

Codifying Choice of Law Around the World

An International Comparative Analysis

Symeon C. Symeonides

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**Codifying Choice of Law
Around the World:
An International
Comparative Analysis**

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Oxford University Press

*To Lythrodontas,
my humble village*

Foreword

It is an honour to be asked to write the preface to Professor Symeon Symeonides' new book. I have known his work for more than 20 years, and he is one of the foremost scholars in the world in the field of the conflict of laws. His work has been cited by federal and state courts in the United States and by the House of Lords and the Supreme Court in the United Kingdom.

This is a truly monumental contribution to the study of codification in the conflict of laws. When I first came to the subject of the conflict of laws in the 1960s codification was in a state of arrested development. There had been the civil law codes of the 19th century, which had dealt with some aspects of choice of law, such as the French Civil Code in 1804, and its successors later in the century, especially in Spain and Germany. There was also the Bustamante Code in Latin America.

The attempts by the Hague Conference at unification by international convention had met with only limited success, and the enormously distinguished authors of the American Law Institute Restatements of the Conflict of Laws, the first by Professor Beale and the second by Professor Reese, failed to achieve unqualified acceptance.

As Professor Symeonides shows, there was an explosion of codification by states in the latter part of the 20th century, amounting to almost 100 new codifications. But it has been the unending quest for harmonization and unification by what is now the European Union which has resulted in what Professor Symeonides rightly describes as a virtual revolution, starting with the jurisdictional efforts in the Brussels Convention of 1968 and choice of law in contract in the Rome Convention of 1980, and eventually accelerating to the widespread enactment of Regulations in the fields of jurisdiction and choice of law, in commercial law and in family law. Whether this has been a success is a matter of some controversy, but what is not in doubt is that Professor Symeonides has made an outstanding contribution to the science of law in this comprehensive treatment of codification in choice of law.

October 2013

Lawrence Collins
(Lord Collins of Mapesbury, LLD, FBA)
Former Justice, UK Supreme Court

Preface

This book is the last of an unplanned trilogy on Choice of Law. The first book, written thirty-three years ago, was a neophyte's doctrinal début, comparing the American and European academic approaches to choice of law.¹

The second book, written twenty-five years later, took a more practical direction. Descending into the trenches of litigation, the book examined the choice-of-law decisions of American courts in the previous fifty years.² Its principal aim was to understand and transmit the lessons doctrinal writers could derive from the "real world" of judicial decisions. In reviewing that book, a distinguished author found it to be grounded "on the principle that what courts do, and their measure of agreement in what they do, are phenomena to be taken very seriously indeed," and on "the strong conviction that to glean truth from reality one has to handle a great deal of reality, and to do so with utmost care."³

This book is based on the same conviction. Ascending to the galleries of legislative chambers, somewhat familiar from the author's previous drafting experience, the book attempts to "glean truth" from the official and plentiful reality of legislation around the world. The book is a comparative study of the choice-of-law codifications and conventions adopted in each of the inhabited continents in the last fifty years. Its main purpose is to document and inform rather than to critique. Although I do not always hide my opinion, I continue to act on the conviction that what we can learn from legislators is far more important than what they can learn from us.⁴

As I look at the calendar, I realize that today is Labor Day, and that the two previous books were also completed on Labor Day; this reminds me of the dual meaning of the word "labor" in denoting toil but also connoting the pain and exhilaration of childbirth.

Labor Day, 2013
Salem, Oregon, USA

S.C.S.

¹ See S. Symeonides, *An Outsider's View of the American Approach to Choice of Law: Comparative Observations on Current American and Continental Conflicts Doctrine* (Doctoral Dissertation, Harvard Law School, 1980).

² See S. Symeonides, *The American Choice-of-Law Revolution: Past, Present, and Future* (Hague Academy of International Law Monographs, 2006).

³ L. Weinberg, Theory Wars in the Conflict of Laws, 103 *Mich. L. Rev.* 1631, 1648 (2005) (reviewing S. Symeonides, *The American Choice-of-Law Revolution in the Courts: Today and Tomorrow*, 298 *Recueil des Cours* 1 (2003)).

⁴ In keeping with this conviction, the book avoids the use of the first person, except in this Preface.

