Table of Contents

Page

PREFACE ---- v
ACKNOWLEDGMENTS ---- xi
TABLE OF CASES ---- xxi
TABLE OF AUTHORITIES ---- xxxv

PART I. CHOICE OF LAW: THE BASIC MODEL

Chapter 1. The Traditional Approach to Choice of Law ---- 2
Section 1. Traditional Theory: A Survey of Jurisdiction—Selecting Rules ---- 2
A Short History of Choice of Law ---- 2
Alabama Great Southern R.R. Co. v. Carroll ---- 6
Traditional Choice of Law Theory ---- 9
The Place of Wrong ---- 14
Milliken v. Pratt ---- 17
The Place of Contracting ---- 21
In re Barrie's Estate ---- 26
The Situs of Property ---- 28
White v. Tennant ---- 30
Domicile ---- 33
Miscellaneous Traditional Rules ---- 37

Section 2. Traditional Practice: A Survey of Escape Devices ---- 39
A. Characterization ---- 39
Levy v. Daniels' U–Drive Auto Renting Co. ---- 39
Haumschild v. Continental Cas. Co. ---- 41
Characterization as a Rational Process ---- 43
B. Substance or Procedure? ---- 48
Grant v. McAuliffe ---- 48
The Substance–Procedure Distinction ---- 51
Bournias v. Atlantic Maritime Co., Ltd. ---- 55
Statutes of Limitations and Other Problems ---- 59
C. Renvoi ---- 61
In re Schneider's Estate ---- 61
The Renvoi Problem ---- 64
D. Public Policy, Penal Laws, And Tax Claims ---- 70
Loucks v. Standard Oil Co. of New York ---- 70
Mertz v. Mertz ---- 73
Holzer v. Deutsche Reichsbahn–Gesellschaft et al. ---- 75
Public Policy ---- 76
Penal Laws ---- 79
Tax Laws ---- 82

Page

Section 3. Pleading and Proving Foreign Law ---- 84
Walton v. Arabian American Oil Co. ---- 84
Notice and Proof of Foreign Law ---- 87

Chapter 2. Modern Approaches to Choice of Law ---- 91
Section 1. Statutory Solutions ---- 91
Section 2. Party Autonomy and the Rule of Validation ---- 99
Pritchard v. Norton ---- 99
Siegelman v. Cunard White Star Ltd. ---- 101
Alternative Choice of Law Rules for Contracts ---- 105
Wyatt v. Fulrath ---- 113
Choice of Law for Inter Vivos and Testamentary Trusts ---- 115

Section 3. Interest Analysis ---- 118
A. Introduction ---- 118
Chesny v. Marek ---- 118
Marek v. Chesny ---- 121
The Domestic Choice of Law Process ---- 123
B. Identifying False Conflicts ---- 137
Tooker v. Lopez ---- 137
Schultz v. Boy Scouts of America, Inc. ---- 145
False Conflicts ---- 151
Cooney v. Osgood Machinery, Inc. ---- 155
The New York Mess ---- 160
C. The ''Unprovided–For'' Case ---- 167
Erwin v. Thomas ---- 167
The ''Unprovided–For Case'' ---- 170
D. Resolving True Conflicts ---- 174
Lilienthal v. Kaufman ---- 174
The Law of the Forum ---- 178
Bernkrant v. Fowler ---- 182
Moderate and Restrained Interpretation ---- 185
Bernhard v. Harrah's Club ---- 186
Comparative Impairment and Policy–Selecting Rules ---- 192
Principles of Preference ---- 201

Section 4. Place of the Most Significant Relationship ---- 204
Restatement (Second) of Conflict of Laws (1971) ---- 204
The Second Restatement ---- 205
Phillips v. General Motors Corp. ---- 209
Wood Bros. Homes, Inc. v. Walker Adjustment Bureau ---- 221
Using the Second Restatement ---- 225

Section 5. The Better Law ---- 228
Milkovich v. Saari ---- 231
Jepson v. General Casualty Co. of Wisconsin ---- 235
Choice–Influencing Considerations and the Better Law ---- 239

Section 6. Problems Old and New ---- 245
A. Dépeçage ---- 245
Dépeçage in the Courts ---- 248
B. Renvoi ---- 250
Pfau v. Trent Aluminum Co. ---- 250
Renvoi and Interest Analysis ---- 252
C. Rules Versus Standards ---- 259
Paul v. National Life ---- 259
Good Rules, Bad Rules, or No Rules? ---- 263

