

Table of Contents

| | Page |
|---|----------|
| PREFACE TO THE SIXTH EDITION..... | V |
| CHAPTER 1. INTRODUCTION: THE SUBJECT DEFINED AND OVERVIEW.... | 1 |
| I. Definitions—Conflict of Laws—Private International Law | 1 |
| II. Scope of the Subject..... | 3 |
| CHAPTER 2. THE DEVELOPMENT AND CURRENT STATE OF APPROACHES TO CHOICE OF LAW..... | 5 |
| I. Introduction | 6 |
| II. A Brief History of European Private International Law | 8 |
| A. From Ancient Greece to Medieval Italy | 8 |
| B. Bartolus and the Italian Statutists | 10 |
| C. The French Statutists | 12 |
| D. The Dutch Contribution: Comity..... | 14 |
| E. The German Contribution: Wächter and Savigny..... | 15 |
| III. The American Development Prior to the Conflicts Revolution | 19 |
| A. From “Comity” (Story) to “Vested Rights” (Beale)..... | 19 |
| B. The First Critics (Cook and Cavers)..... | 25 |
| IV. The Scholastic Revolution..... | 27 |
| A. “Governmental Interests Analysis” (Currie)..... | 27 |
| B. The <i>Lex-Fori</i> Approach (Ehrenzweig) | 39 |
| C. Functional Analyses | 42 |
| D. Value-Oriented Approaches..... | 48 |
| 1. In General | 48 |
| 2. The “Better Law” Approach | 52 |
| V. The Second Restatement | 58 |
| VI. The Judicial Revolution | 65 |
| A. The Chronology of the Revolution in Torts and Contracts | 65 |
| 1. Introduction..... | 65 |
| 2. The Erosion of the <i>Lex Loci Delicti</i> Rule | 66 |
| 3. The Erosion of the <i>Lex Loci Contractus</i> Rule..... | 70 |
| B. The Revolution at the Beginning of the 21st Century | 75 |
| 1. Introduction..... | 75 |
| 2. Caveats | 75 |
| 3. The Methodological Camps | 79 |
| 4. Traditional States | 81 |
| a. Tort Conflicts..... | 82 |
| b. Contract Conflicts | 88 |
| 5. Significant-Contacts States..... | 92 |
| 6. Second Restatement States..... | 94 |
| 7. Interest Analysis and the <i>Lex Fori</i> Variant | 97 |
| 8. Other Modern Approaches | 98 |
| 9. The Louisiana and Oregon Codifications | 99 |

| | |
|---|------------|
| VII. The Evolution of Principled Rules: A Goal for the Future | 104 |
| VIII. Conflicts Law Reform in Other Countries..... | 110 |
| CHAPTER 3. DETERMINING THE APPLICABLE LAW | 125 |
| I. Introduction | 126 |
| II. Pervasive Problems | 128 |
| A. Characterization..... | 128 |
| 1. Introduction..... | 128 |
| 2. Subject Matter Characterization | 130 |
| 3. Connecting Factors | 131 |
| 4. Substance—Procedure Characterization | 133 |
| a. In General..... | 133 |
| b. Statutes of Limitation..... | 134 |
| B. Renvoi..... | 143 |
| C. Public Policy..... | 149 |
| D. Public Policy—Penal and Governmental Claims | 152 |
| E. Availability of Local Procedure and Remedy..... | 155 |
| III. Problems of Federalism: Constitutional Limitations on Choice of Law | 156 |
| A. Due Process and Full Faith and Credit: From Interest-Balancing to Contacts..... | 156 |
| 1. Introduction..... | 156 |
| 2. The Due Process Cases..... | 157 |
| 3. The Full Faith and Credit Cases | 166 |
| 4. Constitutional Limitations Analyzed | 171 |
| a. Due Process | 171 |
| b. Full Faith and Credit..... | 174 |
| B. Privileges and Immunities, Equal Protection and Commerce..... | 176 |
| 1. Privileges and Immunities and Commerce Clauses..... | 176 |
| 2. Equal Protection | 180 |
| IV. Problems of Federalism: State Law in Federal Courts..... | 181 |
| A. The Erie/Klaxon Doctrine: Policy Considerations | 181 |
| B. <i>Erie</i> —Problems in Practice | 184 |
| 1. Byrd, Hanna and the Federal Rules..... | 185 |
| 2. Court-Closing Rules..... | 191 |
| 3. Interstate Forum Shopping..... | 197 |
| a. Interpleader..... | 197 |
| b. The 100-Mile Bulge Rule..... | 198 |
| c. Supplemental Jurisdiction | 198 |
| d. Federal Transfers..... | 199 |
| C. Pervasive Erie/Klaxon Problems | 202 |
| 1. What Is “State Law”?..... | 202 |
| 2. Klaxon and Constitutional Limitations on Choice of Law | 205 |
| V. Problems of Federalism: Federal Common Law | 207 |
| A. The Standard | 207 |
| B. The Federal Interest..... | 211 |
| 1. Government Obligations | 211 |
| 2. Contractual Relations with the Government..... | 214 |
| 3. Tort-Related Issues..... | 215 |
| 4. Private Disputes over Government-Created Rights..... | 216 |

