



DICEY, MORRIS & COLLINS
ON THE CONFLICT OF LAWS



戴雪、莫里斯和柯林斯
论冲突法

(第14版)

下卷



創于1897

商務印書館

The Commercial Press

THE COMMON LAW LIBRARY

普通法图书馆

DICEY, MORRIS & COLLINS
ON THE CONFLICT OF LAWS

戴雪、莫里斯和柯林斯论冲突法

(第 14 版)

下卷

〔英〕劳伦斯·柯林斯爵士 主编



创于1897

商务印书馆
The Commercial Press

2012年·北京

图书在版编目(CIP)数据

戴雪、莫里斯和柯林斯论冲突法:第14版.下卷:
英文/(英)柯林斯主编.一影印本.一北京:商务印
书馆,2012

(普通法图书馆)

ISBN 978-7-100-09636-2

I. ①戴… II. ①柯… III. ①冲突法—研究—英文
IV. ①D997

中国版本图书馆 CIP 数据核字(2012)第 266344 号

所有权利保留。

未经许可,不得以任何方式使用。

普通法图书馆

戴雪、莫里斯和柯林斯论冲突法

(第14版)

下卷

[英] 劳伦斯·柯林斯爵士 主编

商务印书馆出版

(北京王府井大街36号 邮政编码 100710)

商务印书馆发行

北京瑞古冠中印刷厂印刷

ISBN 978-7-100-09636-2

2012年12月第1版 开本 787×1092 1/16

2012年12月北京第1次印刷 印张 82½

定价: 788.00 元

General Editor
Sir Lawrence Collins

DICEY, MORRIS & COLLINS ON THE CONFLICT OF LAWS

Fourteenth Edition

Volume II

© Sweet & Maxwell Limited, 2006

本书由 Sweet & Maxwell 公司授权影印出版

仅限中国大陆地区销售

DICEY, MORRIS AND COLLINS
ON
THE CONFLICT OF LAWS

FOURTEENTH EDITION

UNDER THE GENERAL EDITORSHIP OF
SIR LAWRENCE COLLINS
LL.D. (Cantab.), F.B.A.

WITH
SPECIALIST EDITORS

VOLUME 2

First Edition	1896	By A.V. Dicey
Second Edition	1908	By A.V. Dicey
Third Edition	1922	By A.V. Dicey and A. Berriedale Keith
Fourth Edition	1927	By A. Berriedale Keith
Fifth Edition	1932	By A. Berriedale Keith
Sixth Edition	1949	By J.H.C. Morris and Others
Seventh Edition	1958	By J.H.C. Morris and Others
Eighth Edition	1967	By J.H.C. Morris and Others
Ninth Edition	1973	By J.H.C. Morris and Others
Tenth Edition	1980	By J.H.C. Morris and Others
Eleventh Edition	1987	By Lawrence Collins and Others
Second Impression	1992	By Lawrence Collins and Others
Twelfth Edition	1993	By Lawrence Collins and Others
Second Impression	1994	By Lawrence Collins and Others
Thirteenth Edition	2000	By Lawrence Collins and Others
Fourteenth Edition	2006	By Lawrence Collins and Others

GENERAL EDITOR

SIR LAWRENCE COLLINS

LL.D. (Cantab.), LL.M. (Columbia Univ.), F.B.A.

*One of Her Majesty's Justices; Bencher, Inner Temple;
Fellow, Wolfson College, Cambridge; Honorary Fellow,
Downing College, Cambridge;*

Visiting Professor, Queen Mary College, London;

*Sometime McNair Scholar and Whewell Scholar of International Law in the
University of Cambridge;*

Member, Institut de droit international

EDITORS

ADRIAN BRIGGS

M.A., B.C.L. (Oxon.)

Of the Middle Temple, Barrister;

Professor of Private International Law, Oxford University;

Fellow, St. Edmund Hall, Oxford

JONATHAN HARRIS

M.A., B.C.L. (Oxon.)