Page

D. Complex Litigation ---- 266
In re Air Crash Disaster Near Chicago, Illinois on May 25, 1979 ---- 266
Choice of Law in Mass Actions ---- 283
E. Conflicts in Cyberspace ---- 296
Lawrence Lessig, Code and Other Laws of Cyberspace ---- 296
Licra Et Uejf v. Yahoo! Inc. ---- 301
Yahoo!, Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme ---- 304
Choice of Law on the Internet ---- 306

Chapter 3. The Constitution and Choice of Law ---- 316
Section 1. The Limits of Legislative Jurisdiction ---- 316
A. Due Process ---- 316
Home Ins. Co. v. Dick ---- 316
Due Process and Choice of Law ---- 320
B. Full Faith and Credit ---- 323
Bradford Electric Light Co. v. Clapper ---- 323
Alaska Packers Assoc. v. Industrial Acc. Comm'n ---- 325
Pacific Employers Ins. Co. v. Industrial Acc. Comm'n ---- 328
State Interests and the Constitution ---- 332
C. Convergence ---- 336
Allstate Ins. Co. v. Hague ---- 336
Phillips Petroleum Co. v. Shutts ---- 346
Minimum Contacts and Choice of Law ---- 350

Section 2. The Obligation to Provide a Forum ---- 356
Hughes v. Fetter ---- 356
The "Equal Protection" Component of Full Faith and Credit ---- 359
Tennessee Coal, Iron & R.R. Co. v. George ---- 363
State Power to Keep Litigation at Home ---- 365

Section 3. Unconstitutional Discrimination in Choice of Law ---- 367
Supreme Court of N.H. v. Piper ---- 367
Unconstitutional Discrimination in Choice of Law ---- 372

PART II. OTHER APPLICATIONS

Chapter 4. Jurisdiction of Courts ---- 380
Introductory Note ---- 380

Section 1. Jurisdiction Based on the Relation of the Litigation to the Forum ---- 381
The Evolution of Due Process ---- 381
World–Wide Volkswagen Corp. v. Woodson ---- 389
Asahi Metal Industry Co., Ltd. v. Superior Court ---- 397
The Reach of the Long Arm ---- 403
Burger King Corp. v. Rudzewicz ---- 412
Jurisdiction in Contract Cases ---- 420

Section 2. General Jurisdiction ---- 423
Helicopteros Nacionales de Colombia, S.A. v. Hall ---- 423
Jurisdiction Over "Unrelated" Causes of Action ---- 428

Section 3. Attachment Jurisdiction ---- 434
Shaffer v. Heitner ---- 434
The Seductive "In Rem" Label ---- 447
Shaffer and In Personam Jurisdiction ---- 451

Section 4. Transient Jurisdiction ---- 453
Burnham v. Superior Court of California ---- 453
Playing Tag ---- 462

Page

Section 5. Forum non conveniens ---- 468
Piper Aircraft v. Reno ---- 468

Chapter 5. Recognition of Judgments ---- 477
Res Judicata: Domestic Policies of Finality ---- 477
Full Faith and Credit to Judgments ---- 480
Fauntleroy v. Lum ---- 481
Yarborough v. Yarborough ---- 485
Judgments and the Interest of the Forum ---- 490
Thomas v. Washington Gas Light Co. ---- 496
Limitations on Full Faith and Credit ---- 505
Durfee v. Duke ---- 507
The Foreclosure of Jurisdictional Issues ---- 510
Clarke v. Clarke ---- 514
Fall v. Eastin ---- 516
The Land Taboo ---- 520
Worthley v. Worthley ---- 525
Non–Final Decrees ---- 528
Baker v. General Motors Corporation ---- 532
Equitable Decrees and the Obligation to Enforce Sister–State Judgments ---- 542
Allen v. McCurry ---- 549
State Judgments in Federal Courts ---- 554
Congressional Implementation of the Full Faith and Credit Clause ---- 557
Matsushita Electric Industrial Co. v. Epstein ---- 559
Settlement and Claim Preclusion ---- 568