| | | |
|---------------------------------|--|------------|
| C. | When Is Federal Common Law Appropriate? | 218 |
| VI. | International Treaties..... | 220 |
| A. | In General | 220 |
| B. | Multilateral Treaties..... | 221 |
| C. | Bilateral Treaties..... | 223 |
| D. | Conclusion..... | 227 |
| VII. | Extraterritorial Application of U.S. Law | 227 |
| A. | Extraterritorial Application of the U.S. Constitution..... | 227 |
| B. | Extraterritorial Application of Federal Statutes..... | 229 |
| 1. | Introduction..... | 229 |
| 2. | Statutes Expressly Applicable to Foreign Events or Persons..... | 229 |
| 3. | Statutes That Are Silent or Ambiguous on Their Territorial Reach..... | 233 |
| a. | Introduction..... | 233 |
| b. | The Territorial Presumption: The Early Version | 234 |
| c. | Application of U.S. Law to Foreign Ships | 235 |
| d. | The Effects Doctrine: Foreign Conduct with Domestic Effects..... | 241 |
| e. | The Territorial Presumption, Again | 242 |
| f. | The Effects Doctrine, Again | 243 |
| g. | The Effects Doctrine Tempered by Internationalism..... | 246 |
| h. | The Headquarters Doctrine: Domestic Conduct with Foreign Effects | 247 |
| i. | The Territorial Presumption Returns in Full Force..... | 251 |
| (1) | <i>Morrison</i> and the Securities Exchange Act | 251 |
| (2) | The Alien Torts Statute (ATS) | 255 |
| (a) | <i>Sosa</i> | 255 |
| (b) | <i>Kiobel</i> | 256 |
| (c) | Post- <i>Kiobel</i> Cases | 258 |
| (3) | <i>RJR Nabisco</i> and Civil RICO | 264 |
| 4. | A Few Remarks on Methodology | 266 |
| CHAPTER 4. DOMICILE..... | | 269 |
| I. | Introduction—The Use of the Domicile Concept in Conflict of Laws | 270 |
| II. | Preliminary Matters Significant in Considering Domicile..... | 271 |
| A. | Findings, Evidence and Preclusion by Prior Litigation | 271 |
| B. | Law Determining or Characterizing Domicile..... | 275 |
| III. | Domicile Compared and Defined..... | 277 |
| A. | Domicile Compared to Nationality—International Conflicts | 277 |
| B. | Domicile Compared to Residence, Habitual Residence and Other Persistent Relationships | 279 |
| C. | Domicile Defined..... | 283 |
| IV. | Traditional Requirements for the Acquisition of a Domicile of Choice..... | 285 |
| A. | In General | 285 |
| B. | Physical Presence | 286 |
| C. | Intent Necessary for Domicile | 288 |
| 1. | In General | 288 |
| 2. | Domicile of a Person Having Multiple Homes | 290 |
| 3. | Intent Distinguished from Motive | 292 |
| 4. | Freedom to Exercise Choice..... | 293 |
| V. | Geographic Boundaries of Domicile | 297 |

| | |
|---|------------|
| VI. Domicile as Affected by Status | 298 |
| A. Domicile of Aliens | 298 |
| B. Domicile of Married Persons..... | 300 |
| C. Derivative Domicile | 302 |
| 1. Domicile of Origin | 302 |
| 2. Domicile of Minor—General..... | 304 |
| 3. Children Born out of Wedlock..... | 306 |
| 4. Adopted Children | 307 |
| 5. Separated Parents | 307 |
| 6. Death of Parent..... | 308 |
| 7. Emancipation | 309 |
| 8. Marriage of Minor..... | 310 |
| D. Capacity to Acquire a Domicile..... | 310 |
| VII. Analogous Relationships of Corporate Entities..... | 311 |
| | |
| CHAPTER 5. BASIC CONSIDERATIONS IN PERSONAL JURISDICTION.... | 313 |
| I. Introduction | 314 |
| II. The Development of American Jurisdiction | 315 |
| A. 1789–1877: Developing Full Faith and Credit Standards | 315 |
| B. 1878–1944: Developing Due Process Standards..... | 317 |
| C. 1945–Present: The Minimum Contacts Test | 320 |
| III. Traditional Jurisdictional Relationships | 323 |
| A. In Rem Jurisdiction | 323 |
| B. Quasi in Rem Jurisdiction | 325 |
| C. Status Jurisdiction | 327 |
| D. In Personam Jurisdiction..... | 328 |
| E. Continuing Significance of Traditional Categories | 328 |
| IV. Jurisdictional Relationships | 332 |
| A. Specific Jurisdiction | 332 |
| 1. Related Contacts: Distinguishing Specific from General Jurisdiction | 332 |
| 2. Purposeful Availment..... | 336 |
| 3. Reasonableness | 341 |
| B. General Jurisdiction..... | 343 |
| V. The Need for Statutory Authorization | 347 |
| A. State Courts | 347 |
| B. Federal Courts | 349 |
| VI. Other Jurisdictional Issues Compared | 351 |
| A. Notice and Opportunity to Be Heard | 351 |
| B. Competence of the Court—Subject Matter Jurisdiction | 353 |
| C. Venue..... | 354 |
| VII. Challenging Jurisdiction..... | 355 |
| A. Direct Attacks | 355 |
| 1. Federal Court—FRCP 12(b)..... | 355 |
| 2. State Courts | 357 |
| B. Collateral Attacks..... | 358 |
| C. Limited Appearances..... | 359 |
| VIII. Continuing Jurisdiction..... | 360 |

