The European Contracts Convention

The Rome Convention
on the Choice of Law for Contracts

by Richard Plender Q.C., LL.D.

Second Edition

by

RICHARD PLENDER
One of Her Majesty's Counsel

and

MICHAEL WILDERSPIN

London
Sweet & Maxwell
2001
CONTENTS

Foreword to the First Edition .......................................................... vii
Preface to the Second Edition .......................................................... ix
Contents ............................................................................................ xi
Table of United Kingdom Cases ......................................................... xv
Table of Foreign Cases ...................................................................... xxiii
Table of Cases of the European Court of Justice – Numerical .......... xxvii
- Alphabetical ............................................................................... xxxi
Table of International Court and Tribunal Cases .............................. xxxv
Table of United Kingdom Statutes ...................................................... xxxvii
Table of Foreign Statutes ................................................................. xxxix
Table of European Community Legislation ................................... xli
Table of International and EC Treaties and Conventions ................. xliii
Table of the Principal Conventions .................................................... xlix

PART ONE
THE CHARACTER OF THE CONVENTION

CHAPTER 1 CONTEXT AND ORIGINS
 I The Rome Convention and the Community Legal Order .................. 3
 II The Terms of Related International Agreements .......................... 8
 III The Relationship between the Rome Convention and other Conventions ........................................... 13
 IV The Genesis of the Rome Convention ........................................ 15
 V Signature, Ratification and Implementation ............................... 18
 VI Territorial Application .............................................................. 23

CHAPTER 2 INTERPRETATION
 I Canons of Construction ............................................................... 29
 II Aids to Construction ................................................................. 31
 III Preliminary Rulings: the Subject-Matter ................................. 35
 IV Preliminary Rulings: The Court ............................................... 37
 V Preliminary Rulings: References by Competent Authorities ....... 39
 VI Preliminary Rulings: Discretion .............................................. 41
 VII Preliminary Rulings: Internal Conflicts ................................. 41
PART TWO
THE SCOPE OF THE CONVENTION

CHAPTER 3 MATTERS TO WHICH THE CONVENTION APPLIES
I The Relevance of the Forum ........................................ 47
II "Contractual Obligations" ........................................... 49
III "Any situation involving a choice" .............................. 54
IV "Between the laws of different countries" ....................... 56

CHAPTER 4 EXCLUDED MATTERS
I Status or Legal Capacity of Natural Persons .......... 59
II Succession, Matrimonial and Family Relationships ........................................... 62
III Negotiable Instruments ............................................ 65
IV Arbitration and Choice of Court Agreements .......... 67
V Bodies Corporate .................................................... 74
VI Agency .................................................................... 76
VII Trusts .................................................................... 78
VIII Evidence and Procedure ....................................... 80
IX Insurance and Reinsurance .................................... 82

PART THREE
BASIC PRINCIPLES

CHAPTER 5 FREEDOM OF CHOICE
I Origins and Extent of Autonomy ................................. 87
II Demonstration with Reasonable Certainty ................. 92
III Dépeçage .............................................................. 100
IV Variation of the Chosen Law .................................. 101
V Restrictions upon Party Autonomy ......................... 104

CHAPTER 6 CLOSEST CONNECTIONS
I The Principle of Closest Connection ......................... 109
II Dépeçage .............................................................. 112
III Characteristic Performance ................................. 113
IV Identifying the Characteristic Performance ............ 116
V The Weight to be Attached to the Presumptions of Article 4(1), 4(3) and 4(4) ................................. 119
VI Immovable Property ............................................. 126
VII Carriage of Goods ............................................... 130

PART FOUR
PARTICULAR CONTRACTS

CHAPTER 7 CONSUMER CONTRACTS
I The Unfair Contract Terms Act ............................... 137
PART SIX
FINAL PROVISIONS

CHAPTER 12 SUPERVENING EVENTS
   I New Choice of Law Rules ......................... 233
   II New Conventions .................................. 235

CHAPTER 13 TEMPORAL APPLICATION AND REVIEW
   I Termination ...................................... 240
   II Denunciation .................................... 240
   III Revision ........................................ 241
   IV Depository ....................................... 242

CHAPTER 14 THE FUTURE OF THE ROME CONVENTION
   IN THE LIGHT OF THE AMSTERDAM TREATY .. 243

ANNEXES
   I The Contracts (Applicable Law) Act 1990 ...... 251
   II Convention on the Law Applicable to Contractual Obligations (80/94/EEC) .................. 259
   III Joint Declaration ................................ 298
   V First Protocol ..................................... 351
   VI Joint Declarations ................................ 362
   VII Second Protocol .................................. 366
   IX Commission Opinion concerning the Draft Conven- tion on the Law Applicable to Contractual Obligations .................................................. 392
   X Bibliography ........................................ 395

Index .................................................... 399