

## Table of Contents

---

	PAGE
PART ELEVEN. PROPERTY .....	I
CHAPTER 54. TANGIBLE PROPERTY .....	3
I. Real Rights .....	3
1. Concept of Proprietary Rights .....	3
2. Objects of Real Rights .....	5
II. The Statutist Doctrine .....	7
1. <i>Lex Situs</i> .....	7
2. Movables Follow the Person .....	8
(a) Theoretical basis .....	8
(b) Scope of the rule .....	9
(c) Exceptional function of the rule ...	13
(d) Obsolete remainders .....	14
3. Characterization of Movables and Im- movables .....	15
(a) The traditional characterization ...	15
(b) The common-law rule .....	18
(c) The <i>lex fori</i> theory .....	26
III. <i>Lex Rei Sitae</i> .....	30
1. The Rule .....	30
2. Property and Contract .....	34
Transfer of title .....	34
Transfer of movables .....	34
Lease of land .....	36
Conditional sales .....	39
Co-ownership .....	39
3. Right of Stoppage <i>in Transitu</i> .....	40
CHAPTER 55. SCOPE OF <i>Lex Situs</i> .....	43
I. Creation of Real Rights by Transaction ....	43

	PAGE
1. Capacity to Dispose and Acquire . . . . .	43
2. Form . . . . .	46
(a) Exclusive <i>lex situs</i> . . . . .	46
(b) The French-influenced group . . . . .	47
(c) Irrespective of the contrast . . . . .	48
3. Structure of the Right . . . . .	49
4. Place . . . . .	50
Foreign judgments . . . . .	50
II. Special Applications of <i>Lex Situs</i> . . . . .	51
1. Remedies . . . . .	51
2. Documents of Title . . . . .	55
3. Easements . . . . .	58
4. Encumbrances . . . . .	60
(a) In general . . . . .	60
(b) In particular . . . . .	61
(c) Satisfaction . . . . .	63
(d) Liens . . . . .	64
5. Limitation of Actions . . . . .	66
III. Intangibles . . . . .	66
Aggregates . . . . .	69
 CHAPTER 56. REMOVAL OF CHATTELS . . . . .	 70
I. Principles . . . . .	70
1. Successfully Completed Acts . . . . .	70
Defenses . . . . .	73
2. Defective Acts . . . . .	75
3. Events in the Second Territory . . . . .	76
4. Incomplete Legal Situations . . . . .	78
II. Local Public Policy . . . . .	81
1. New York . . . . .	81
2. France . . . . .	83
III. Security Interests . . . . .	84
1. Normal Principles . . . . .	86
2. Public Policy . . . . .	88
3. Recording . . . . .	89
4. Removal Without the Creditor's Consent . . . . .	92
5. The Concept of the First Situs . . . . .	94
American Legislation . . . . .	95

TABLE OF CONTENTS

ix

PAGE

IV. Adverse Possession .....	97
CHAPTER 57. AMBULATORY CHATTELS .....	100
I. Goods in Transit .....	100
II. Rights in Ships in General .....	102
1. Present Theories .....	102
River Boats .....	105
2. Situations .....	106
(a) The ship is in home waters .....	106
(b) The ship is on the high seas .....	106
Voluntary alienations .....	106
(c) The ship is in foreign waters .....	108
Involuntary assignments .....	108
Voluntary alienation .....	108
Voluntary securities .....	110
Other events .....	112
Conclusion .....	112
III. Maritime Liens (Privileges by Law) .....	113
Anglo-American admiralty law .....	113
The Continental laws .....	114
1. Recognition of Foreign-Created Liens .....	115
(a) Repair and supply .....	115
(b) Wages of master and crew .....	117
(c) Injury .....	118
(d) Carrier's default .....	118
2. Priority .....	119
IV. Rights in Aircraft .....	122
1. Municipal Laws .....	122
Effect of Recording .....	123
2. Conflicts Rules .....	125
 PART TWELVE. BILLS AND NOTES .....	 127
 CHAPTER 58. PRINCIPLES .....	 129
I. Sources .....	129
1. The Written Laws .....	130