| | |
|--|------------|
| CHAPTER 6. GENERAL JURISDICTION | 363 |
| I. Introduction | 363 |
| II. “Satellite” Bases of Jurisdiction | 365 |
| A. Transient Jurisdiction—The Rule of In-State Service | 365 |
| B. Consent..... | 367 |
| C. Residence, Domicile and Nationality | 369 |
| D. Appearance | 372 |
| E. Jurisdiction by Necessity | 374 |
| III. Contacts-Based General Jurisdiction | 376 |
| A. Distinguished from Specific Jurisdiction | 376 |
| B. Application to Individual Defendants | 379 |
| C. “Continuous and Systematic” Contacts..... | 380 |
| | |
| CHAPTER 7. SPECIFIC JURISDICTION IN TORT CASES | 387 |
| I. Introduction | 387 |
| II. Personal Injuries | 388 |
| A. Products Liability—The “Stream of Commerce” Test..... | 388 |
| B. Intentional Torts..... | 394 |
| C. Negligence..... | 397 |
| D. Other Strict Liability..... | 399 |
| III. Injuries to Property | 400 |
| A. Personal Property..... | 400 |
| B. Real Property | 401 |
| IV. Injuries to Reputation..... | 402 |
| A. Libel..... | 402 |
| B. Slander | 406 |
| C. Invasion of Privacy | 407 |
| V. Economic Injuries..... | 408 |
| A. Interference with Contract and Related Torts | 408 |
| B. Fraud and Related Torts..... | 409 |
| | |
| CHAPTER 8. SPECIFIC JURISDICTION IN CONTRACT CASES | 411 |
| I. Introduction | 411 |
| II. Insurance Contracts..... | 414 |
| III. Franchise and Similar Contracts | 416 |
| IV. Employment and Personal Service Contracts..... | 418 |
| V. Purchase and Sale Contracts..... | 420 |
| VI. Construction Contracts..... | 422 |
| VII. Leases..... | 423 |
| VIII. Carriage Contracts..... | 424 |
| | |
| CHAPTER 9. SPECIFIC JURISDICTION IN STATUTORY CASES | 427 |
| I. Introduction | 427 |
| II. Environmental Harm..... | 429 |
| III. Copyright and Trademark Infringement..... | 432 |
| IV. Patent Infringement..... | 434 |
| V. Employment-Related Statutory Obligations | 437 |
| VI. Securities and Related Statutes..... | 439 |
| VII. Private Antitrust and Other Unfair Trade Actions | 441 |

| | |
|---|------------|
| VIII. Anti-Fraud Statutes..... | 443 |
| CHAPTER 10. SPECIAL JURISDICTIONAL PROBLEMS..... | 445 |
| I. Introduction..... | 445 |
| II. Federal Court Personal Jurisdiction..... | 446 |
| A. Fifth and Fourteenth Amendment Standards..... | 446 |
| B. Federal Rule of Civil Procedure..... | 450 |
| 1. Incorporation of State Long-Arm Statutes..... | 450 |
| 2. The “100-Mile Bulge Rule”..... | 452 |
| 3. Federal Rule 4(k)(2)..... | 454 |
| C. Admiralty Jurisdiction..... | 456 |
| D. Bankruptcy Cases..... | 460 |
| E. Removed Cases..... | 462 |
| III. Class Actions..... | 464 |
| A. Jurisdiction over Defendants..... | 464 |
| B. Jurisdiction over Plaintiffs..... | 466 |
| 1. Opt-out Classes..... | 466 |
| 2. Mandatory Classes..... | 468 |
| IV. Special Problems of Jurisdiction over Business Associations..... | 469 |
| A. Partnerships and Other Unincorporated Associations..... | 469 |
| B. Domestic Corporations..... | 471 |
| C. Foreign Corporations..... | 473 |
| 1. Historical Development..... | 473 |
| 2. Current Jurisdictional Theory..... | 475 |
| D. Corporate Parent-Subsidiary Relationships..... | 478 |
| E. Jurisdiction over Individuals for Corporate or Fiduciary Activities..... | 480 |
| V. Pendent Personal Jurisdiction..... | 482 |
| VI. Foreign States and Instrumentalities..... | 486 |
| CHAPTER 11. LIMITATIONS ON JURISDICTION..... | 493 |
| I. Introduction..... | 493 |
| II. Contractual Limitations on Forum Selection..... | 494 |
| A. Exclusive and Non-Exclusive Forum Clauses..... | 494 |
| B. Enforceability in Federal Courts..... | 496 |
| 1. Non-Diversity Cases..... | 496 |
| 2. Diversity Cases..... | 501 |
| C. Enforceability in State Courts..... | 502 |
| D. Interpretation and Scope of Forum Clauses..... | 504 |
| E. Judgment Recognition Issues..... | 506 |
| III. Forum Non Conveniens..... | 507 |
| A. Introduction..... | 507 |
| B. Significant Factors in Application..... | 510 |
| 1. Preference for Chosen Forum..... | 510 |
| 2. Availability of Another Forum..... | 511 |
| 3. Other Factors..... | 513 |
| 4. Methods of Application..... | 515 |
| 5. State Practice..... | 515 |
| C. Federal Transfers..... | 518 |
| IV. Immunities from Service..... | 521 |

| | |
|--|------------|
| V. Other Federal Limitations on State Court Jurisdiction | 522 |
| CHAPTER 12. PROCEDURE..... | 525 |
| I. Notice | 525 |
| A. Method of Notice..... | 526 |
| B. Opportunity to Be Heard | 528 |
| C. Waiver of Notice | 529 |
| II. Service Abroad of Documents | 530 |
| III. Taking Evidence Abroad..... | 536 |
| IV. Admissibility of Evidence: Testimonial Privilege..... | 543 |
| A. Introduction | 543 |
| B. Interstate Conflicts..... | 543 |
| C. International Conflicts | 547 |
| D. The Interstate and Convention Approaches Compared..... | 548 |
| V. Proof of Foreign Law | 550 |
| A. The Fact Approach to Foreign Law | 550 |
| 1. The Common Law Background..... | 550 |
| 2. Other Legal Systems | 552 |
| B. State Statutes and Uniform Laws..... | 553 |
| C. Federal Law | 554 |
| D. When Proof Fails: Presumptions and Use of the <i>Lex Fori</i> | 558 |
| CHAPTER 13. FORMING DOMESTIC RELATIONSHIPS..... | 563 |
| I. Marriage and Other Domestic Relationships as a Problem in the Conflict of Laws | 563 |
| A. Marriage and Other Domestic Relationships | 563 |
| B. Marriage: Significant Policies..... | 564 |
| C. Marriage and Other Relationships as an Incidental Question | 567 |
| D. Competing Approaches in Choice of Law: Domicile and Nationality | 568 |
| II. Law Governing Recognition of Marriage | 569 |
| A. The Traditional Rule | 569 |
| B. Requirements of Place of Celebration | 571 |
| C. Prohibitions of the Domicile of the Parties | 575 |
| 1. Form and Capacity | 575 |
| 2. Substantive Prohibition | 575 |
| 3. Prohibitions upon Remarriage After Divorce: Progressive Polygamy ... | 577 |
| 4. Anti-Miscegenation Laws..... | 580 |
| 5. Incestuous Marriages | 581 |
| 6. Non-Age—Consent of Parent | 582 |
| 7. Marriage Evasion Legislation..... | 583 |
| D. Effect in Third State of Marriage Void by Law of Domicile..... | 584 |
| E. Marriage of Parties with Different Domiciles | 585 |
| F. The Covenant Marriage | 586 |
| III. Conflict-of-Laws Issues Regarding Particular Types of Domestic Relationships | 587 |
| A. Polygamous Marriage..... | 587 |
| B. Marriage Under American Indian Tribal Law | 590 |
| C. Islamic Marriage in American Courts..... | 591 |
| D. Same-Sex Marriages..... | 593 |

