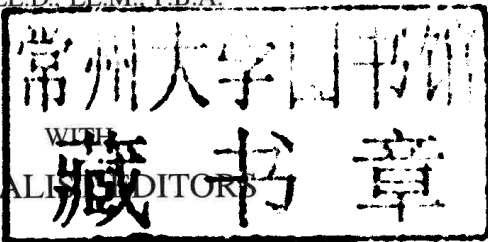


DICEY, MORRIS AND COLLINS ON THE CONFLICT OF LAWS

FIFTEENTH EDITION

UNDER THE GENERAL EDITORSHIP OF
LORD COLLINS OF MAPESBURY
P.C., LL.D., LL.M., F.B.A.

SPECIAL EDITORS



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PREFACE

The editorial team continues to have the great responsibility of maintaining the standard of what Lord Goff of Chieveley very generously described in the House of Lords as “the prince of legal textbooks.” This is particularly so, given the great reliance on it by the courts. It has been cited in well over 200 judgments of the English courts since the last edition.

As the previous edition noted, Professor Dicey, and even Dr Morris, could not of course have foreseen the huge impact which a supra-national body of law, namely European law, would have on the subject of the conflict of laws. Since the last edition was published in 2006, the EU has demonstrated its intention to legislate for virtually the whole area, and four extremely important Regulations have come into force: The Rome II Regulation, Regulation (EC) 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations; the Rome I Regulation, Regulation (EC) 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations; the EU Service Regulation, Regulation of the European Parliament and Council (EC) 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters; and the Maintenance Regulation, Council Regulation (EC) 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations. The revised Lugano Convention came into force in January 2010.

Since the last edition there have been more than 50 relevant new decisions of the European Court, and more than 1000 decisions of the English courts. The decisions of the European Court include the controversial decision in Case C-185/07 *West Tankers Inc v Allianz SpA (The Front Comor)* [2009] E.C.R. I-663, [2009] 1 A.C. 1138, preventing the English from granting anti-suit injunctions to restrain proceedings in other EU States brought in breach of agreements to arbitrate in London. In addition, the Human Rights Act 1998 and the European Convention have played an increasing role in the areas covered by this work, and account has been taken of them, especially in the area of access to justice in the light of state immunity, and in relation to forum conveniens, and in the area of right to family life in the context of international child abduction.

Much of the work has been re-written and expanded. The main changes are these:

- (1) the section on enforceability of foreign public in Chapter 5 has been re-written in the light of the decisions of the Court of Appeal in *Mbasogo v Logo Ltd* and *Islamic Republic of Iran v Barakat Galleries Ltd*;
- (2) Chapter 6 contains a new expanded treatment of habitual residence;
- (3) Chapter 7 takes account of the impact of the Rome I and Rome II Regulations on issues relating to damages and to limitation of

actions (and now also deals with interest, previously in Chapter 33);

- (4) Chapter 8 has been extensively recast and contains for the first time rules for its subject-matter, together with an account of the new EU Service Regulation;
- (5) Chapters 11, 12 and 14 have been revised and expanded to take account of the many decisions in the area of jurisdiction and judgments, and also to take account of the new Lugano Convention;
- (6) Chapters 11 and 16 have been expanded to take account of the relationship between court proceedings and arbitration;
- (7) Chapters 17 and 18 contain expanded treatment of conflict of laws aspects of civil partnership;
- (8) Chapters 18 and 19 have been expanded to take account of the Maintenance Regulation;
- (9) Chapter 19 contains an account of the 1996 Hague Convention on the Protection of Children, which is not yet in force;
- (10) Chapter 29 on trusts now contains five rules instead of the former single rule, including a new rule on constructive and resulting trusts;
- (11) Chapter 30 contains a new section on the UNCITRAL Model Law on Cross-Border Insolvency, as implemented in the Cross-Border Insolvency Regulations 2006;
- (12) the Rome I Regulation (and other EU legislation) has had a considerable impact on the chapters on movable property (Chapter 24), and on contracts (Chapters 32 and 33), and Chapter 33 in particular has been greatly expanded;
- (13) the Rome II Regulation has required very considerable changes to the treatment of torts in the work: Chapter 34 is substantially new and deals with issues common to torts and to other non-contractual obligations; Chapter 35 has been very considerably revised to take account of the Rome II Regulation; and the chapter on restitution has been substantially rewritten as Chapter 36 on unjust enrichment and equitable claims, etc.