Of Lincoln's Inn, Barrister;

Professor of International Commercial Law,

University of Birmingham

J.D. McCLEAN

C.B.E., Q.C. (Hon.), D.C.L. (Oxon.), F.B.A.

Bencher, Gray's Inn;

Emeritus Professor of Law, University of Sheffield;

Chancellor of the Dioceses of Newcastle and Sheffield;

Associé, Institut de droit international

CAMPBELL McLACHLAN

LL.B. (Well.), Ph.D. (London)

Solicitor (England), Barrister and Solicitor (New Zealand);

Professor of Law, Victoria University of Wellington

C.G.J. MORSE

M.A., B.C.L. (Oxon.)

Of the Middle Temple, Barrister;

Professor of Law, King's College, London

CONTENTS

VOLUME 1

	<i>Page</i>
<i>Preface</i>	xv
<i>Biographical Notes: A.V. Dicey</i>	xix
<i>J.H.C. Morris</i>	xxi
<i>Table of Statutes</i>	xxv
<i>Table of Cases</i>	lxix
<i>Table of Statutory Instruments</i>	cclxi
<i>Table of Civil Procedure Rules</i>	cclxxv
<i>Table of European and International Conventions and Legislation</i>	cclxxix
<i>Table of EC Regulations</i>	ccxcvii
<i>Table of Foreign Case References</i>	cccvii
<i>Table of Books Referred to</i>	cccxi

PART ONE PRELIMINARY MATTERS

Chapter 1	
NATURE AND SCOPE OF THE CONFLICT OF LAWS	3
Chapter 2	
CHARACTERISATION AND THE INCIDENTAL QUESTION	37
Chapter 3	
THE TIME FACTOR	60
Chapter 4	
RENOI	73
Chapter 5	
THE EXCLUSION OF FOREIGN LAW	92
Chapter 6	
DOMICILE AND RESIDENCE	122
1. General Principles	122
2. Ascertainment of Domicile	130
A. Domicile of origin	130
B. Domicile of choice	133
(1) Acquisition	133
(2) Loss	151
C. Domicile of dependency	153
3. Residence	164

Contents

4. Domicile, Residence and Nationality	172
--	-----

PART TWO
PROCEDURE

Chapter 7 SUBSTANCE AND PROCEDURE	177
Chapter 8 INTERNATIONAL LITIGATION: PROTECTIVE MEASURES AND JUDICIAL ASSISTANCE	207
Chapter 9 PROOF OF FOREIGN LAW	255

PART THREE
JURISDICTION AND FOREIGN JUDGMENTS

Chapter 10 JURISDICTIONAL IMMUNITIES	273
Chapter 11 JURISDICTION IN CLAIMS IN PERSONAM	305
1. General Principle	305
2. Domicile	333
3. Rules Relating to Jurisdiction	343
A. Where the Judgments Regulation, 1968 Convention and the Lugano Convention do not apply or where the defendant is not domiciled in the United Kingdom or any part thereof or in any other State which is a Judgments Regulation State or a State which is party to the 1968 Convention or the Lugano Convention	343
B. Where the defendant is domiciled in a Judgments Regulation State or in a 1968 Convention or Lugano Convention State or in Scotland or Northern Ireland	398
Chapter 12 FORUM NON CONVENIENS, LIS ALIBI PENDENS, ANTI-SUIT INJUNCTIONS AND JURISDICTION AGREEMENTS	461