| | |
|--|------------|
| E. Civil Unions, Registered Partnerships, and Contractual Arrangements | 594 |
| CHAPTER 14. MARITAL PROPERTY..... | 597 |
| I. Preliminary Policy Observations..... | 597 |
| A. Introduction | 597 |
| B. Common Law System..... | 598 |
| C. Community Property System | 599 |
| D. Marital Property as Conflict of Laws Issues in the United States | 600 |
| E. Foreign Country Approaches | 603 |
| II. Immovables..... | 604 |
| A. Land Owned at Time of Marriage | 604 |
| B. Land Acquired After Marriage | 605 |
| C. Income from Immovables | 607 |
| III. Movables | 608 |
| A. Movables Owned at Time of Marriage | 608 |
| B. Movables Acquired Subsequent to Marriage..... | 609 |
| C. Income from Movables..... | 612 |
| D. Accrual Values: Insurance, Pensions, etc. | 612 |
| IV. Subsequent Intentional Property Transactions | 614 |
| V. The Separate Property and Quasi-Community Property Concepts | 616 |
| A. Characterization of Separate Property | 616 |
| B. Quasi-Community Property..... | 617 |
| VI. Contractual Modification of the Marital Property Regime..... | 618 |
| VII. Debts | 620 |
| CHAPTER 15. DISSOLUTION OF DOMESTIC RELATIONSHIPS AND ITS CONSEQUENCES | 623 |
| I. Interstate Recognition of Dissolution Decrees | 624 |
| A. Introduction | 624 |
| 1. In General | 624 |
| 2. Domicile and Choice of Law | 626 |
| B. Ex Parte Divorces | 629 |
| 1. Full Faith and Credit and the Domicile Requirement: The <i>Williams</i> Cases..... | 629 |
| 2. Domicile and Durational Residence Requirements..... | 631 |
| C. Inter Partes Divorces | 633 |
| D. The Effect of a Collateral Determination of Invalidity | 636 |
| E. Conclusion and Outlook | 639 |
| II. Annulment in the United States | 641 |
| III. International Recognition of Dissolution Decrees..... | 644 |
| A. Recognition of Foreign-Country Judicial Divorces in the United States..... | 644 |
| B. Recognition of Foreign Non-Judicial Divorces in the United States..... | 653 |
| C. Recognition of U.S. Dissolution Decrees Abroad..... | 658 |
| IV. Incidents of Divorce Decrees: Support and Custody | 659 |
| A. Divisible Divorce..... | 659 |
| B. Support Obligations..... | 665 |
| 1. Establishing the Support Obligation by Judicial Decree | 665 |
| 2. Enforcement and Modification of Support Decrees | 668 |
| a. Lump Sum Child Support and Claims for Additional Support | 669 |

| | | |
|---|---|------------|
| b. | Modification of Support Decrees | 671 |
| c. | Choice of Law for Modification..... | 672 |
| d. | Summary | 673 |
| 3. | International Recognition | 674 |
| C. | Child Custody | 678 |
| 1. | Obtaining Custody..... | 678 |
| 2. | Interstate Recognition and Modification..... | 679 |
| 3. | International Recognition and Modification | 687 |
| CHAPTER 16. LEGITIMATION AND ADOPTION..... | | 691 |
| I. | Legitimacy and Legitimation..... | 691 |
| A. | Status | 691 |
| B. | Inheritance Rights of Legitimate and Legitimated Children | 695 |
| C. | Inheritance Rights of Illegitimate Children | 696 |
| II. | Adoption | 698 |
| A. | Jurisdiction to Decree an Adoption | 699 |
| B. | Extrastate Consequences of Adoption..... | 703 |
| C. | International Adoptions | 704 |
| CHAPTER 17. TORTS | | 711 |
| I. | Introduction | 713 |
| II. | Choice-of-Law Approaches to Torts in General..... | 715 |
| A. | Traditional Approaches: The First Restatement's <i>Lex Loci</i> Test | 715 |
| 1. | The <i>Lex-Loci-Delicti</i> Rule | 715 |
| 2. | Characterization | 723 |
| B. | Interest Analysis | 726 |
| 1. | In General | 726 |
| 2. | Interest Analysis and the <i>Lex-Fori</i> Variant in the Courts..... | 729 |
| a. | False Conflicts..... | 729 |
| b. | True Conflicts..... | 730 |
| c. | "No-Interest" or "Unprovided-For" Cases..... | 733 |
| d. | The <i>Lex-Fori</i> Variant | 736 |
| 3. | The "Comparative Impairment" Approach | 739 |
| a. | The California Version | 740 |
| b. | The Louisiana Version..... | 748 |
| C. | The "Better Law" Approach | 750 |
| D. | The Most-Significant-Relationship Test and the Second Restatement | 757 |
| 1. | Introduction..... | 757 |
| 2. | The Case Law..... | 759 |
| E. | The New York Experience..... | 766 |
| 1. | <i>Babcock</i> and Guest-Statute Conflicts..... | 766 |
| 2. | From <i>Babcock</i> to <i>Neumeier</i> | 767 |
| 3. | The <i>Neumeier</i> Rules..... | 770 |
| 4. | Extending the <i>Neumeier</i> Rules to Other Loss-Distribution Conflicts: <i>Schultz</i> and <i>Cooney</i> | 771 |
| 5. | Subsequent Cases | 778 |
| III. | From Rules to Approaches to Rules | 780 |
| A. | From Rules to Approaches | 780 |
| 1. | Introduction..... | 780 |

