INDEX

abduction see children
actions in personam
bases of jurisdiction, 47
administration of estates
country reports, 296–306
generally, 296
international conventions, 306
jurisdiction, 306–7
letters of administration
effect, 310
exclusion of foreign law, 23–4
jurisdiction, 306–7
personal representatives
consular officers as, 309
selection, 309
probate
effect, 310
jurisdiction, 306–7
re-sealing of grants, 307–9
proof of foreign law, 14
see also succession
adoption see children
Africa
as study field, lix–lx
African regional economic community
courts see international judicial assistance
applicable law
ascertainment of, 12–23
question of meaning, 3
arbitration see foreign arbitration
awards; New York Convention
arbitration agreements
generally, 91
separability from main agreement, 110–11

see also jurisdiction agreements
arrest
peregrinus defendants, 71–2, 84
attachment of property
actions between peregrines, 70
amenability to, 86
application for, 69–71, 73, 82, 85
avoidance of, 87–8
as basis of jurisdiction, 78–9
categories of attachable property, 76
consent to jurisdiction as alternative, 70–3, 79–82, 84
constitutionality, 86–7
court’s discretion as to, 83–4
doctrine of effectiveness, 69, 78, 81
effect on third parties, 86
excluded forms of property, 76–7
human rights, 86–7
immunity from, 84–5
jurisdiction see jurisdiction
lex causae and, 7–8
money claims, 70, 74–5
proof of attachable interest, 75–6
proof of prima facie cause of action, 77–8
proof of right to claim, 75
purpose of, 84
for satisfaction of judgment, 82
submission to jurisdiction as alternative, 70–3, 79–81, 84
value of property, 77
bankruptcy
country reports, 264–73
INDEX