Since the last edition, Professor Peter McEleavy and Professor Andrew Dickinson have joined the team. The responsibility of the editors for this edition is as follows: Professor Briggs is responsible for Chapters 2, 3, 4, 9, 12, 14, 24, 26, and 28; Professor Dickinson is responsible for Chapters 33, 34 and 35; Professor Harris is responsible for Chapters 7, 13, 15, 22, 23, 27, 29 and 36; Professor McClean is responsible for Chapters 17 and 18; Professor McEleavy is responsible for Chapters 6, and 19, 20 and 21; Professor McLachlan is responsible for Chapters 8, 16 (jointly with the General Editor) and 37; Professor Morse is responsible for Chapters 30 and 31. In addition to my overall responsibility as General Editor, I am responsible for Chapters 1, 5, 10, 11, 16 (jointly with Professor McLachlan), 25 and 32.

As before, we have had the advantage of much advice and information from friends and colleagues. We should mention especially Professor Francis Reynolds, Aude Fiorini, Maria Hook, Jean McMahon, and Paul Mora. We also acknowledge the administrative assistance of Maria Dolan, and the valuable

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efforts of the staff of the publisher in maintaining the technical excellence of the book.

This edition endeavours to state the law as at January 1, 2012. Later developments will be dealt with in the first supplement.

Lawrence Collins
September 2012

BIOGRAPHICAL NOTE

ALBERT VENN DICEY, the author of this book, was born on February 4, 1835. He was educated at Balliol College, Oxford, where he took a first in Honour Moderations in 1856 and a first in Greats in 1858; he was also President of the Union. He was elected a Fellow of Trinity College, Oxford, in 1860, and held his Fellowship until his marriage in 1872.

He was called to the Bar by the Inner Temple in 1863 and for some years “devilled” for Sir John Coleridge, afterwards Solicitor-General and Attorney-General. In 1870 he published his first law book, *Parties to Actions*, which (it is interesting to observe) was arranged in the form of rules and illustrations. His practice at the Bar was never very lucrative, though in 1876 he was appointed Junior Counsel to the Commissioners of Inland Revenue, a position which he held until 1890, when he took silk. In 1879 he published his second law book, on Domicil.

From a very early age he was intensely interested in politics. From family tradition and associations he belonged to the Whig as opposed to the Radical wing of the Liberal party. He was a convinced Free Trader. He ardently supported the cause of the North in the American Civil War, and the cause of Italian unity. He disliked the autocratic pretensions of Louis Napoleon and rejoiced in his fall. When Mr Gladstone split the Liberal party in two over the Home Rule question in 1885–1886, Dicey identified himself with the Unionist cause, and was prominent in its support from then until 1921. He wrote many pamphlets against Home Rule, and was an active speaker on Unionist platforms. This—the ruling political passion of his later years—naturally brought him into association with leading Conservative statesmen, whom hitherto he had tended to regard with suspicion. But he never lost his faith in Liberalism. “I am an old, an unconverted, and an impenitent Benthamite” he declared in 1913.

In 1881 the Vinerian Professorship of English law in the University of Oxford fell vacant, and after some hesitation Dicey resolved to become a candidate. He was duly elected in the following year. This Chair, of which Blackstone had been the first occupant, carried with it a Fellowship at All Souls College, and it was here that Dicey’s most lasting work was done. He chose as the subject of his inaugural lecture the question “Can English law be taught at the Universities?” to which he replied with a vehement if closely reasoned affirmative. He admitted the immense advantages of reading in chambers, but argued that at the universities “a student can be taught to regard law as a whole, and to consider the relation of one part of English law to another”; that at the universities “can be taught the habit of looking upon law as a series of rules and exceptions, and of carefully marking off the exact limits of ascertained principles.” In 1885 he published his *Law of the Constitution*, a book which was based on his Oxford lectures, and made his fame, not only in England but also in France and the United States, as the leading constitutional lawyer of the day. In 1898 he was invited to deliver a course of lectures at the Harvard Law School, the fruit of which was published in 1905 as *Law and Opinion in England*.