| | | |
|-----|---|-----|
| 2. | Policy Analysis: A Synthesis | 781 |
| a. | False Conflicts | 781 |
| b. | Conflicting Rules: Accommodation | 781 |
| c. | Resolving the Impasse | 782 |
| 3. | Time for Rules? | 783 |
| B. | From Approaches to Rules | 784 |
| 1. | The Distinction Between Conduct-Regulation Rules and Loss-Distribution Rules | 784 |
| a. | The Origins and Meaning of the Distinction..... | 784 |
| b. | The Difficulties of the Distinction..... | 788 |
| c. | The Usefulness of the Distinction..... | 792 |
| 2. | Loss-Distribution Conflicts | 794 |
| a. | Common-Domicile Cases | 794 |
| (1) | The <i>Babcock</i> Pattern..... | 794 |
| (2) | The Converse- <i>Babcock</i> Pattern | 795 |
| (3) | Summary | 798 |
| (4) | American Rules | 799 |
| (5) | Foreign Rules | 801 |
| b. | Cases Analogous to Common-Domicile Cases..... | 804 |
| (1) | Domicile in States with Same Law | 804 |
| (2) | Pre-Existing Relationship | 806 |
| (3) | Defendant-by-Defendant Analysis..... | 807 |
| c. | Split-Domicile Intra-State Torts | 808 |
| (1) | True Conflicts | 809 |
| (a) | Intrastate Torts in Which the Conduct, the Injury, and the Tortfeasor's Domicile Are in a State Whose Law Protects the Tortfeasor (the <i>Cipolla</i> Pattern)..... | 809 |
| (b) | Intrastate Torts in Which the Conduct, the Injury, and the Victim's Domicile Are in a State Whose Law Protects the Victim (the <i>Hall</i> Pattern) | 815 |
| (c) | Summary and Rules..... | 818 |
| (2) | "No-Interest" or Unprovided-for Cases | 821 |
| (a) | The <i>Neumeier</i> Pattern..... | 821 |
| (b) | The <i>Hurtado</i> Pattern | 825 |
| (c) | Summary and Rules..... | 827 |
| d. | Cross-Border Torts Involving Two States | 830 |
| (1) | Cross-Border Torts in Which the Conduct and the Tortfeasor's Domicile Are in a State Whose Law Favors the Tortfeasor, While the Injury and the Victim's Domicile Are in a State Whose Law Protects the Victim (the <i>Kuehn</i> Pattern)..... | 831 |
| (2) | Cross-Border Torts in Which the State of Conduct Favors the Victim and the State of Injury Favors the Tortfeasor (the <i>Williams</i> Pattern) | 835 |
| (3) | Summary | 839 |
| (4) | American Rules | 840 |
| (5) | Foreign Rules | 843 |
| e. | Split-Domicile Conflicts Involving Three States..... | 845 |
| f. | Summary and Rules | 850 |

| | | |
|-----|--|-----|
| 3. | Conduct-Regulation Conflicts | 852 |
| a. | Generic Conduct-Regulation Conflicts | 852 |
| (1) | Pattern 1: Intrastate Torts (Conduct and Injury in Same State)..... | 853 |
| (2) | Pattern 2: Cases Analogous to Intrastate Torts (Conduct and Injury in Different States That Prescribe the Same Standards of Conduct) | 860 |
| (3) | Pattern 3: Cross-Border False Conflicts: Conduct Violates Standards of State of Conduct but Not Those of the State of Injury | 861 |
| (4) | Pattern 4: Cross-Border True Conflicts: Conduct Violates the Standards of the State of Injury, but Not the Standards of the State of Conduct | 868 |
| b. | Summary and Rules | 874 |
| c. | Punitive-Damages Conflicts..... | 879 |
| (1) | The Pertinent Contacts and Typical Patterns | 879 |
| (2) | Three- or Two-Contact Patterns | 880 |
| (3) | Single-Contact Patterns | 885 |
| (4) | The Victim's Domicile or Nationality..... | 892 |
| (5) | Summary and Rule | 895 |
| IV. | Particular Tort Problems | 896 |
| A. | Injury to Intangible Values..... | 896 |
| 1. | Fraud and Misrepresentation | 896 |
| 2. | Unfair Competition..... | 899 |
| 3. | Alienation of Affections | 902 |
| 4. | Defamation and Invasion of Privacy | 903 |
| B. | Statutory Liability..... | 906 |
| 1. | No-Fault Liability | 906 |
| a. | In General..... | 906 |
| b. | Law Governing the Tortfeasor's Liability | 910 |
| c. | Coverage of the No-Fault Statutes | 912 |
| 2. | Workers' Compensation..... | 913 |
| a. | Workers' Compensation Benefits..... | 913 |
| b. | Statutory Benefits and Tort Immunity | 916 |
| c. | Exclusivity with Regard to Subcontractors and Their Employees..... | 918 |
| d. | Mutual Employment for Benefit of Two Employers | 919 |
| C. | Admiralty | 920 |
| V. | Products Liability | 927 |
| A. | In General | 927 |
| B. | Samples from the Case Law | 931 |
| 1. | Common Denominators | 931 |
| a. | Recent Trends | 931 |
| b. | Pertinent Contacts..... | 932 |
| c. | Typical Patterns..... | 933 |
| 2. | Cases in Which Each State's Law Favors the Local Litigant (Direct or True Conflicts)..... | 935 |
| a. | Cases Applying the Pro-Defendant Law of a Defendant-Affiliated State..... | 935 |