jurisdiction, 274–5
recognition of foreign proceedings
and representatives, 275–6
statutory regimes, 273
trustee, 274
bills of exchange
country reports, 168–77
issues generally, 168
statutory regimes, 177–8
bond holders
relief, and lex fori, 8
Botswana
administration of estates, 296
arbitration agreements, 92
bankruptcy, 264–5
bills of exchange, 168–9
capacity to invoke jurisdiction,
126–7
children
custody, 235
legitimacy and legitimation,
245
choice of law, conceptual issues, 4
decline of jurisdiction, 91–2
diplomatic immunity, 112–13
domicile of dependency, 39
domicile of origin and of choice,
27–8
enforcement of foreign judgments
final judgments, 331
jurisdiction, 318–19
res judicata, 335
against states, 332–48
statutory regime, 358–60
foreign arbitration awards, 405
grounds of jurisdiction, 68–71
insolvency, 264–5
international judicial assistance,
445–7
lis alibi pendens, 92
marriage
property rights, 186–7
recognition of foreign decrees,
200–1
matrimonial causes
enforcement of foreign
maintenance orders, 206–7
jurisdiction, 190–1
New York Convention, 405
proof of foreign law, 12–13
property, jurisdiction, 257
remedies, 425
stay of proceedings, 91–2
succession
revocation of wills, 286–7
validity of wills, 278–9
taking of evidence for foreign courts,
445–7
capacity
contractual capacity, 142–6
invocation of jurisdiction,
126–7
carriage by sea and carriage by air
contracts for, 134–5
limitation of contracting party
autonomy, 141–2
cause of action
statute extinguishing, distinction
between substance and
procedure, 10–11
characterisation
approaches to, 6
country reports, 4–6
decisions as to, 4–5
domain of, 3
judgments as ‘governmental’ or
‘commercial’ acts, 349–51
problems as to, 6–7
children
abduction, Hague Convention cases,
240–4
adoption
choice of law, 230–1
country reports, 221–9
international conventions,
229–30
interventions to secure best
interests of child, 231
jurisdiction, 230
lex adoptionis, 232
recognition, 231
recognition of foreign orders,
231–2
statutory regimes, 229
| Index | 
|---|---|
| children (cont.) custody | 
|   | application types, 239–40
|   | best interests of child (welfare principle), 240
|   | country reports, 235–9
|   | domicile, 39–42
|   | issues generally, 221
|   | legitimacy and legitimation basis of jurisdiction, 249
|   | continuing legitimacy after parents’ marriage voided, 250–1
|   | country reports, 245–8
|   | domicile, 249–50
|   | equal treatment, 248–9
| surrogacy agreements as contract, 232, 234 | 
|   | legal basis, 232
|   | lex fori, 234
|   | recognition, 233
|   | status of child born under, 234
|   | statutory regimes, 232–3
|   | unilateral conflicts rule, 233–4
| choice of law characterisation see characterisation conceptual issues generally, 3 incidental question see incidental question lex situs see lex situs renvoi see renvoi see also applicable law; domicile; foreign law; see also under specific topics Civil Procedure Rules service out of jurisdiction, 49, 54–6 claims ranking, 9 recognition, 9 recovery, 9 classification see characterisation companies capacity to invoke jurisdiction, 126–7 foreign company jurisdiction, 73 residence, 56, 59–60, 65–6 winding up of foreign company, 275 comparative law private international law contrasted, 12 competent jurisdiction of foreign court res judicata, 338–40 conflict of laws see private international law connecting factors role of, 27 constitutional law attachment of property, 86–7 defences against enforcement and recognition of foreign judgments, 347 consular officers diplomatic immunity see diplomatic immunity as personal representatives, 309 consumer contracts limitation of party autonomy, 139 contracts application of proper law, 138–41 ascertainment of applicable law country reports, 131–4 generally, 134 capacity country reports, 142–3 lex domicilii, 144–5 lex loci contractus, 144–6 lex loci solutionis, 144 carriage by sea and carriage by air, 134–5 change of governing law, 136–7 choice of law implied, 135–6 issues generally, 131 upholding of, 137 executed or performed abroad, jurisdiction, 49, 54, 63–4, 66 factual connections as to proper law, 137–8 formal validity country reports, 142–3 generally, 145–6 interpretation, 148 lex domicilii, 144–5 lex loci solutionis, 144 made through agent, jurisdiction, 53
more than one proper law, 136–7
domicile
acquisition of
illegality of residence as bar to,
37–8
proof of, 37
time of, 38–9
as connecting factor, 27, 36–7
country reports, 39–42
of dependency, 39–42
independent, 43–4
lex fori and, 37
more than one, 38
nationality distinguished, 28–9
of origin and of choice, 27–39
as question of fact, 35–6
residence distinguished, 28–9, 31–2
test of intent, 37–8
see also under specific topics
debtors
residence, 56
see also bankruptcy; insolvency
default judgments
defences against enforcement and recognition of foreign judgments, 345–6
finality, 335
defendants
arrest, 71–2, 84
peregrinus defendants, 69–71, 84–5
diplomatic immunity
country reports, 112–21
extension to international organisations, 123–4
generally, 112
restrictive or absolute doctrine, 123
sovereign immunity distinguished, 122
Vienna Convention on Diplomatic Relations, 121–2
waiver, 124
divorce
independent domicile, wife’s, 39–40, 42–3
proof of foreign law, 19–20
domestic citation
service out of jurisdiction, 73, 81, 83, 89–90
effectiveness, doctrine of jurisdiction, 81
employment contracts
limitation of party autonomy, 139–41
enforcement of foreign adoption orders see children, adoption
enforcement of foreign arbitration awards see foreign arbitration awards
enforcement of foreign judgments and orders see foreign judgments
estates
administration see administration of estates
sequestration see bankruptcy
succession see succession
estimation of costs
lex fori and, 8
evidence
sufficiency of, and lex fori, 9
taking for foreign courts
application by authorised persons, 454
country reports, 445–53
evidence (cont.)
  international arbitral tribunals, 453
  international conventions, 453
  procedure for, 454
  reciprocity, 453–4
  statutory regimes, 453
  transmission of dispositions, 454
exchange control
  enforcement, exclusion of foreign law, 25
exchange rates
  foreign currency obligations, 165–6
execution of judgments
  foreign currency obligations, 165
expert evidence
  proof of foreign law, 22
experts
  qualification as, 22
family law see children; marriage; matrimonial causes
federal laws
  judicial notice of, 16–17
final judgments see foreign judgments, enforcement
foreign adoption orders
  recognition, 231–2
foreign arbitration awards
  enforcement
    co-existence with other regimes, 401
    at common law, 400–1
    country reports, 398–9
    with leave of court, 400
    non-parties to New York Convention, 401
  statutory schemes
    awards enforceable as 'foreign judgments', 402–5
    ICSID Convention awards, 417–19
    as to New York Convention
      see New York Convention
    submission to arbitration, 400–1
    in foreign currency, 419–20
international conventions
  generally, 397
  New York Convention see New York Convention
  status of, 397–8
  limitation of actions, 420–2
foreign companies see companies
foreign currency, foreign judgments in, 351–2
foreign currency obligations
  conversion date, 166
  country reports, 154–62
  decline of jurisdiction, 164
  exchange rate, 165–6
  execution of judgments, 165
  exercise of jurisdiction, 165
  financial implications of decisions, 162–3
  interest rate, 167
  issues generally, 154, 163
  nominalism principle, 163–4
  payment date rule, 166–7
  scope of jurisdiction, 164–5
foreign judgments
  common law definition, 313–15
  defences against recognition
    constitutional norms, 347
    country reports, 340–4
    default judgments, 345–6
    international law grounds, 345
    natural justice defence, 345–7
    public policy defence, 344–7
    statutory defences, 344
  enforcement
    bases of, 316, 320
    conditions for, 322–35
  defences against
    constitutional norms, 347
    country reports, 340–4
    default judgments, 345–6
    international law grounds, 345
    natural justice defence, 345–7
    public policy defence, 344–7
    statutory defences, 344
  exclusion of foreign law, 24
  final judgments
    conclusiveness and res judicata
      see res judicata below
INDEX 483