	PAGE
(a) Communities .....	130
(b) Isolated laws .....	131
(c) Scope .....	132
2. Main Differences of Internal Law .....	132
3. Special and General Law .....	133
Terminology .....	134
II. The Role of Theory .....	135
1. Municipal Theories .....	135
2. The Cambial Contracts .....	137
3. Influence of Underlying Relationships .....	139
4. Scope of the Cambial Rights .....	142
Cover .....	144
Enforcement Privileges .....	146
III. Private Autonomy .....	147
IV. The Bill and the Accessory Obligations .....	149
1. Principles .....	149
(a) The principle of the basic bill .....	149
(b) The principle of independence .....	150
2. Difficulties .....	151
Examples of settled solutions .....	152
CHAPTER 59. FORMAL REQUIREMENTS .....	154
I. Form and Substance .....	154
1. Essential Requirements .....	154
2. Narrow Enactments .....	155
Concept of Form .....	156
3. Scope of Form .....	157
II. <i>Locus Regit Actum</i> .....	158
1. Imperative Function .....	158
2. Where is the act done? .....	159
(a) The Common-Law Doctrine .....	159
(b) The Civil-Law Doctrine .....	162
<i>Locus verus</i> or <i>locus scriptus</i> ? .....	162
Delivery in municipal civil law .....	164
Rationale .....	165
3. Conclusions .....	166
Interpersonal law .....	168
III. Exceptions to the Principle .....	169

TABLE OF CONTENTS

xi

	PAGE
1. British Law .....	169
2. Geneva Rules .....	169
(a) Article 3, paragraph 2 .....	169
(b) Article 3, paragraph 3 .....	170
CHAPTER 60. VALIDITY IN GENERAL .....	173
I. Intrinsic Requirements .....	173
1. Capacity .....	173
Corporations .....	175
Exceptions .....	175
Conclusion .....	176
2. Consent .....	177
3. Consideration .....	177
4. Other Incidents .....	178
II. Acceptance .....	179
III. Special Contracts .....	180
1. Accommodation Paper .....	180
2. Aval .....	181
3. Acceptance for Honor .....	182
CHAPTER 61. CIRCULATION .....	183
I. The Chain of Holders .....	183
1. The Effect of Possession: "legitimation" .....	183
2. Translative Function of Indorsement .....	184
3. The Doubtful Scope of the Principle of Independence .....	186
II. Which Law of Indorsement Prevails in De- termining the Rights of Holders? .....	187
1. Defenses of Warrantor .....	188
2. Spurious Signatures .....	190
Liability of Agent .....	195
III. " <i>Lex Loci Contractus</i> " of the Single Obliga- tion or Law of the Original Contract? .....	196
1. Negotiability .....	196
(a) In English and Continental Laws .....	196
(b) United States .....	198
(c) Conclusion .....	199
2. Indorsement After Maturity .....	199

	PAGE
IV. Single Law of Indorsement or Law of the Place of Payment? .....	200
1. Amount of Damages in Recourse .....	200
2. Defenses of Acceptor or Maker .....	201
CHAPTER 62. PAYMENT AND RECOURSE .....	202
I. Payment .....	202
1. The Applicable Law .....	202
Place of payment named ("domiciled draft") .....	203
Absence of place of payment .....	203
2. The Scope of the Law of Payment .....	204
(a) Modalities of payment .....	204
(b) Time of maturity .....	204
(c) Part payment .....	205
(d) Amortization .....	205
(e) Excuses and discharge .....	205
3. Enlargements of Scope .....	206
II. The Steps to Preserve Recourse .....	207
1. Survey of Theories .....	207
(a) Controversy .....	207
(b) Statutes .....	208
2. Necessity of Preserving Steps .....	209
3. Form and Time .....	212
(a) Form .....	212
What is "form?" .....	213
"Sufficiency of notice" .....	214
Renvoi .....	214
(b) Time .....	214
Reasonable time .....	215
4. Exemptions from the Duties .....	217
(a) Personal defenses .....	218
(b) Incidents of payment .....	219
(c) Estoppel .....	220
III. Time for Suing .....	221
1. Suing for Recourse .....	221
2. Suing for Payment .....	223