Contents

1. Forum non conveniens, anti-suit injunctions and lis alibi pendens	461
2. Jurisdiction agreements	513
Chapter 13	
JURISDICTION IN ADMIRALTY CLAIMS IN REM	549
Chapter 14	
FOREIGN JUDGMENTS	566
1. Introductory	567
2. Enforcement and Recognition at Common Law	574
A. Enforcement and Recognition	574
B. Jurisdiction of Foreign Courts at Common Law	588
(1) Jurisdiction in personam	588
(2) Where jurisdiction does not exist	608
(3) Judgments in rem	611
C. Conclusiveness of Foreign Judgments: Defences	616
3. Enforcement and Recognition under Statute	638
(1) Administration of Justice Act 1920	638
(2) Foreign Judgments (Reciprocal Enforcement) Act 1933	642
(3) Civil Jurisdiction and Judgments Order 2001, Sch.1, Civil Jurisdiction and Judgments Act 1982, Pt I and Council Regulation (EC) 805/2004	650
(4) Civil Jurisdiction and Judgments Act 1982, Pts II and IV	677
(5) Community judgments	679
(6) Judgments against the United Kingdom	680
4. Protection of Trading Interests Act 1980	682
Chapter 15	
JURISDICTION AND ENFORCEMENT OF JUDGMENTS UNDER MULTILATERAL CONVENTIONS	685
Chapter 16	
ARBITRATION AND FOREIGN AWARDS	712
1. Governing law	712
2. Staying of Proceedings and Injunctions to Restrain Foreign Proceedings	736
3. Enforcement of foreign awards	750
A. At Common Law	751
B. New York Convention Awards	762
C. Intra-United Kingdom Enforcement	773
D. Enforcement as Foreign Judgment	774
E. Arbitration and Investment Disputes	778

Contents

VOLUME TWO

**PART FOUR
FAMILY LAW**

Chapter 17	
MARRIAGE	789
1. Formal Validity	789
2. Capacity	810
3. Consent of Parties	830
4. Polygamous Marriages	835
5. Civil Partnerships	857
Chapter 18	
MATRIMONIAL CAUSES	865
1. Divorce, Nullity and Judicial Separation	865
A. Jurisdiction of the English courts	865
B. Choice of Law	877
C. Recognition of foreign decrees	884
(1) Decrees granted in the British Isles	884
(2) Decrees obtained in other Regulation States	887
(3) Decrees obtained elsewhere	888
(4) Non-proceedings Divorces and Annulments	901
D. Effect in England of foreign decrees	918
2. Presumption of Death and Dissolution of Marriage	925
3. Declarations as to Status	926
4. Financial Relief	929
A. Jurisdiction of the English courts	929
B. Effect of Foreign Divorce on English Maintenance Orders	951
C. Enforcement of Foreign Maintenance Orders	953
5. Staying of Matrimonial Proceedings	962
Chapter 19	
CHILDREN	969
1. Parental Responsibility in General	969
2. Guardianship and Custody	972
A. Jurisdiction of the English courts	972
B. Effect of foreign guardianship and custody orders	991
3. Maintenance and Contribution Orders	1029
Chapter 20	
LEGITIMACY, LEGITIMATION AND ADOPTION	1036
1. Legitimacy	1036
A. Jurisdiction of the English courts	1036
B. Recognition of the Status of Legitimacy	1040
C. Succession by and to Legitimate Persons	1050

Contents

2. Legitimation	1053
A. Jurisdiction of the English courts	1053
B. Recognition of Foreign Legitimations	1056
(1) At Common Law	1056
(2) Under the Legitimacy Act 1976	1065
C. Succession by and to Legitimated Persons	1067
3. Adoption	1071
A. Jurisdiction of the English courts	1071
B. Recognition of Foreign Adoptions	1080
C. Succession by and to Adopted Persons	1089
 Chapter 21	
MENTAL INCAPACITY	1093
PART FIVE	
LAW OF PROPERTY	
Chapter 22	
NATURE AND SITUS OF PROPERTY	1109
 Chapter 23	
IMMOVABLES	1133
1. Jurisdiction of the English court: Land in England	1133
2. Jurisdiction of the English court: Foreign Land	1142
3. Choice of Law	1158
 Chapter 24	
PARTICULAR TRANSFERS OF MOVABLES	1164
1. Transfer of Tangible Things	1164
2. Assignment of Intangible Things	1181
3. Garnishment	1197
 Chapter 25	
GOVERNMENTAL ACTS AFFECTING PROPERTY	1203
 Chapter 26	
ADMINISTRATION OF ESTATES	1215
1. English Grants of Representation	1215
2. Effect of an English Grant	1222
3. Law Governing Administration	1226
4. Foreign Personal Representatives	1228
 Chapter 27	
SUCCESSION	1233
1. Jurisdiction of the English court	1233
2. Jurisdiction of foreign courts	1234
3. Choice of Law	1236
A. Intestate succession	1236