country reports, 331–4
default judgments, 335
process by which judgment reached, 334
status of, 334
fixed sums of money cases, 329–30
reforms as to, 330–1
as requirement for enforcement, 329
statutory regimes, 330
in foreign currency, 351–2
international competence for bases of, 326–7
burden of proof, 328–9
country reports, 322–9
generally, 322
jurisdictional equivalence test, 328
physical presence as basis, 327
public policy considerations, 328
real and substantial connection as basis, 327–8
issues generally, 313
jurisdiction for country reports, 318–20
issues generally, 318
*peregrinus* plaintiffs, 320–1
limitation of actions, 352
new action on original cause, 321
property cases, 260–1
res judicata competent jurisdiction of foreign court, 338–40
country reports, 335–8
generally, 335
service out of jurisdiction, 321
against states challenges to, 349
country reports, 347–9
immunity from jurisdiction and immunity from execution distinguished, 350
issues generally, 347
judgment as ‘governmental’ or ‘commercial’ act, 349–51
restrictive immunity doctrine, 349–50
statutory regimes *see* statutory regimes for enforcing foreign judgments in foreign currency, 351–2
recognition *see* defences against recognition *above*
registration automatic or discretionary, 391–2
‘nationalistic’ provisions as to, 394–6
periods, 392–3
set aside, 394–6
foreign jurisdiction clauses *see* jurisdiction agreements

foreign law application issues generally, 12, 20–1
country reports, 12–20
exclusion of, 23–6
expert evidence, 22
judicial notice of, 12, 21–3
judicial pronouncements, test of soundness, 23
*lex fori* presumed to be equivalent, 22
pleading of, 21–2
proof of, 12–23
as question of fact, 21
*see also* applicable law; *lex causae*