## TABLE OF CONTENTS

xiii

	PAGE
CHAPTER 63. CHECKS .....	224
I. The Special Law on Checks .....	224
Differentiation .....	224
United States .....	226
Function .....	227
Conflicts .....	227
II. Creation .....	229
1. Form .....	229
2. Capacity of Drawer .....	229
3. Capacity of Drawee .....	230
III. Cover and Stop Payment .....	232
1. Cover .....	232
2. Stop Payment .....	233
3. Restriction to Specific Holders .....	235
4. Time for Action .....	236
 CHAPTER 64. CONCLUSIONS TO PART TWELVE .....	 238
 PART THIRTEEN. INHERITANCE .....	 243
 CHAPTER 65. PRESENT CONFLICTS RULES .....	 245
I. Terminology and Sources .....	245
1. Terminology .....	245
2. Sources .....	246
Treaties .....	247
II. Survey of the Conflicts Systems .....	251
A. Plurality of Successions	
1. Immovables under <i>lex situs</i> .....	251
(a) Movables under <i>lex domicilii</i> .....	251
(b) Movables under <i>lex patriae</i> .....	252
2. Other Functions of <i>Lex Situs</i> .....	253
(a) As principle for all assets .....	253
(b) As exception for all domestic assets .....	254
(c) As exception for certain movables .....	254
(d) For domestic immovables only ..	255
(e) Otherwise on the ground of public policy .....	255

	PAGE
(f) On the ground of comity . . . . .	256
B. Unity of Succession	
1. All assets subject to the law of the last domicile . . . . .	257
2. All assets subject to the national law of the deceased at the time of his death . . . . .	258
3. Mixed systems . . . . .	260
C. <i>Lex Fori</i> . . . . .	261
1. As principle . . . . .	261
2. In Favor of Domestic Beneficiaries . . . . .	261
(a) Reciprocity . . . . .	262
(b) <i>Prélèvement</i> . . . . .	262
Contractual disposal . . . . .	266
CHAPTER 66. PRINCIPLES . . . . .	268
I. Unity and Plurality of Succession . . . . .	268
1. Historical Notes . . . . .	268
2. Rationale . . . . .	270
II. Problems Concerning the Connecting Factors . . . . .	273
1. Party Autonomy . . . . .	273
2. Concept of Immovables . . . . .	276
3. Renvoi . . . . .	277
The Personal Law . . . . .	279
Reference to <i>Lex Situs</i> . . . . .	282
CHAPTER 67. THE FORM OF WILLS . . . . .	287
I. The Conflicts System . . . . .	287
1. Basic Tests . . . . .	289
2. Enlargements . . . . .	291
(a) English legislation . . . . .	291
(b) Typical civil law . . . . .	292
(c) Interstate and international unification . . . . .	295
Canadian Uniform Law . . . . .	297
Hague Conferences . . . . .	297
Scandinavian Convention . . . . .	297
(d) Various rules . . . . .	298



	PAGE
3. The Most Developed Reference Lists . . .	299
(a) Texts . . . . .	299
(b) Comparison: time of validity . . . . .	301
Law of Place of Execution . . . . .	302
Law Governing Succession . . . . .	302
Law of the Enacting State . . . . .	302
Domestic Wills . . . . .	303
The Personal Law of Other States . . . . .	303
Change of Personal Law . . . . .	304
Proposal . . . . .	305
II. Restrictions . . . . .	305
1. In Favor of <i>Lex Causae</i> . . . . .	305
(a) French Code Civil, Article 999 . . . . .	306
(b) Netherlands Code, Article 992 . . . . .	307
(c) The Dutch Provision . . . . .	309
Wills of Minors . . . . .	310
2. In Favor of <i>Lex Situs</i> . . . . .	311
III. Operation of the Rules . . . . .	311
1. The Concept of Form . . . . .	311
2. Renvoi . . . . .	312
3. Defective Formality . . . . .	313
IV. Joint Wills . . . . .	315