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- ANGOLA:** Civil Code of Angola, arts. 14-63, Law-Decree 496 of 25 Nov. 1977.
- ARGENTINA:** Anteproyecto de Código Civil y Commercial de la Nación (2012) by Comisión de Reformas decreto presidencial 191/2011, arts. 2594-2671.
- ARMENIA:** Civil Code of Armenia as adopted in 1998, Division 12, arts. 1253-93.
- AUSTRIA:** Bundesgesetz vom 15. 6. 1978 über das internationale Privatrecht, as subsequently amended.
- AZERBAIJAN:** Law of 6 June 2000 on Private International Law.
- BELARUS:** Civil Code of Belarus (Law of 7 December 1998, as amended on 28 Dec. 28 2009), arts. 1093-1136.
- BELGIUM:** Code de droit international privé (Loi du 16 juillet 2004).
- BOSNIA-HERZEGOVINA:** [Former Yugoslav] Act of 15 July 1982 on the Resolution of Conflicts of Laws with Laws and Regulations of Other Countries in Certain Matters.
- BULGARIA:** Bulgarian Private International Law Code (Law No. 42 of 2005 as amended by Law No. 59 of 2007).
- BURKINA FASO:** Code of Persons and Family, arts. 988-1050 (Law VII 0013 of 19 Nov. 1989).
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- CAPE VERDE:** Civil Code of Cape Verde, arts. 14-63, re-enacted by Legislative Decree No. 12-C/97 of June 30, 1997.
- CENTRAL AFRICAN REPUBLIC:** Law No. 65-71 of 3 June 1965 regarding the obligatory force of laws and the conflict of laws in time and space, arts. 38-45.
- CHAD:** Ordinance No. 6 of 21 March 1967 for the Reform of Judicial Organization, arts. 70-72.
- CHINA:** Statute of Application of Law to Foreign Civil Relations, adopted at the 17th session of the Standing Committee of the 11th National People's Congress on October 28, 2010.
- CONGO-BRAZZAVILLE:** Family Code, arts. 38-39, 155, 819-832 (Law No. 073/1984 of 17.10.1984).
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- FYROM:** (Former Yugoslav Republic of Macedonia): Private International Law Act of 4 July 2007.
- GABON:** Civil Code arts. 25-77 (Law No. 15/1972 of 29.7.1972 adopting Part I of Civil Code).
- GEORGIA:** Act No. 1362 of 29 April 1998 on Private International Law.
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- ITALY:** Act No. 218 of 31 May 1995 (Riforma del sistema italiano di diritto internazionale privato).
- JAPAN:** Law No. 10 of 1898 as Newly Titled and Amended on 21 June 2006, effective 1 Jan. 2007, on the General Rules of Application of Laws.
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- LIECHTENSTEIN:** Private International Law Act of 1996.
- LITHUANIA:** Civil Code of the Republic of Lithuania of 2000, arts. 1.10 --1.62.
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- MADAGASCAR:** Arts. 20-35, Ordonnance No. 62-041 du 19 sept. 1962 relative aux dispositions générales de droit interne et de droit international privé, complétée par la loi no. 98-019 du 2 déc. 1998.
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- BRUSSELS CONVENTION:** Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.
- LUGANO CONVENTION:** Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, Done at Lugano on 16 September 1988.
- BRUSSELS I REGULATION:** European Community Council Regulation (EC) No. 44/2001 of 22 December 2001 on Jurisdiction and the Recognition of Judgments in Civil and Commercial Matters.
- BRUSSELS IIBIS (IIA) REGULATION:** Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.
- INSOLVENCY REGULATION:** Council Regulation (EC) No 1346/2000 of 29 May 2000 on Insolvency Proceedings.
- MAINTENANCE REGULATION:** Council Regulation (EC) No 4/2009 of 18 December 2008 on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Cooperation in Matters Relating to Maintenance Obligations.
- ROME I REGULATION:** Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the Law Applicable to Contractual Obligations (Rome I).
- ROME II REGULATION:** Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the Law Applicable to Non-Contractual Obligations (Rome II).
- ROME III REGULATION:** Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.
- SUCCESSIONS REGULATION:** Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession.

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ACCESS TO JUSTICE: Hague Convention of 25 October 1980 on International Access to Justice.