His *magnum opus*, however, was *The Conflict of Laws*, at which he was working from 1882 onwards, and which was first published in 1896. In a letter to a friend he declared in 1922 that "a successor of Blackstone should show that of one branch of English Law at least he could speak with authority." Shortly after the publication of the first edition, he thus described the book in a characteristic letter to his friend James Bryce: "In outward look it is like Story. I cannot flatter myself there is much other resemblance. For after reading much on the Conflict of Laws, I am well assured that Story and Savigny have written the only great books on the subject and, considering the state of legal speculation in Story's time and country, I am not sure that his is not the greater achievement of the two. If I had Westlake's knowledge, or if Westlake could have expressed himself as clearly as I can, a considerable book might have been produced. As it is, my clearness makes patent my errors. He has, I must add, acted with great generosity in giving me help when asked for and, if I had had more impudence, I believe I might have asked for and obtained much more. . . . My Introduction I like and some of the appendices. I doubt if there is much else really good which is not to be found in my *Domicil*, but I am tired and not quite a fair judge. Still, my impression is that the 'practical' man will prefer Foote, and the theorist Story or Savigny. What a queer thing life is. Why should I ever have become involved in this conflict of laws?" Four years later he wrote: "It is unlucky that the endless labour expended on the *Conflict of Law* cannot, from the nature of things, ever be visible to my Oxford friends to whom I principally wish, so to speak, to vindicate my work. If they say the labour was misspent, I more than half, though not completely, agree with them. My faith in digests has declined."

In 1907 the University of Oxford conferred on Dicey the degree of Honorary D.C.L., and in 1909 he resigned the Vinerian Chair, having unquestionably brought more lustre to it than any of his predecessors since Blackstone. He still retained his interest in teaching and in the Conflict of Laws, and in the following year All Souls College created especially for him a Lectureship in Private International Law, which he held until 1913. The duties of the post included giving informal instruction as well as lecturing, and he was thus brought into close contact with a number of under-graduates, largely Rhodes scholars, whose society he greatly enjoyed. Many of the Rhodes scholars were Americans, and he felt that his teaching created a new link with the United States. He died on April 7, 1922, at the age of 87, a few days after the publication of the third edition of this book.

J. H. C. M.

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JOHN HUMPHREY CARLILE MORRIS, "whose contribution to the conflict of laws has excelled even that of his great predecessor. A. V. Dicey" (Lord Denning M.R.¹), the General Editor of the 6th to 10th editions of this book and whose name appeared as co-author from the 8th edition in 1967, was born in 1910. He was an undergraduate of Christ Church, Oxford, and took firsts in the Final Honour School of Jurisprudence and in the B.C.L. and was elected Eldon Scholar. In 1934 he was called to the Bar by Gray's Inn, and following pupillage he practised for a short time in the chambers of Sir Andrew Clark before taking up a Fellowship at Magdalen College, Oxford in 1936, which he retained until his retirement in 1977, when the College elected him to an Honorary Fellowship. From 1951 to 1977 he was Reader in the Conflict of Laws at Oxford University. During that time, and until his death, he achieved and retained a distinction in teaching and scholarship, particularly in the conflict of laws, which earned him worldwide renown and respect and the devotion of generations of his Oxford pupils.

Dicey's great work on the Conflict of Laws, which had, following his death in 1922, suffered a considerable decline, was revived under John Morris' general editorship in 1949. In 1945 he was invited to undertake the sole editorship but (as he put it in the preface to the 6th edition) by October 1946 he felt that the task was beyond his strength and he therefore invited seven learned friends to help him. Those friends were Zelman (later Sir Zelman) Cowen, Rupert (later Sir Rupert) Cross, Otto (later Sir Otto) Kahn-Freund, Dr (later Professor) K. Lipstein, Dr (later Professor) Clive Parry, Mr R.S. Welsh and Professor Ben Wortley. In the preface to the 6th edition he regretted that no practitioner had felt able to accept his invitation to be an editor; but this deficiency was remedied in later editions, among whose editors were two practising barristers (who subsequently became High Court judges, and then members of the Court of Appeal, and one of whom became a distinguished Law Lord) and one practising solicitor (subsequently appointed a High Court judge). His wife, whom, as Jane Kinch, he had married in 1939, was a great support to him and had the unique experience of contributing to the accuracy of the work by reading successive editions aloud to the general editor.