## CHAPTER 68. SUBSTANTIVE REQUIREMENTS OF WILLS . . . . .

I. Testamentary Capacity . . . . .	319
1. Law of Succession . . . . .	319
2. Personal Law . . . . .	321
3. Variety of Solutions . . . . .	322
4. <i>Vel</i> instead of <i>Et</i> . . . . .	322
II. Other Substantive Requirements . . . . .	322
III. Restraint on Power of Disposal . . . . .	324
1. Law of Succession Governs . . . . .	324
2. Family Provision Acts . . . . .	327
3. Restraint on Liberalities to Certain Persons . . . . .	328
4. Gifts Impairing Legitimate Shares . . . . .	330
5. Future Interests . . . . .	331

	PAGE
CHAPTER 69. EFFECT OF WILLS .....	334
I. Construction .....	334
1. Concept of Construction .....	334
2. Universal Principle .....	337
3. Conflict of Rules .....	340
4. Transposition .....	343
II. Revocation .....	344
Formal Validity .....	345
(a) Law of Succession .....	346
(b) Effect <i>Inter Vivos</i> .....	346
III. Election .....	349
IV. Powers of Appointment .....	351
CHAPTER 70. SCOPE OF THE LAW OF SUCCESSION ..	354
I. In General .....	354
II. Delimitation of the Scope .....	355
1. Status of Beneficiaries .....	355
(a) The incidental question .....	355
(b) Capacity of beneficiaries .....	358
(c) Rationale .....	360
(d) Public policy .....	364
(e) Unworthiness .....	365
(f) Corporations .....	365
2. Marital Property .....	365
3. <i>Donatio mortis causa</i> .....	366
(a) Act <i>inter vivos</i> .....	366
(b) Act affecting succession .....	369
4. Life Insurance .....	370
III. The Right of the State to Take Estates .....	371
CHAPTER 71. ACQUISITION OF INHERITANCE	
RIGHTS .....	375
I. Devolution .....	375
1. Principle .....	375
Conflicts rule .....	376
2. Transmission .....	378
(a) Title .....	378

TABLE OF CONTENTS

xvii

	PAGE
(b) Possession (seisin) . . . . .	379
(c) Specific legacy . . . . .	382
3. Acceptance and Repudiation . . . . .	382
II. Agreements on Inheritance Rights . . . . .	385
1. Release to Ancestor . . . . .	385
2. Release of Expectancy in General . . . . .	386
3. Promise of Testamentary Disposal . . . . .	387
III. Advancements ( <i>collatio bonorum</i> ) . . . . .	389
IV. Partition . . . . .	391
1. Coheirship . . . . .	391
2. Partition . . . . .	393
(a) Voluntary partition . . . . .	393
Private partition; Waiver of partition . . . . .	394
(b) Effect . . . . .	395
CHAPTER 72. PLURALITY OF SUCCESSION . . . . .	397
I. The Problem . . . . .	397
(a) Occurrence . . . . .	397
(b) Scope . . . . .	398
II. Distribution . . . . .	399
1. Intestate Rules . . . . .	399
2. Requirements of Wills . . . . .	400
Forced shares . . . . .	400
III. Acquisition . . . . .	401
1. Option . . . . .	401
2. Advancement . . . . .	402
3. Prerogatives of Domestic Beneficiaries . . . . .	403
4. Partition . . . . .	404
IV. Administration . . . . .	405
CHAPTER 73. ADMINISTRATORS AND COURTS . . . . .	406
I. Municipal Organization of Decedent's Estate . . . . .	406
1. Common Law . . . . .	406
(a) Jurisdiction . . . . .	407
(b) Effect of probate within the forum . . . . .	409
2. Civil Law . . . . .	410
3. Situs . . . . .	412
4. Law Governing Administration . . . . .	414