foreign maintenance orders affiliation orders, exclusion, 218
automatic registration, 219–20
enforcement issues generally, 206
international conventions, 217
limitation of available defences, 218–19
mandatory registration, 219–20
‘privileged’ status, 220
provisional orders, 218
reciprocity between regimes, 217–18
statutory regimes, 217

foreign states capacity to invoke jurisdiction, 127
forum agreements *see* jurisdiction agreements

forum non conveniens application of, 106–7
country reports, 91–106
generally, 91
Gambia
administration of estates, 297
arbitration agreements, 92
bills of exchange, 169
children
adoption, 221
custody, 235
decline of jurisdiction, 92
domicile of origin and of choice, 28
enforcement of foreign judgments
res judicata, 336
statutory regime, 360–1
foreign arbitration awards, 405–6
foreign marriage decrees, recognition of, 201
grounds of jurisdiction, 47–9
international judicial assistance
service of foreign process, 438–9
taking of evidence for foreign courts, 447
matrimonial causes
enforcement of foreign maintenance orders, 207–8
jurisdiction, 191
New York Convention, 405–6
proof of foreign law, 13
service of foreign process, 438–9
stay of proceedings, 72
succession, revocation of wills, 287
taking of evidence for foreign courts, 447
gay and lesbian relationships
domicile, 43–4

Ghana
administration of estates, 297–9
arbitration agreements, 93
bills of exchange, 170–69
capacity to invoke jurisdiction, 126
children
abduction, 236
adoption, 222
custody, 235
legitimacy and legitimation, 245
choice of law, conceptual issues, 4
contracts
applicable law, 131–2
capacity and formal validity, 142
decline of jurisdiction, 92–3
diplomatic immunity, 113–14
domicile of origin and of choice, 28–9
enforcement of foreign judgments
international competence for, 322
statutory regime, 361–5
exclusion of foreign law, 23–4
foreign arbitration awards
enforcement, 398–9
New York Convention, 406–8
foreign currency obligations, 154–5
forum non conveniens, 92
grounds of jurisdiction, 49–54
insolvency, 265
international judicial assistance
service of foreign process, 439
taking of evidence for foreign courts, 447–8
marriage
recognition of foreign decrees, 201
validity, 183
matrimonial causes
enforcement of foreign maintenance orders, 208–9
jurisdiction, 191
proof of foreign law, 13–14
property
jurisdiction, 258
ownership and transfer, 261–2
remedies, 426
service of foreign process, 439
stay of proceedings, 93
succession
intestate succession, 290–2
revocation of wills, 287
validity of wills, 279–80
taking of evidence for foreign courts, 447–8
torts, 149
guardianship see children

Hague Conventions
Civil Aspects of International Child Abduction (1980), 240–4
Conflict of Laws relating to the Form of Testamentary Dispositions (1961), 284
International Recovery of Child Support and Other Forms of Family Maintenance (2007), 217
Law Applicable to Trusts and their Recognition (1985), 276
Protection of Children and Co-operation in respect of Inter-Country Adoption (1993), 229–30
Recognition and Enforcement of Decisions relating to Maintenance Obligations (1973), 217
Recognition of Divorces and Legal Separations (1970), 205
Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (1965), 438
Taking of Evidence Abroad in Civil or Commercial Matters (1970), 453
human rights
attachment of property, 86–7

ICSID Convention
enforcement of awards, 417–19
illegitimacy see children, legitimacy and legitimation
immunity
court’s mandate to give effect, 124–5
distinction between substance and procedure, 125
from jurisdiction and from execution distinguished, 350
lex causae and, 125
in personam actions
bases of jurisdiction, 47
jurisdiction as to, 260
incidental question
country reports, 4–6
decisions as to, 5–6
field of, 3
incola plaintiffs
jurisdiction, 69, 84–5
individuals
jurisdictional immunity, 122