Contents

B. Testamentary succession	1240
(1) Capacity	1240
(2) Formal validity	1242
(3) Material or essential validity	1247
(4) Interpretation	1253
(5) Election	1259
(6) Revocation	1263
C. Exercise of power by will	1268
(1) Capacity	1268
(2) Formal validity	1270
(3) Interpretation	1271
(4) Material or essential validity	1274
(5) Revocation	1278
 Chapter 28	
THE EFFECT OF MARRIAGE ON PROPERTY	1280
 Chapter 29	
TRUSTS	1302
PART SIX	
CORPORATIONS AND INSOLVENCY	
Chapter 30	
CORPORATIONS AND CORPORATE INSOLVENCY	1335
1. Domicile and Residence	1335
2. Status	1339
3. Capacity and Internal Management	1345
4. Winding up proceedings not falling within Council Regulation (EC) 1346/2000 on Insolvency Proceedings	1353
A. Jurisdiction of the English courts	1353
B. Effect of an English Winding up Order	1374
C. Effect of a Foreign Winding up Order	1385
D. Receivers	1397
E. UNCITRAL Model Law on Cross-Border Insolvency	1407
5. Council Regulation (EC) 1346/2000 on Insolvency Proceedings	1410
A. Introduction and Scope	1410
B. International Jurisdiction	1420
C. Choice of Law	1443
D. Recognition of Insolvency Proceedings	1472
E. Co-operation and Co-ordination	1487
 Chapter 31	
BANKRUPTCY	1492
1. English Bankruptcies not falling within Council Regulation (EC) 1346/2000 on Insolvency Proceedings	1492
A. Jurisdiction of the English courts	1492

Contents

B. Effect of an English bankruptcy as an assignment of property	1502
C. Choice of Law	1509
D. Effect of English bankruptcy as a discharge of debts	1512
2. Foreign Bankruptcies not falling within Council Regulation (EC) 1346/2000 on Insolvency Proceedings	1513
A. Jurisdiction of foreign courts	1513
B. Effect in England of foreign bankruptcy as an assignment of property	1515
(1) Bankruptcy in Scotland or Northern Ireland	1515
(2) Bankruptcy in any other foreign country	1517
(3) Successive bankruptcies in different countries	1521
C. Effect in England of foreign bankruptcy as a discharge of debts	1523
3. Bankruptcies falling within Council Regulation (EC) 1346/2000 on Insolvency Proceedings	1526
A. Introduction and Scope	1526
B. International Jurisdiction	1526
C. Choice of Law	1531
D. Recognition of Insolvency Proceedings	1532
E. Co-operation and Co-ordination	1533

PART SEVEN LAW OF OBLIGATIONS

Chapter 32	
CONTRACTS. GENERAL RULES	1537
1. The Law Governing a Contract	1537
2. Determination of the Applicable Law	1560
3. Mandatory Rules	1589
4. Material Validity	1598
5. Formal Validity	1605
6. Scope of the Applicable Law	1610
7. Capacity	1621
8. Public Policy	1626
Chapter 33	
PARTICULAR CONTRACTS	1634
1. Certain Consumer Contracts	1634
2. Contracts of Employment	1661
3. Contracts for the Sale, Pledge and Hire of Movables	1684
4. Contracts of Insurance and Re-insurance	1700
5. Contracts with Regard to Immovables	1748
6. Contracts for the Carriage of Persons or Goods Generally	1762
7. Contracts of Affreightment	1767
8. Contracts between Banker and Customer	1785
9. Negotiable Instruments Generally	1800