| | | |
|-----|---|------------|
| b. | Cases Applying the Pro-Recovery Law of a Victim-Affiliated State..... | 939 |
| (1) | Choice Supported by Three Contacts..... | 939 |
| (2) | Choice Supported by Two Contacts | 946 |
| (3) | Choice Supported by a Single Contact..... | 949 |
| 3. | Cases in Which Each State’s Law Favors a Litigant Affiliated with the Other State (Inverse Conflicts) | 955 |
| a. | Cases Applying the Pro-Recovery Law of a Defendant-Affiliated State..... | 955 |
| b. | Cases Applying the Pro-Defendant Law of a Victim-Affiliated State..... | 961 |
| (1) | Choice Supported by Three Contacts..... | 961 |
| (2) | Choice Supported by Two Contacts | 974 |
| (3) | Choice Supported by a Single Contact..... | 979 |
| C. | Latent Injuries and the Issue of Time..... | 981 |
| D. | Summary | 987 |
| E. | Choice-of-Law Rules | 989 |
| 1. | No Descriptive Rule..... | 989 |
| 2. | American Rules..... | 989 |
| 3. | Foreign Rules | 991 |
| VI. | Territoriality and Personality in Tort Conflicts | 994 |
| | CHAPTER 18. CONTRACTS | 999 |
| I. | Choice of Law by the Parties (Party Autonomy) | 1001 |
| A. | The Principle..... | 1001 |
| B. | Limitations on Party Autonomy | 1007 |
| 1. | Issues That the Parties Could Resolve by Agreement | 1007 |
| 2. | The Requirement of a “Substantial Relationship” or “Reasonable Basis” | 1008 |
| 3. | The Public Policy Limitation..... | 1015 |
| a. | Public Policy Limitation in General | 1015 |
| (1) | Which State’s Public Policy? The <i>Lex Limitativa</i> | 1016 |
| (a) | <i>Lex Fori</i> Systems | 1016 |
| (b) | <i>Lex Causae</i> Systems..... | 1017 |
| (c) | <i>Hybrid</i> Systems | 1020 |
| (2) | Which Level of Public Policy?..... | 1022 |
| (3) | Public Policy and “Mandatory Rules” | 1023 |
| (4) | “Fundamental Policy” | 1024 |
| b. | Public Policy in Specific Contexts | 1027 |
| (1) | Consumer Contracts | 1028 |
| (2) | Employment Contracts | 1033 |
| (3) | Franchise Contracts..... | 1042 |
| (4) | Insurance Contracts..... | 1048 |
| (5) | Usury | 1049 |
| (6) | Other Contracts..... | 1050 |
| C. | Modalities of the Choice-of-Law Agreement..... | 1052 |
| 1. | Existence and Validity | 1052 |
| a. | Capacity..... | 1052 |
| b. | Consent and Formation..... | 1054 |

| | | |
|-----|--|------|
| c. | Form..... | 1054 |
| 2. | Multiple, Partial, or Subsequent Choice or Change..... | 1057 |
| 3. | Choice of an Invalidating Law..... | 1059 |
| 4. | Choice of Non-State Norms..... | 1060 |
| 5. | The Scope-of-the Choice of Law Clause..... | 1063 |
| a. | Substantive or Conflicts Law..... | 1065 |
| b. | Substantive Law or Procedural Law..... | 1068 |
| c. | Non-Contractual Issues..... | 1073 |
| (1) | Introduction..... | 1073 |
| (2) | The Case Law..... | 1076 |
| (3) | Critique..... | 1082 |
| D. | Forum-Selection or Choice-of-Forum Clauses..... | 1084 |
| 1. | Introduction..... | 1084 |
| 2. | Scenario 1: Action Filed in the Chosen Court..... | 1086 |
| 3. | Actions Filed in a Court Not Chosen (the “Seized” Court)..... | 1088 |
| a. | Scenario 2: Contracts Without a Choice-of-Law Clause..... | 1088 |
| b. | Scenario 3: Contracts with a Choice-of-Law Clause..... | 1092 |
| (1) | Cases Applying Forum Law..... | 1093 |
| (2) | Cases Applying the Chosen Law..... | 1094 |
| (3) | Cases Distinguishing Between Enforceability and Interpretation..... | 1098 |
| 4. | Summary..... | 1101 |
| 5. | Law Governing Interpretation..... | 1101 |
| 6. | Law Governing Enforceability..... | 1101 |
| E. | Arbitration Clauses..... | 1103 |
| 1. | Domestic Interstate Arbitration..... | 1103 |
| a. | Introduction..... | 1103 |
| b. | The Supreme Court’s Strong Pro-Arbitration Stance..... | 1105 |
| c. | Separability of Arbitration Clause..... | 1108 |
| 2. | Foreign Arbitration..... | 1109 |
| a. | The Supreme Court’s Jurisprudence..... | 1109 |
| b. | Law Governing the Arbitration Agreement..... | 1113 |
| (1) | Contractual Capacity..... | 1115 |
| (2) | Other Issues of Formation of the Arbitration Agreement..... | 1116 |
| (3) | Issues of Scope, Validity, and Enforceability (Other than Arbitrability)..... | 1116 |
| (4) | Arbitrability..... | 1117 |
| (5) | Public Policy..... | 1119 |
| c. | Law Applicable in Arbitration..... | 1120 |
| F. | Section 1–301 of the Uniform Commercial Code..... | 1123 |
| 1. | History..... | 1123 |
| 2. | Party Autonomy..... | 1124 |
| 3. | Limits of Party Autonomy..... | 1126 |
| 4. | Applicable Law in the Absence of Effective Party Agreement..... | 1127 |
| G. | Other State Statutes on Party Autonomy..... | 1129 |
| 1. | Statutes Welcoming Inbound Choice-of-Law Clauses..... | 1129 |
| 2. | Statutes Prohibiting Outbound Choice-of-Law Clauses..... | 1130 |
| H. | The CISG..... | 1132 |