	PAGE
II. Extraterritorial Effect of Probate . . . . .	416
1. Common Law Countries . . . . .	416
(a) Assets in the forum . . . . .	416
(b) Assets in other jurisdictions . . . . .	417
England . . . . .	417
United States . . . . .	417
(c) Effect of ancillary probate . . . . .	419
2. Recognition in Civil Law Countries . . . . .	421
3. The German Certificate of Heirship . . . . .	422
III. Extraterritorial Powers of Fiduciaries . . . . .	422
1. Extraterritorial Scope of Appointment . . . . .	422
(a) Common law countries . . . . .	422
(b) Civil law countries . . . . .	424
2. Recognition of Foreign Fiduciaries . . . . .	424
(a) Common law countries . . . . .	424
(b) Civil law countries . . . . .	426
CHAPTER 74. CLAIMS . . . . .	429
I. Single Law of Succession . . . . .	429
1. The Question of Liability . . . . .	429
2. Civil Law . . . . .	431
Law of the debt . . . . .	432
Enforcement . . . . .	433
<i>Lex situs</i> . . . . .	433
3. Common Law . . . . .	434
II. Several Laws of Succession . . . . .	440
1. Lack of Privity . . . . .	440
2. Equalization . . . . .	441
PART FOURTEEN. TRUSTS . . . . .	443
CHAPTER 75. TRUSTS . . . . .	445
I. Trusts in General . . . . .	445
1. Municipal Systems . . . . .	446
2. Categories in Conflicts Law . . . . .	449
(a) Testamentary and <i>inter vivos</i> trusts . . . . .	449
(b) Trusts of land and trusts of movables . . . . .	450
(c) Creation and administration . . . . .	450
(d) Voluntary and legally-implied trusts . . . . .	451

TABLE OF CONTENTS

xix

	PAGE
3. Judicial Favor .....	452
4. Changes of Contact .....	453
II. Testamentary Trusts .....	454
Rationale .....	456
Validity and administration .....	456
What rule? .....	458
III. Trusts <i>Inter Vivos</i> .....	458
1. England .....	458
2. United States .....	459
IV. Conclusions .....	460
V. Recognition of Foreign Trusts .....	464
1. Common Law Countries .....	464
English courts .....	464
American courts .....	464
2. Civil Law Countries .....	465
(a) In general .....	465
(b) Powers of trustee .....	466
(c) Inalienability of the fund .....	468

PART FIFTEEN. APPLICATION OF  
FOREIGN LAW ..... 471

CHAPTER 76. ASCERTAINMENT OF FOREIGN LAW ..	473
I. Judicial Notice of Foreign Law .....	473
1. Mere Party Evidence .....	473
(a) Foreign Law is a fact .....	473
(b) Like a fact .....	476
2. Discretionary Right of the Court to In-	
vestigate .....	478
3. Duty to Take Judicial Notice .....	480
4. Sources of Foreign Law .....	484
II. Review on Appeal .....	485
1. Review of Conflicts Law .....	485
(a) No review .....	485
(b) Review of written conflicts law .....	486
(c) Violation of conflicts law .....	486
(d) Indirect review of foreign law .....	488
2. Review of Foreign Law .....	489

	PAGE
III. Methods of Proof .....	490
IV. Absence of Proof .....	492
1. Rejection of the Claim .....	492
2. Presumptions of Similarity .....	493
3. Subsidiary Law .....	495
4. Distinction of Situations .....	497
(a) Acquiescence in the law of the forum	497
(b) Dismissal .....	498
(c) "Civilized Laws" .....	498
(d) <i>Lex fori</i> .....	499
PART SIXTEEN. INTERTEMPORAL RELATIONS .....	501
CHAPTER 77. TRANSITORY RELATIONS OF CONFLICTS LAW .....	503
I. Change of Foreign Law .....	503
Change of the applicable substantive law ..	503
Change of foreign conflicts rules .....	504
II. Change of the Conflicts Rule of the Forum ..	505
Occurrence .....	505
1. Court Decisions .....	506
2. Theories .....	509
(a) Applying the substantive intertem- poral rules of the forum .....	509
(b) Distinguishing foreign cases .....	510
(c) Establishing general transitory rules	511
(d) Applying the new conflicts rules ...	511
III. Rationale .....	513
TABLES .....	521
BIBLIOGRAPHY .....	523
TABLE OF STATUTES AND INTERNATIONAL CON- VENTIONS .....	551
TABLE OF ANGLO-AMERICAN CASES .....	589
INDEX .....	611