insolvency
country reports, 264–73
international judicial co-operation, 275
recognition of foreign proceedings and representatives, 275–6
winding up of foreign company, 275
intellectual property
jurisdiction, 277
statutory regimes, 277
interest rates
foreign currency obligations, 167
international adoption see children
international conventions
administration of estates, 306
carriage by sea and carriage by air, 134, 141–2
contractual obligations, 140–1
enforcement of foreign maintenance orders, 217–19
inter-country adoption of children, 229–30
jurisdictional immunity, 121–2
Jurisdictional Immunity of States, 349
limitation of contracting party autonomy, 141–2
party autonomy, 141–2
service out of jurisdiction, 438
taking of evidence for foreign courts, 453
validity of wills, 284
see also Hague Conventions; ICSID Convention; New York Convention; Vienna Convention on Diplomatic Relations

international court judgments
jurisdiction as to, 261
international judicial assistance
African regional economic
community courts, 455–8
evidence see evidence
generally, 433
service see service of foreign process;

service out of jurisdiction
international organisations
jurisdictional immunity, 122–4
intestate succession see succession

judgments
characterisation as 'governmental' or 'commercial' acts, 349–51
immunity from execution distinguished from immunity from jurisdiction, 350
jurisdiction
bases generally, 47
common law countries, 47–64
decline of exercise generally, 91, 106
equivalence test, 328
immunity see diplomatic immunity;
immunity; sovereign immunity
physical presence as basis, 49, 64–5
residence as basis, 56, 63–6
Roman-Dutch law countries, 68–84
submission to
by conduct, 49, 66
voluntary submission, 56, 63–4
see also arbitration agreements;
jurisdiction agreements;
see also under specific topics;
see also service; service out of jurisdiction
jurisdiction agreements
country reports, 91–106
generally, 91
limitations on enforceability, 108–9
stay of proceedings, 107–8
submission to jurisdiction by, 49, 66
as waiver of immunity, 124
see also arbitration agreements
Kenya
administration of estates, 299–300
arbitration agreements, 95–6
bankruptcy, 265–6
bills of exchange, 170–1
capacity to invoke jurisdiction, 126–7

children
adoption, 222–3
legitimacy and legitimation, 245–6
contracts
applicable law, 132
performance, 146
decline of jurisdiction, 93–6
diplomatic immunity, 114–15
distinction between substance and procedure, 7–8
domicile of dependency, 39–40
domicile of origin and of choice, 29–30
enforcement of foreign judgments
defences against recognition and, 340–1
final judgments, 331
international competence for, 322
res judicata, 336
statutory regime, 365–9
foreign arbitration awards, 408–9
foreign currency obligations, 156
grounds of jurisdiction, 54–6
insolvency, 265–6
international judicial assistance
service of foreign process, 439–40
taking of evidence for foreign courts, 448
jurisdiction agreements, 94–5
marriage
recognition of foreign decrees, 202
validity, 183
matrimonial causes
enforcement of foreign maintenance orders, 209
jurisdiction, 192
New York Convention, 408–9
proof of foreign law, 14
property
jurisdiction, 258
ownership and transfer, 262
service of foreign process, 439–40
stay of proceedings, 93–4
succession
intestate succession, 292
validity of wills, 280
taking of evidence for foreign courts, 448
Malawi (cont.)
domicile of origin and of choice, 31
enforcement of foreign final judgments, 332
foreign arbitration awards, 409–10
insolvency, 266–7
jurisdiction agreements, 96
marriage
property rights, 187
validity, 183–6
matrimonial causes
enforcement of foreign maintenance orders, 210–11
jurisdiction, 193–4
New York Convention, 409–10
proof of foreign law, 15
property, jurisdiction, 258
succession
intestate succession, 293
revocation of wills, 288
validity of wills, 280–1
maritime lien
lex fori and, 9
marriage
dissolution see divorce
domicile of dependency, wife’s, 39–44
essential and formal validity, 185–6
independent domicile, wife’s, 39–40, 42–3
issues generally, 181
lex domicilii, 183
lex domicilii matrimonii, 187–8
lex loci celebrationis, 183–5
lex loci contractus, 186
nature of, 181–3
polygamous
proof of foreign law, 19
property rights
choice of law, 4–5
conversion from polygamy to monogamy, 188
voided, continuing legitimacy of children, 250–1
matrimonial causes
choice of law, 199–200
enforcement of foreign maintenance orders see foreign maintenance orders
issues generally, 190
jurisdiction, 198
recognition of foreign decrees, 200–6
money claims
attachment of property, 70, 74–5, 88–9
multilateral conflict rules
categories and connecting factors, 27
Namibia
administration of estates, 301
bankruptcy, 268
bills of exchange, 172–3
capacity to invoke jurisdiction, 126–7
children, legitimacy and legitimation, 246
decline of jurisdiction, 97
distinction between substance and procedure, 8
domicile of dependency, 41
domicile of origin and of choice, 31–2
enforcement of foreign judgments
final judgments, 332
international competence for, 322–3
statutory regime, 370–2
grounds of jurisdiction, 72–3
insolvency, 268
international judicial assistance
service of foreign process, 440–1
taking of evidence for foreign courts, 448–9
matrimonial causes
enforcement of foreign maintenance orders, 211–12
jurisdiction, 194
proof of foreign law, 15–16
property, nature and legal situs, 255
service of foreign process, 440–1
taking of evidence for foreign courts, 448–9
INDEX

