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.


⁴ In keeping with this conviction, the book avoids the use of the first person, except in this Preface.
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Codif.: Refers to any choice-of-law statute, regardless of its formal designation as an act, statute, decree, or ordinance, or code, or as a part of another code, such as a civil code.
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Symeonides, *The "Dismal Swamp":* S. Symeonides, Exploring the “Dismal Swamp”: Revising Louisiana’s Conflicts Law on Successions, 47 La. L. Rev. 1029 (1987);


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<td>Albania</td>
<td>Law No. 10428 of 2 July 2011 on Private International Law.</td>
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<td>Algeria</td>
<td>Algerian Civil Code, arts. 9-24, as amended by Ordinance No. 75-58 of 26 Sept. 1975.</td>
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<td>Armenia</td>
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<td>Belgium</td>
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<td>Bulgaria</td>
<td>Bulgarian Private International Law Code (Law No. 42 of 2005 as amended by Law No. 59 of 2007).</td>
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<td>Central African Republic</td>
<td>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.</td>
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<td>Chad</td>
<td>Ordinance No. 6 of 21 March 1967 for the Reform of Judicial Organization, arts. 70-72.</td>
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<td>China</td>
<td>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.</td>
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<td>Czech Republic</td>
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2011.

**ECUADOR:** Ecuador Civil Code as revised by Law of 10 May 2005, arts. 13-17, 43, 91-93, 103, 129, 137, 139, 1019, 1057-58, 1087-89, and 2337.

**EL SALVADOR:** Civil Code of El Salvador, arts. 14-18, 53-55, 617, 740, 966, 994-95, 1021, 1333, and 2160, as revised by Law-Decree No. 724, 30/09/1999.

**ESTONIA:** Private International Law Act of 27 March 2002.


**GEORGIA:** Act No. 1362 of 29 April 1998 on Private International Law.

**GERMANY:** Gesetz zur Neuregelung des IPR vom 25.7.1986; Gesetz zum IPR für außervertragliche Schuldverhältnisse und das Sachenrecht vom 21.5.1999.

**GUATEMALA:** Ley del Organism Judicial, arts. 21-35 (Decreto 2-89, of 18.3.1989).


**HUNGARY:** Law-Decree No. 13 of 1979 on Private International Law.

**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.

**JORDAN:** Jordanian Civil Code of 1 August 1976, arts. 1-3, 11-29.

**KAZAKHSTAN:** Civil Code of the Republic of Kazakhstan, arts. 1158-1124, enacted by Law No. 409-1 ZRK of July 1, 1999.


**KYRGYZSTAN:** Law of 5 Jan. 1998 revising Civil Code arts. 1167-1208.

**LATVIA:** Latvian Civil Code (1993), arts. 8-25.

**LIECHTENSTEIN:** Private International Law Act of 1996.

**LITHUANIA:** Civil Code of the Republic of Lithuania of 2000, arts. 1.10 --1.62.

**LOUISIANA:** Book IV of the Louisiana Civil Code, enacted by La. Act No. 923 of 1991.


**MAURITANIA:** Code des Obligations et des Contrats, arts 6-11 (Ordonnance no. 89-126 du 14
sept. 1989).


**MOLDOVA:** Moldova Civil Code (Law 1107 of June 6, 2002), arts. 1578-1625.

**MONGOLIA:** Mongolian Civil Code, arts. 539-52, enacted 2 Jan. 2, 2002.


**NETHERLANDS:** Act of 19 May 2011 adopting and implementing Book 10 (Private International Law) of the Dutch Civil Code.


**PANAMA:** Panama Civil Code, arts. 1, 5-8, 631-32, 765-70, as revised by Law No. 18 of 1992.

**PARAGUAY:** Civil Code of Paraguay as revised by Law No. 1183 of 18 December 1985, arts. 11-26, 101, 132-36, 163-67, 177-78, 297, 699, 1196, 1199, 2184, 2447-48, 2609, and 2626.

**PERU:** Peruvian Civil Code of 1984, Book X, arts. 2046-2111.


**PORTUGAL:** Portuguese Civil Code, arts. 14-65, as revised in 1966 and subsequently.

**PUERTO RICO:** Proyecto de Ley para la Revisión y Reforma del Código Civil De Puerto Rico, Libro Séptimo (Derecho Internacional Privado), 25 de mayo 2002.

**QATAR:** Arts. 10-38 of the Civil Code of Qatar, as amended by law 22/2004 of 8 August 2004.

**QUEBEC:** L.Q. 1991, ch. 64, composing Book Ten of the Quebec Civil Code (arts. 3076-3168).

**ROMANIA:** Law No. 105 of 22 Sept. 1992 on the Settlement of Private International Law Relations.


**RWANDA:** Law no. 42/1988 (Preliminary Title and First Book of the Civil Code) in force since May 1, 1992.

**SENEGAL:** Family Code of Senegal, arts. 840-854, Law No. 76-61 of June 1972.

**SERBIA:** Serbian Ministry of Justice Draft of July 20, 2012 on Private International Law Code.

**SLOVAKIA:** Czechoslovakian Act 97 of 1963 on Private International Law and Procedure, as subsequently amended.

**SLOVENIA:** Private International Law and Procedure Act of 30 June 1999.


**SPAIN:** Spanish Civil Code, arts. 8-16, as revised in 1974 and subsequently.


**TAIWAN:** Act Governing the Application of Laws in Civil Matters Involving Foreign Ele-
ments, promulgated on 26 May 2010.


TURKEY: Law No. 5718 of 27 Nov. 2007 adopting the Turkish Code of Private International Law and International Civil Procedure.


UKRAINE: Law of 23 June 2005 No. 2709-IV on Private International Law, as subsequently amended.


**Table of EU Regulations (and Conventions)**

**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.


**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.

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<td><strong>CHOICE OF COURT</strong>: Hague Convention of 30 June 2005 on Choice of Court Agreements.</td>
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<td><strong>LEGALIZATION</strong>: Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents.</td>
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<tr>
<td><strong>PROTECTION OF INFANTS</strong>: Hague Convention of 5 October 1961 Concerning the Powers of Infants.</td>
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CARRIAGE OF GOODS: Negotiable Inter-American Uniform Through Bill of Lading for the International Carriage of Good by Road (2002).

CARRIAGE OF GOODS: Non-Negotiable Inter-American Uniform Through Bill of Lading for the International Carriage of Good by the Road (2002).

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


CONTRACTS: See “Mexico City Convention.”


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

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


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