| | | |
|------|---|-------------|
| II. | Choice of Law in the Absence of Choice-of-Law Agreement..... | 1136 |
| A. | The Classic Approach | 1136 |
| B. | Modern Approaches | 1139 |
| 1. | Overview..... | 1139 |
| 2. | The Case Law: Issue Identification (Characterization) and Connecting Factors | 1140 |
| 3. | The Choice-of-Law Approaches in the Courts: Summary | 1146 |
| III. | Contract Choice-of-Law by Subject Matter..... | 1150 |
| A. | Contracts by Subject Matter | 1151 |
| 1. | Interests in Land | 1151 |
| 2. | Sales of Chattels | 1152 |
| 3. | Insurance Contracts | 1154 |
| a. | Insurance Statutes..... | 1154 |
| b. | Automobile Insurance..... | 1155 |
| c. | Life Insurance | 1158 |
| d. | Commercial Liability Insurance | 1159 |
| 4. | Suretyship | 1162 |
| 5. | Contracts for the Repayment of Money Lent..... | 1163 |
| 6. | Rendition of Services | 1164 |
| 7. | Agency | 1171 |
| 8. | Other Contracts | 1177 |
| B. | Contract Issues | 1180 |
| IV. | Choice-of-Law Alternatives | 1183 |
| V. | Unjust Enrichment..... | 1185 |
| A. | Introduction | 1185 |
| 1. | In General | 1185 |
| 2. | Case Categories..... | 1186 |
| B. | Choice-of-Law Alternatives..... | 1187 |
| 1. | Preexisting (Contractual) Relationships | 1187 |
| 2. | Voluntary Bestowal of Benefits | 1190 |
| 3. | Claims Related to Tort | 1191 |
| 4. | Equitable Remedies..... | 1192 |
| 5. | Extent and Nature of Relief..... | 1194 |
| | CHAPTER 19. PROPERTY..... | 1197 |
| I. | Interests in Land | 1198 |
| A. | Introduction | 1198 |
| B. | The Situs Rule | 1199 |
| C. | Contract and Conveyance Distinctions | 1202 |
| D. | Particular Issues..... | 1206 |
| 1. | Conveyances: Effect and Construction | 1206 |
| 2. | Covenants..... | 1207 |
| E. | Equitable Interests..... | 1209 |
| 1. | Generally | 1209 |
| 2. | Equitable Servitudes | 1210 |
| 3. | Equitable Remedies | 1210 |
| F. | Encumbrances..... | 1213 |
| II. | Tangible Movables..... | 1217 |
| A. | Policy Considerations | 1217 |

| | | |
|------|---|-------------|
| B. | Chattel Transfers | 1219 |
| 1. | Contract and Property Issues | 1219 |
| 2. | Situs and Market Policies | 1221 |
| 3. | Prescription | 1223 |
| 4. | Removal of a Chattel | 1224 |
| C. | Chattel Security | 1226 |
| 1. | Introduction | 1226 |
| 2. | The Uniform Commercial Code | 1226 |
| a. | Introduction | 1226 |
| b. | Documents, Instruments, and Ordinary Goods | 1227 |
| c. | Goods Covered by a Certificate of Title | 1230 |
| d. | Deposit Accounts, General Intangibles, Mobile Goods and Agricultural Liens | 1230 |
| e. | Chattel Paper | 1232 |
| f. | Oil, Gas, Minerals and Timber | 1232 |
| g. | Investment Property and Letters of Credit | 1233 |
| h. | Renvoi | 1235 |
| 3. | Treaties | 1235 |
| III. | Intangibles | 1236 |
| A. | Introduction | 1236 |
| B. | Assignability of Intangibles | 1237 |
| C. | Assignment of Intangibles | 1238 |
| 1. | Introduction | 1238 |
| 2. | Assignments for the Benefit of Creditors | 1239 |
| 3. | Commercial Assignments | 1239 |
| D. | Corporate Stock | 1240 |
| | CHAPTER 20. SUCCESSION | 1243 |
| I. | Introduction | 1243 |
| II. | Intestate Succession | 1244 |
| A. | Immovables—Land | 1244 |
| B. | Movables | 1247 |
| III. | Testamentary Succession | 1250 |
| A. | Introduction | 1250 |
| B. | Wills of Immovables—Land | 1252 |
| 1. | Formal Validity | 1252 |
| 2. | Validity—Testamentary Trusts | 1255 |
| 3. | Construction | 1256 |
| C. | Wills of Movables | 1258 |
| 1. | Validity | 1258 |
| 2. | Restrictions on Charitable Gifts | 1261 |
| 3. | Revocation | 1262 |
| a. | By Instrument or Physical Act | 1262 |
| b. | By Operation of Law | 1263 |
| 4. | Construction | 1264 |
| IV. | Family Protection—Forced Shares—Election | 1266 |
| A. | Forced Shares | 1266 |
| B. | Election | 1268 |
| V. | International Wills | 1270 |