validity of wills, 281
nationality
domicile distinguished, 28–9
natural justice defence
enforcement and recognition of
foreign judgments, 345–7
New York Convention
cases
national public policy concerns, 417
as to recognition and enforcement
of awards, 416
scope of Convention defences, 416–17
parties, 110
statutory schemes giving effect to
compliance with Convention, 415–16
country reports, 405–15
enacting legislation, 415
Nigeria
arbitration agreements, 99
bankruptcy, 268–9
bills of exchange, 173
capacity to invoke jurisdiction, 126–7
children, legitimacy and legitimation, 246
contracts, applicable law, 133
decline of jurisdiction, 97–100
diplomatic immunity, 115–17
domicile of dependency, 41
domicile of origin and of choice, 32
enforcement of foreign judgments
jurisdiction, 319
res judicata, 336–7
statutory regime, 372–5
foreign arbitration awards
enforcement, 398–9
New York Convention, 410–11
foreign currency obligations, 156–8
forum non conveniens, 97–8
grounds of jurisdiction, 56–60
international judicial assistance
service of foreign process, 441
taking of evidence for foreign
courts, 449
intestate succession, 293
jurisdiction agreements, 98
marriage
recognition of foreign decrees, 201–2
validity, 184
matrimonial causes
enforcement of foreign
maintenance orders, 212
jurisdiction, 194–5
proof of foreign law, 16–17
property
jurisdiction, 259
nature and legal situs, 255–6
remedies, 426–7
service of foreign process, 441
stay of proceedings, 98
succession, intestate, 293
taking of evidence for foreign courts, 449
torts, 150
nominalism principle
foreign currency obligations, 163–4
nullity
voided marriage, continuing
legitimacy of children, 250–1
obligations see bills of exchange;
contracts; foreign currency
obligations; torts
payment date rule
foreign currency obligations, 166–7
pending actions
stay of proceedings, 109–10
peregrinus defendants
arrest, 71–2, 84
jurisdiction, 69–71, 84–5
peregrinus plaintiffs
enforcement of foreign judgments, 320–1
personal representatives
see administration of estates
persons
capacity to invoke jurisdiction, 126–7
jurisdictional immunity, 122
physical presence
basis of international competence, 327
basis of jurisdiction, 49, 64–5
as basis of jurisdiction, 49, 64–5
plaintiffs
incola plaintiffs, 69, 84–5
polygamous marriage
proof of foreign law, 19
prescription
lex causae and, 7–9
private international law
Africa as study field, lix–lx
comparative law contrasted, 12
purpose and structure of book, lviii,
Ix–lxii
see also choice of law; foreign
decisions; jurisdiction
probate see administration of estates
procedural law
country reports, 7–9
substantive law distinguished, 3,
10–11
see also lex fori
property
administration see administration of
estates
attachment see attachment of
property
bankruptcy see bankruptcy
insolvency see insolvency
intellectual property see intellectual
property
issues generally, 255
jurisdiction
country reports, 257–60
foreign judgments, 260–1
international court judgments, 261
limits, 260
in personam actions, 260
regional court judgments, 261
marriage see marriage
ownership and transfer
country reports, 261–2
lex situ, 263–4
situs
country reports, 255–6
generally, 256–7
succession see succession
trusts see trusts
public policy
defences against enforcement and
recognition of foreign
judgments, 344–7
exclusion of foreign law, 23–5
as to international competence,
328
limitation of contracting party
autonomy, 141
as to New York Convention, 417
quantification of damages
lex fori, 9
real and substantial connection
basis of international competence, 327–8
recognition of foreign judgments and
orders see foreign arbitration
awards; foreign judgments
regional court judgments
jurisdiction as to, 261
regional economic community courts
see international judicial
assistance
registration see foreign judgments;
registration; foreign
maintenance orders
relief
lex fori, 8
remedies
arbitration proceedings, 431–2
country reports, 425–9
exercise of ‘extra-territorial
jurisdiction’, 429–31
generally, 425
lex fori and, 9
statute barring, distinction between
substance and procedure,
10–11
types, 429
renvoi
country reports, 4–6
domain of, 3
INDEX