ADMINISTRATION OF ESTATES: Hague Convention of 2 October 1973 Concerning the International Administration of the Estates of Deceased Persons.

ADOPTION: Hague Convention of 15 November 1965 on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions.

ADOPTION: Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.

AGENCY: Hague Convention of 14 March 1978 on the Law Applicable to Agency.

CHILD ABDUCTION: Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

CHILD SUPPORT: Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance.

CHOICE OF COURT: Hague Convention of 30 June 2005 on Choice of Court Agreements.

CONTRACTS: Hague Choice of Law Principles for International Contracts, Approved by the Special Commission on 12-16 November 2012.

DIVORCE: Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations.

EVIDENCE: Hague Convention of 8 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.

FOREIGN JUDGMENTS: Hague Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

LEGALIZATION: Hague Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents.

MAINTENANCE: Hague Convention of 2 October 1973 on the Law Applicable to Maintenance Obligations.

MAINTENANCE PROTOCOL: Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations.

MATRIMONIAL PROPERTY: Hague Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes.

MARRIAGE: Hague Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages.

PARENTAL RESPONSIBILITY: Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

PRODUCTS LIABILITY: Hague Convention of 2 October 1973 on the Law Applicable to Products Liability.

SALES: Hague Convention of 22 December 1986 on the Law Applicable to Contracts for the International Sale of Goods.

PROTECTION OF ADULTS: Hague Convention of 13 January 2000 on the International Protection of Adults.

PROTECTION OF INFANTS: Hague Convention of 5 October 1961 Concerning the Powers of

Authorities and the Law Applicable in Respect of the Protection of Infants.

SECURITIES: Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary.

SERVICE OF DOCUMENTS: Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

SUCCESSIONS: Hague Convention of 1 August 1989 on the Law Applicable to Succession to the Estates of Deceased Persons.

TESTAMENTARY FORM: Hague Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions.

TRAFFIC ACCIDENTS: Hague Convention of 4 May 1971 on the Law Applicable to Traffic Accidents.

TRUSTS: Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.

II. INTER-AMERICAN CONVENTIONS

ADOPTION: Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors (1984).

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BILLS OF EXCHANGE: Inter-American Convention on Conflict of Laws concerning Bills of Exchange, Promissory Notes, and Invoices (1975).

CAPACITY: Inter-American Convention on Personality and Capacity of Juridical Persons in Private International Law (1984).

CARRIAGE OF GOODS: Inter-American Convention on Contracts for the International Carriage of Goods by Road (1989).

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CHECKS: Inter-American Convention on Conflict of Laws Concerning Checks (1975).

CHECKS: Inter-American Convention on Conflicts of Laws Concerning Checks (1979).

CONTRACTS: See "Mexico City Convention."

COMPANIES: Inter-American Convention on Conflicts of Laws Concerning Commercial Companies (1979).

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EVIDENCE: Inter-American Convention on the Taking of Evidence Abroad (1975).

EVIDENCE PROTOCOL: Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad (1984).

FOREIGN LAW PROOF: Inter-American Convention on Proof and Information on Foreign Law (1979).

GENERAL RULES OF PIL: Inter-American convention on general rules of private international Law, Done at Montevideo, Uruguay, on May 8, 1979.

JUDGMENTS AND ARBITRAL AWARDS: Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards (1979).

JURISDICTION AND JUDGMENTS: Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments (1984).

LETTERS ROGATORY: Inter-American Convention on Letters Rogatory (1975).

LETTERS ROGATORY PROTOCOL: Additional Protocol to the Inter-American Convention on Letters Rogatory (1979).

“MEXICO CITY” CONVENTION: Inter-American Convention on the Law Applicable to International Contracts, Signed at Mexico, D.F., Mexico, on March 17, 1994.

POWERS OF ATTORNEY: Inter-American Convention on the Legal Regime of Powers of Attorney to Be Used Abroad (1975).

PREVENTIVE MEASURES: Inter-American Convention on Execution of Preventive Measures (1979).

RETURN OF CHILDREN: Inter-American Convention on International Return of Children (1989).

SECURED TRANSACTIONS: Model Inter-American Law on Secured Transactions (2002).

SUPPORT: Inter-American Convention on Support Obligations (1989).

TRAFFIC IN MINORS: Inter-American Convention on International Traffic in Minors (1994).

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