| | |
|---|-------------|
| VI. Devises to Aliens | 1272 |
| CHAPTER 21. TRUSTS AND POWERS OF APPOINTMENT | 1275 |
| I. Trusts | 1275 |
| A. Introduction | 1275 |
| B. Validity | 1276 |
| 1. Testamentary Trusts | 1276 |
| 2. Inter Vivos Trusts | 1278 |
| C. Administration of Trusts | 1281 |
| 1. Introduction | 1281 |
| 2. Qualification of Foreign Trustees | 1282 |
| 3. Administrative Issues | 1283 |
| 4. Change in Place of Administration | 1284 |
| II. Powers of Appointment | 1285 |
| A. Introduction | 1285 |
| B. Validity of a Power | 1286 |
| C. Nature and Scope of a Power | 1286 |
| D. Exercise of Powers | 1287 |
| 1. Generally | 1287 |
| 2. Rule Against Perpetuities | 1290 |
| 3. Exercise by Residuary Clause | 1291 |
| CHAPTER 22. PROBATE AND ADMINISTRATION OF ESTATES | 1293 |
| I. Probate | 1294 |
| A. Introduction | 1294 |
| B. Probate of Will of Movables | 1294 |
| C. Recognition of Foreign Probate | 1295 |
| D. Probate of Will of Immovables—Land | 1297 |
| II. Administration of Estates | 1298 |
| A. Introduction | 1298 |
| B. Place and Necessity of Administration | 1299 |
| 1. Domicile | 1299 |
| 2. Situs of Tangible Assets | 1299 |
| 3. Chattels Temporarily Present Within a State | 1300 |
| 4. Chattels Brought into a State After Owner's Death | 1301 |
| 5. Intangibles | 1302 |
| 6. Commercial Paper | 1305 |
| 7. Corporate Stock | 1307 |
| 8. Life Insurance | 1308 |
| C. Powers of Personal Representative Outside Appointing State | 1309 |
| 1. Power to Sue | 1309 |
| 2. Other Acts | 1311 |
| 3. Payment to a Foreign Representative | 1314 |
| 4. Transfer of Claim by Personal Representative | 1316 |
| 5. Suits Arising out of Administration | 1317 |
| 6. Actions Against Foreign Representatives | 1318 |
| 7. Privity Between Foreign Representatives | 1323 |
| D. Creditors' Claims—Proof and Payment | 1328 |
| E. Spousal and Family Allowances | 1330 |

| | |
|--|-------------|
| III. Accounting and Distribution | 1331 |
| IV. Guardians and Conservators | 1333 |
| A. In General | 1333 |
| B. Conservators | 1333 |
| C. Guardians of the Person..... | 1336 |
| CHAPTER 23. CORPORATIONS, WINDING-UP, AND BANKRUPTCY | 1339 |
| I. The Law Applicable to Corporations | 1339 |
| A. The Law of the Place of Incorporation | 1339 |
| 1. The General Principle | 1339 |
| 2. Special Choice-of-Law Rules | 1344 |
| 3. Applications of the Incorporation Rule..... | 1346 |
| B. Regulation of Foreign Corporations by the Forum..... | 1349 |
| 1. Constitutional Limits | 1349 |
| 2. Qualification Statutes | 1351 |
| 3. Pseudo-Foreign Corporations..... | 1352 |
| 4. Piercing the Corporate Veil..... | 1354 |
| C. Dissolution and Winding-up | 1355 |
| II. Bankruptcy | 1356 |
| A. Introduction | 1356 |
| B. Interstate Bankruptcy..... | 1360 |
| C. International Bankruptcy | 1368 |
| 1. Effect of Foreign Proceedings in the United States..... | 1369 |
| 2. Effect of U.S. Proceedings Abroad | 1370 |
| D. Insolvency of Related and of Multinational Corporations | 1371 |
| CHAPTER 24. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND DECREES | 1375 |
| I. Preliminary Considerations..... | 1376 |
| A. The Policy of Preclusion | 1376 |
| B. Preclusion and the Enforcement of Interstate Judgments..... | 1378 |
| C. Preclusion and the Enforcement of International Judgments | 1381 |
| D. Methods of Enforcing Foreign Judgments | 1384 |
| II. Interstate Recognition of Judgments | 1389 |
| A. What Constitutes Enforceable Foreign Proceedings..... | 1389 |
| 1. Finality | 1389 |
| 2. Equity Decrees: Jurisdiction and Recognition..... | 1390 |
| 3. Foreign Decrees Relating to Land | 1393 |
| 4. Nature of the Proceeding..... | 1395 |
| B. Methods of Enforcing Interstate Judgments | 1396 |
| 1. Full Faith and Credit | 1396 |
| 2. Recognition and Enforcement by Registration or Summary Proceeding | 1399 |
| C. Defenses to Claim on Sister-State Judgments | 1400 |
| 1. Lack of Jurisdiction of Rendering Court | 1400 |
| 2. Judgment Obtained by Fraud; Equitable Defenses | 1403 |
| 3. The Public Policy of the Forum, Penal Judgments, Tax Judgments, and Lack of a Competent Court..... | 1405 |
| a. Public Policy | 1406 |

| | | |
|------|--|------|
| b. | No Competent Court in Recognizing Forum | 1409 |
| c. | Tax and Penal Judgments and Claims..... | 1410 |
| 4. | Foreign Judgment Not on the Merits..... | 1413 |
| 5. | Other Defenses..... | 1416 |
| III. | International Recognition of Judgments | 1421 |
| A. | Recognition and Enforcement..... | 1421 |
| 1. | Early Approaches and the <i>Hilton</i> Doctrine..... | 1421 |
| 2. | Recognition Practice After <i>Hilton</i> and <i>Erie</i> | 1424 |
| 3. | Foreign Approaches and Their Implications for U.S. Recognition Practice..... | 1428 |
| 4. | Federal Preemption by Recognition Treaty | 1435 |
| 5. | Valuation of Foreign Money-Judgments | 1439 |
| B. | Defenses to Claim on Foreign-Country Judgment | 1441 |
| 1. | Jurisdiction | 1441 |
| 2. | Foreign Judgment for Taxes or Penalties | 1444 |
| 3. | Public Policy..... | 1445 |
| 4. | International Recognition Treaties and Preclusion | 1448 |
| IV. | Extrajudicial Proceedings, Administrative Determinations, and Arbitral Awards | 1449 |
| | TABLE OF CASES | 1455 |
| | TABLE OF STATUTES AND RULES | 1545 |
| | TABLE OF RESTATEMENT CITATIONS..... | 1555 |
| | TABLE OF UNIFORM COMMERCIAL CODE CITATIONS | 1565 |
| | TABLE OF UNIFORM PROBATE CODE CITATIONS | 1567 |
| | INDEX..... | 1569 |