Contents

10. Bills of Exchange and Promissory Notes	1804
11. Interest	1825
12. Contracts through Agents	1838
A. Contract of Agency	1838
B. Relation of Principal and Third Party	1849
13. Wagering Contracts	1858
Chapter 34	
RESTITUTION	1863
Chapter 35	
TORTS	1892
1. The Law Applicable to Issues in Tort	1892
2. Determination of the Applicable Law	1934
A. The General Rule	1934
B. Rule of Displacement	1942
3. Public Policy and Related Questions	1952
4. Law Applicable to Defamation and Related Claims	1957
Chapter 36	
FOREIGN CURRENCY OBLIGATIONS	1975
1. The Money of Account	1975
2. Effect of the Law of the Transaction upon Monetary Obligations	1994
3. Discharge of Currency Obligations	2000
4. Judgments in Foreign Currency	2015
<i>Index</i>	I

INDEX

References to the Judgments Regulation are to Council Regulation (EC) 44/2001 on jurisdiction and the enforcement of judgments in civil and commercial matters.

References to the Brussels Convention and the Lugano Convention are to the Brussels Convention of 1968 and the Lugano Convention of 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters.

References to the Rome Convention are to the Rome Convention on the Law Applicable to Contractual Obligations 1980.

Abduction

see **International abduction**

Acts of state

see also **Exclusion of foreign law**

constitutionality, 5–046

Crown, ratified by, 5–042

defence, relating to, 5–042

diplomatic protection, 5–041

foreign states

acts committed, by, 5–043

acts committed, outside, 5–046

acts committed, within, 5–043

illustrations, 5–054

investigation, into, 5–041

judicial restraint, 5–049, 5–050

judicial review, 5–041

lex situs, and, 5–045

motivation, and, 5–047

non-justiciability principle, 5–049, 5–050

private rights, and, 5–041

propriety, of, 5–046

public international law, and, 5–048,
5–050

public policy, contrary to, 5–046

recognition, of, 5–041

redress, 5–042

Rule (3), 5R–019

scope, of, 5–042, 5–043

seizure of property, 5–045, 5–048, 5–050

sovereignty, and, 5–044, 5–045, 5–049

status, of, 5–041

validity, of, 5–046

Administration of estates

administration

debts, 26–031, 26–032

governing law, 26R–030

illustrations, 26–035

lex successionis, 26–034

personal representatives, by,
26–031–26–033

Administration of estates—cont.

administration—*cont.*

scope, of, 26–033

succession, and, 26–033, 26–034

claims *in personam* (jurisdiction)

probate proceedings, 11R–238

provisions, governing, 11–239

Rules, as to, 11R–237, 11R–238

and see **Claims in personam
(jurisdiction)**

executors, 26–002

foreign personal representatives

see **Foreign personal representatives**

governing law

deceased's debts, 26–031, 26–032

illustrations, 26–035

lex fori, 26–032

lex successionis, 26–034

personal representatives, 26–031

Rule (134), 26R–030

grants of representation

see **Grants of representation**

intestacy, 26–002

jurisdiction, 26–003, 26–004

letters of administration, 26–002

probate, 26–002

probate actions, 26–003

Public Trustee, 26–002

separate wills, 26–005

Administration of Justice Act 1920

see also **Enforcement of foreign
judgments**

arbitration proceedings, 14–164

and see **Arbitration proceedings**

civil proceedings, 14–164

foreign judgments

countries eligible, under, 14–169

enforcement, under, 14–162, 14–163

non-registration, 14–164, 14–165

recognition, under, 14–162, 14–168

Index

Administration of Justice Act 1920—cont.