There is no doubt that, even among these distinguished co-editors, it was John Morris' influence as general editor which was paramount in re-establishing the book as the leading work on the subject in the Commonwealth. In succeeding editions the influence of Dicey (from 1967, Dicey and Morris) grew, because under his guidance it kept up with, and anticipated, the great changes in the law caused by the 20th century revolution in communication and travel, and by new social attitudes to family life. As Lord Scarman put it

¹ *The Hollandia* [1982] Q.B. 872, 884 (C.A.). See for an appreciation of his life and work, Professor G. Treitel in (1984) 55 B.Y.I.L. p. ix-xiv; Dr P. M. North in (1988) 74 *Proceedings of the British Academy*, pp. 443-482.

in the foreword to an entire issue of the *International and Comparative Law Quarterly* in 1977 devoted to essays in honour of John Morris, "the depth and range of his learning coupled with his gift of critical analysis brought the flattering consequence that what Dicey said on a point mattered as much to the judges who made the case law as did their case law to the editor of Dicey".²

He was also the author of several important articles in the conflict of laws and in property law. Among the most influential in the former field were those on the proper law of contract in 1940, which was co-authored by Professor Cheshire, who acknowledged, however, that it was conceived and written by John Morris³; on the choice of law clause in statutes⁴; on family law, especially polygamy⁵ and recognition of foreign divorces⁶; on property, especially transfer of chattels⁷ and intestate succession to land.⁸ No article was more influential than "The Proper Law of a Tort",⁹ which had a profound effect on American case law and the American Law Institute Restatement (Second) of the Conflict of Laws.

In addition to his articles and work on this book, John Morris produced four editions of a case-book on the conflict of laws first published in 1939, a book of cases and materials (with Dr P. M. North, now Sir Peter North) in the year of his death, and an influential students' text book on the Conflict of Laws in 1971, the third edition of which was also published in the year of his death. He was editor of three editions of *Theobald on Wills* and the general editor of one edition of *Chitty on Contracts*, as well as co-author (with W. Barton Leach) of a well-known book on the Rule against Perpetuities.

Although he was no seeker of honours, the excellence of his work, and his influence on the law, was marked by a series of distinctions: he was awarded the degree of Doctor of Civil Law by Oxford in 1949; he was elected an Associate Member of the Institute of International Law (1954); Associate Member of the American Academy of Arts and Sciences (1960); Fellow of the British Academy (1966); Honorary Benchet of Gray's Inn (1980); Queen's Counsel (1981). But unlike Dicey, he never became Vinerian Professor at Oxford. As the author (rumoured to be a highly reliable source) of his obituary in *The Times* put it, "in 1964 the Vinerian Chair of English Law at All Souls College fell vacant, and Morris was strongly tipped for the succession. The Chair was offered to him, but to the surprise of his friends and many academic lawyers he declined it. He was devoted to Magdalen, which he served long and faithfully as a Fellow, Clerk to the College and (for one year) as Vice-President and could not bear the thought of migrating to All Souls, for which he had a life-long antipathy." As a result John Morris was entitled to the title of professor only twice, once when he was visiting professor at Harvard Law School in 1950–1951, and latterly when, despite his life-long devotion to

² (1977) 26 I.C.L.Q. 701.

³ (1940) 56 L.Q.R. 320, 339. See also (1950) 3 Int. L.Q. 197.

⁴ (1946) 62 L.Q.R. 170. See also (1979) 95 L.Q.R. 59.

⁵ (1953) 66 Harv. L.Rev. 691, first published in *Festschrift für Martin Wolff* (1952), p. 287.

⁶ (1946) 24 Can. Bar Rev. 73; (1952) 29 B.Y.I.L. 283; (1975) 14 I.C.L.Q. 635.

⁷ (1945) 22 B.Y.I.L. 232.

⁸ (1969) 85 L.Q.R. 339. See also (1937) 18 B.Y.I.L. 32 (renvoi); (1938) 54 L.Q.R. 78 (marriage settlements).

⁹ (1951) 64 Harv. L.Rev. 884. See also (1949) 12 M.L.R. 248.

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Oxford, he spent a happy year in 1978–1979 as Goodhart Professor at Cambridge University and Fellow of Gonville and Caius College.

He completed work on the last supplement to the 10th edition only a few days before his death on September 29, 1984, and on September 19 he wrote “It is with relief, not untinged with emotion, that I lay down the burden of the task I assumed as long ago as January 1945. I have improved the book—no question about that—and perhaps prevented it from dying a natural death.”

L. A. C.

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