [1979] 1 CMLR 520	85, 89
Mike Trading and Transport v R Pagnan & Fratelli, The Lisboa [1980] 2 Lloyd's Rep 546, CA	90, 99
Multinational Gas and Petrochemical Co v Multinational and Petrochemical Services Ltd [1983] 2 All ER 563, [1983] 3 WLR 492, CA	59, 150
Netherlands State v Rüffer: 814/79 [1980] ECR 3807, [1981] 3 CMLR 293	15, 19, 20, 35, 58, 60
Netty, The [1981] 2 Lloyd's Rep 57	35
Nordsee v Reederei Mond: 102/81 [1982] ECR 1095	13
Obikoya v Silvernorth Ltd (1983) Times, 6 July	94
Official Solicitor v Stype Investments (Jersey) Ltd [1983] 1 All ER 629, [1983] 1 WLR 214	64, 151
Onnen v Nielsen, 1976, Eur Court Digest DI-27, 4-B1	111
O'Reilly v Mackman [1982] 3 All ER 1124, [1982] 3 WLR 1096, HL	17
Pendy Plastic Products BV v Pluspunkt Handelsgesellschaft mbH [1983] 1 CMLR 665, [1982] ECR 2733	96, 109
Perry v Zissis [1977] 1 Lloyd's Rep 607, CA	101, 138, 145, 151
Peters v ZNAV: 34/82 [1983] ECR (not yet reported)	15, 53
Plozza v South Australian Insurance Co Ltd [1963] SASR 122	72
Porta-Leasing GmbH v Prestige International SA: 784/79 [1980] ECR 1517, [1981] 1 CMLR 135	87
R v B, Bruges 1977 (1980) 5 Eur L Rev 420	90
R v Henn [1979] ECR 3795, [1980] 1 CMLR 246, ECJ; sub nom Henn and Darby v DPP [1981] AC 850, [1980] 2 All ER 145, HL	9, 13, 108, 109
Rena K, The [1979] QB 377, [1979] 1 All ER 397	139
Rinkau: 157/80 [1981] ECR 1391, [1983] 1 CMLR 205	10, 22, 61
Rohr SA v Ossberger: 27/81 [1981] ECR 2431, [1982] 3 CMLR 29	92, 93, 108, 152
Rolled Steel Products (Holdings) Ltd v British Steel Corp [1982] Ch 478, [1982] 3 All ER 1057	82
Ruffino v Fornaro, Milan 1979 [1981] ECC 541	66
St Gobain, Chauny & Cirey Co v Hoyermann's Agency [1893] 2 QB 96, 62 LJQB 485	152
Sanders v Van der Putte: 73/77 [1977] ECR 2383, [1978] 1 CMLR 331	15, 77, 78, 79
Sanicentral GmbH v Collin: 25/79 [1979] ECR 3423, [1980] 2 CMLR 164	8, 22, 32, 77, 88
Shah v Barnet London Borough Council [1983] 1 All ER 226, [1983] 2 WLR 16, HL	39
Siskina, The [1979] AC 210, [1977] 3 All ER 803	6, 99, 138, 139
Smith Kline and French Laboratories Ltd v Bloch [1983] 2 All ER 72, [1983] 1 WLR 730, CA	46, 96
Soc Cotonfil v Società Chemitex [1980] I Foro It 1860, [1983] ECC 8	88
Société Bertrand v Paul Ott KG: 150/77 [1978] ECR 1431, [1978] 3 CMLR 499	15, 74, 75
Société Civile Immobilière de Bourgogne v Raat, Amsterdam 1975, Eur Court Digest DI-16, 1-B2	79
Société France International Représentation v Héritiers Baas, Paris, 1979, affd Cour de Cassation, 1981, 1980 Rev Crit 121 and 1981 Rev Crit 553	28, 107
Société Gotz v Barsaghian, Lyons 1979, 1980 Clunet 888, 1981 11 JCP 19519, [1981] ELD 185	56, 94
Société Julia v Société Sodevoc, Rennes and Cour de Cassation 1978, 1980 Clunet 351	56
Société Salik v Martin, Paris 1980, 1982 Rev Crit 135	83
Société Schumacher v Société Technic-Equipement, French Cour de Cassation 1980, 1981 Rev Crit 127	85
Sofraco v Plumvee Export, French Cour de Cassation 1977, Eur Court Digest DI-27, 3-B1	110
Somafer SA v Saar-Ferngas AG: 33/78 [1978] ECR 2183, [1979] 1 CMLR 490	15, 47, 62
Somportex v Philadelphia Chewing Gum Corp [1968] 3 All ER 26, 112 Sol Jo 216, CA	92
Stag Line Ltd v Foscolo, Mango & Co [1932] AC 328, [1931] All ER Rep 666	8
Theodohos, The [1977] 2 Lloyd's Rep 428	42
Theunissen v Luz, Italy Ct of Cass [1981] I Foro It 1607, [1981] ELD 440	79

Table of Cases

	PAGE
Tracomina SA v Sudan Oil Seeds Co Ltd [1983] 1 All ER 404, [1983] 1 WLR 662; affd. (1983) Times, 2 July, CA	29, 112, 114, 142, 143, 144
Tron v Verkoren, Versailles, 1980 Clunet 894	99
Tropical Shipping Co v Dammers and Van der Heide, Hague 1980, [1982] ECC 353	41
Tyne Improvement Comrs v Armement Anverso SA, The Brabo [1949] AC 326, [1949] 1 All ER 294	150
Unit Construction Co Ltd v Bullock [1960] AC 351, [1959] 3 All ER 831	41
United Australia Ltd v Barclays Bank Ltd [1941] AC 1, [1940] 4 All ER 20	53
Vaccaro v Abitbol, Aix 1977, Eur Court Digest DI-5. 1-B5	56
Van Rollegheem v Roth, Brussels, March 1977, Eur Court Digest DI-1. 2-B5	28
Verhulst v Thovadec Plastics, Netherlands 1978, Eur Court Digest DI-21-B2	97
Vervaeke v Smith (Messina and A-G intervening) [1981] Fam 77, [1981] 1 All ER 55; affd. [1983] AC 145, [1982] 2 All ER 144	18, 34
Westfal-Larsen & Co AS v Ikerigi Compania Naviera SA, The Messiniaki Bergen [1983] 1 All ER 382, [1983] 1 Lloyd's Rep 424	114
Winter v Winter [1894] 1 Ch 421, 63 LJ Ch 165	151
Wisseborn BV v Blome KG, Netherlands 1977, 1981 Netherlands Int L Rev 80	99
Zelger v Salinitri: 56/79 [1980] ECR 89, [1980] 2 CMLR 635	56, 87
Decisions of the European Court of Justice are listed below numerically. These decisions are also included in the preceding alphabetical table.	