foreign judgments—*cont.*
 registration, under, 14-164, 14-166
 and see **Foreign judgments**
fraud, and, 14-165
illustrations, 14-170
natural justice, and, 14-165
 and see **Natural justice**
payment of money, 14-164
recognition, under, 14-162, 14-168
 see also **Recognition of foreign judgments**

recovery of costs, 14-167

Rule (46), 14R-161

Admiralty proceedings

actions *in personam*, 10-055
actions *in rem*, 8-036, 10-054, 10-057,
 13R-001, 13-002, 13-003
 see also **Claims in rem**
Brussels Arrest Convention,
 13-030—13-032, 13-036
Brussels Collision Convention, 13-033
collisions, 13-021
defendant, meaning of, 13-024
illustrations, 13-037
international conventions,
 13-022—13-029
jurisdiction, relating to, 8-036, 8-037,
 8-039, 13-004, 13-005, 13-034,
 13-035
maritime lien, 13-011, 13-014, 13-018
pilotage, 13-020
security, in, 8-036, 8-039
service of claim, 13-006—13-008
service out of jurisdiction, 13-008
state immunity, 10E-052,
 10-053—10-057
 see also **Jurisdictional immunity**
stay of proceedings, 8-036, 8-038, 8-039
 and see **Stay of proceedings**
Supreme Court Act 1981 (s.21),
 13-009—13-014, 13-020, 13-021
towage, 13-020
warrant of arrest, 13-006, 13-007

Adoption

adoption orders
 effect, of, 20-114
 foreign children, 20-107—20-113
 Hague Convention (1993), 20-099
 parental responsibility, 20-114
 prerequisites, 20-098
 welfare of child, 20-110, 20-111
choice of law, 20-106—20-110
common law, and, 20-094
consent, and, 20-107
domicile, and, 20-096, 20-097
foreign adoptions
 declarations, as to, 20-137, 20-138
 effect, of, 20-132
 Rule (112), 20R-136
 validity, of, 20-137

Adoption—cont.

foreign children, 20-107—20-113
habitual residence, 20-096
Hague Convention (1993)
 adoption orders, 20-099
 annulment of adoption, 20-125
 determinations made abroad, 20-124
 effect, of, 20-099, 20-122, 20-123
 overseas adoptions, 20-122—20-125
 receiving state, 20-101—20-104
 scope, of, 20-100
 state of origin, 20-105
illustrations, 20-116
inter-country adoptions, 20-107
jurisdiction, 20-093—20-096
overseas adoptions
 Hague Convention (1993),
 20-122—20-125
 meaning, of, 20-120
 public policy, and, 20-121, 20-133
 validity, of, 20-121
prohibition, of, 20-113
recognition of foreign adoptions
 Adoption and Children Act 2002,
 20-120
 British Isles, orders in, 20-119
 common law, and, 20-126—20-131
 illustrations, 20-135
 overseas adoptions, 20-120, 20-121
 public policy, and, 20-121, 20-133
 Rule (111), 20R-117
 statutory provisions, 20-118
Rule (110), 20R-092
succession to property
 Adoption and Children Act 2002,
 20-141
 governing law, 20-140, 20-145
 illustrations, 20-146
 intention, and, 20-143
 Rule (113), 20R-139
 succession rights, 20-140—20-142,
 20-144
taking children abroad, 20-115, 20-134

Affreightment contracts

arbitration clause, 33-268
bills of lading, 33-267
Carriage of Goods by Sea Act 1971,
 33-285—33-289, 33-295, 33-296
Carriage of Goods by Sea Act 1992,
 33-290
carrier
 meaning, of, 33-271
 place of business, 33-272, 33-273,
 33-277
charterparties, 33-266, 33-267, 33-292
choice of law, 33-264, 33-268, 33-269,
 33-276
close connection, 33-264, 33-269,
 33-276—33-278
common law, 33-264