Chapter 6. Special Problems of Choice of Law, Jurisdiction, and Recognition of Judgments in Divorce, Interstate and International Child Custody, and Decedents' Estates ---- 570
Section 1. Divorce ---- 570
Introductory Note ---- 570
A. Ex Parte Divorce ---- 571
Williams v. State of North Carolina [I] ---- 571
Ex Parte Divorce ---- 578
Estin v. Estin ---- 579
Divisible Divorce ---- 584
B. Divorce by Consent ---- 589
Williams v. State of North Carolina [II] ---- 589
Sherrer v. Sherrer ---- 594
Jurisdiction to Divorce and Collateral Attack on Migratory Divorce Decrees ---- 602
Rosenstiel v. Rosenstiel ---- 610
Mexican Divorces ---- 615
C. Same–Sex Divorce and Dissolution ---- 617
Rosengarten v. Downes ---- 617
Recognition and Dissolution of Civil Unions and Same–Sex Marriage ---- 622

Section 2. Child Custody ---- 626
A. Interstate Child Custody ---- 626
Welch-Doden v. Roberts ---- 626
Grahm v. Superior Court ---- 635
The "Interstate Child" ---- 639
B. International Abduction of Children ---- 650
Van De Sande v. Van De Sande ---- 650
The Hague Abduction Convention ---- 655

Page
Section 3. Decedents' Estates 663
Chapter 7. Conflicts Between Federal and State Law 667
Section 1. Federal Question Jurisdiction 667
Osborn v. Bank of the United States 667
Federal Questions and Federal Interests 675
Louisville & Nashville R. Co. v. Mottley 677
The Well Pleaded Complaint Rule 679
Merrell Dow Pharmaceuticals, Inc. v. Thompson 682
State Incorporation of Federal Law (and Vice–Versa) 691

Section 2. The Erie Doctrine 695
Erie R.R. Co. v. Tompkins 695
The Law Applicable in Federal Courts 700
Guaranty Trust Co. of New York v. York 705
Outcome Determinativeness 708
Byrd v. Blue Ridge Rural Elec. Co–op., Inc. 709
Byrd Balancing 713
Hanna v. Plumer 713
Erie and the Federal Rules of Civil Procedure 718
Walker v. Armco Steel Corp. 720
Interpreting Rules of Procedure 724
Gasperini v. Center for Humanities, Inc. 728
Byrd Redux 737
Semtek International Inc. v. Lockheed Martin Corp. 738
Now What? 743

Section 3. Choice of Law in Federal–Court Cases Involving State–Created Rights 744
Klaxon Co. v. Stentor Elec. Mfg. Co. 744
The Choice Among Conflicting State Laws Under Erie 746

Section 4. Federal Common Law 749
Clearfield Trust Co. v. United States 749
Bank of America v. Parnell 751
Banco Nacional de Cuba v. Sabbatino 753
Federal Common Law and Incorporation of State Law 755

Section 5. Preemption and Supremacy 760
A. Preemption 760
English v. General Electric Co. 760
Preemption of State Law 767
B. Supremacy 770
"Discrimination" against federal law 770
Testa v. Katt 770
Howlett v. Rose 773
Supremacy and Discrimination 776
Federal Law in State Courts: Reverse Erie 779
Dice v. Akron, Canton & Youngstown R.R. 779
State–Court Enforcement of Federal Law 782

Chapter 8. International Conflicts 784
Section 1. The Scope of Legislative Jurisdiction: "Extraterritorial" Regulation 784
United States v. Yunis 784

Page
The Limits of Legislative Jurisdiction In International Law ---- 789
Equal Employment Opportunity Commission v. Arabian American Oil Co. -- 796
Moderation In The Extraterritorial Application of United States Law ---- 802
Hartford Fire Ins. Co. v. California ---- 810
Antitrust And Extraterritoriality ---- 824
Note on The Extraterritorial Application Of Securities (And Other) Laws --- 830
United States v. Verdugo–Urquidez ---- 835
The Extraterritorial Reach of The Constitution ---- 844

Section 2. The European Perspective ---- 850
W. v. Ms. W. ---- 860
Civil Codes And Choice of Law ---- 862

Section 3. The Act–of–State Doctrine ---- 864
Banco Nacional de Cuba v. Sabbatino ---- 864
W.S. Kirkpatrick v. Environmental Tectonics Corp. ---- 871
Judicial Cognizance of Foreign Acts of State ---- 875

Section 4. Recognition of Judgments ---- 881
Hilton v. Guyot ---- 881
Recognition of Foreign–Country Judgments ---- 885

APPENDICES

App.
A. The Constitution of the United States ---- 895
B. Title 28, United States Code ---- 899

INDEX ---- 907