12/76: Industrie Tessili Italiana Como v Dunlop AG [1976] ECR 1473, [1977] 1 CMLR 26:	14, 15, 47, 55
14/76: De Bloos Sprl v Bouyer SA [1976] ECR 1497, [1977] 1 CMLR 60	15, 54, 62, 64
21/76: Handelskwekerij G.J. Bier BV v Mines de Potasse d'Alsace SA [1978] QB 708, [1976] ECR 1735, [1977] 1 CMLR 284	15, 59, 69, 71, 150
24/76: Estasis Salotti v RÜWA GmbH [1976] ECR 1831, [1977] 1 CMLR 345	18, 86
25/76: Galeries Segoura SPRL v Bonakdarian [1976] ECR 1851, [1977] 1 CMLR 361	15, 86
29/76: LTU GmbH & Co KG v Eurocontrol [1976] ECR 1541, [1977] 1 CMLR 88	15, 18, 20, 106
42/76: De Wolf v Cox BV [1976] ECR 1759, [1977] 2 CMLR 43	8, 15, 97, 114
9 and 10/77: Bavaria & Co KG and Germanair GmbH & Co KG v Eurocontrol [1977] ECR 1517, [1980] 1 CMLR 566	13, 15, 18, 19, 31, 33
43/77: Industrial Diamond Supplies v Riva [1977] ECR 2175, [1978] 1 CMLR 349	15, 121
73/77: Sanders v Van der Putte [1977] ECR 2383, [1978] 1 CMLR 331	15, 77, 78, 79
150/77: Société Bertrand v Paul Ott KG [1978] ECR 1431, [1978] 3 CMLR 499	15, 74, 75
23/78: Meeth v Glacetal Sarl [1978] ECR 2133, [1979] 1 CMLR 520	85, 89
33/78: Somafer SA v Saar-Ferngas AG [1978] ECR 2183, [1979] 1 CMLR 490	15, 47, 62
133/78: Gourdain v Nadler [1979] ECR 733, [1979] 3 CMLR 180	15, 19, 28, 106
143/78: De Cavel v De Cavel (No 1) [1979] ECR 1055, [1979] 2 CMLR 547	13, 22, 24, 30, 57, 98, 102, 106
25/79: Sanicentral GmbH v Collin [1979] ECR 3423, [1980] 2 CMLR 164	8, 22, 32, 77, 88
34/79: R v Henn [1979] ECR 3795, [1980] 1 CMLR 246	109
56/79: Zelger v Salinitri [1980] ECR 89, [1980] 2 CMLR 635	56, 87
104/79: Foglia v Novello (No 1) [1980] ECR 745, [1981] 1 CMLR 45	13
120/79: De Cavel v De Cavel (No 2) [1980] ECR 731, [1980] 3 CMLR 1	13, 22, 24, 30, 31, 57, 98
125/79: Denilauler v Snc Couchet Frères [1980] ECR 1553, [1981] 1 CMLR 62	16, 30, 98, 102, 106, 109, 116, 119
784/79: Porta-Leasing GmbH v Prestige International SA [1980] ECR 1517, [1981] 1 CMLR 135	87
814/79: Netherlands State v Rüffer [1980] ECR 3807, [1981] 3 CMLR 293	15, 19, 20, 35, 58, 60
22/80: Boussac Saint-Frères SA v Gerstenmeier [1980] ECR 3427, [1982] 1 CMLR 202	103
36 and 71/80: Boyle v Taoiseach [1981] ECR 735, [1981] 2 CMLR 455	13
36 and 71/80: Irish Creamery Milk Suppliers Association v Government of Ireland [1981] ECR 735, [1981] 2 CMLR 455	13
139/80: Blanckaert and Willems PVBA v Trost [1981] ECR 819, [1982] 2 CMLR 1	62, 64