- alternative method as foundation of jurisdiction, 47–9
- as basis of jurisdiction, 47–9
- service of foreign process
  - country reports, 438–43
  - international conventions, 444
- lex fori, 444
- by plaintiff, 445
- statutory regimes, 444
- service out of jurisdiction
  - application for, 50, 54, 56, 60, 62, 63
  - as basis of jurisdiction, 47–9, 66–7
- Civil Procedure Rules, 49, 54–6, 433–5
- commencement, 68–9
- edictal citation, 73, 81, 83, 89–90
  - as foundation of jurisdiction, 54
  - grounds for, 51–63, 67–8
  - international conventions, 438
- notice of writ, 433–4
- order for, 51
- by plaintiff, 435–6
- Roman-Dutch law, 437–8
- substituted service, 436

Sierra Leone
- administration of estates, 301–2
- children
  - adoption, 224
  - legitimacy and legitimation, 246–7
- decline of jurisdiction, 99–100
- diplomatic immunity, 117
- grounds of jurisdiction, 60–1
- international judicial assistance, 450
- matrimonial causes
  - enforcement of foreign maintenance orders, 213
  - jurisdiction, 195
  - stay of proceedings, 99–100
- taking of evidence for foreign courts, 450

South Africa
- administration of estates, 302–3
- arbitration agreements, 102
- bills of exchange, 173–4
- capacity to invoke jurisdiction, 126–7
- children
  - abduction, 240–4

Cambridge University Press
978-0-521-19969-8 - Private International Law in Commonwealth Africa
Richard Frimpong Oppong
Index
More information
South Africa (cont.)
  adoption, 224–6
  custody, 236–7, 240
  legitimacy and legitimation, 247
  choice of law, conceptual issues, 5–6
  contracts
    applicable law, 133
    capacity and formal validity, 142–3
    interpretation, 148
    performance, 146
  decline of jurisdiction, 100–2
  diplomatic immunity, 118–19
  distinction between substance and procedure, 9
  domicile of dependency, 41–2
  domicile of origin and of choice, 32–4
  enforcement of foreign judgments
    defences against recognition and, 341–2
    final judgments, 332–3
    international competence for, 323–4
    jurisdiction, 319–20
    res judicata, 337–8
    against states, 348
  statutory regime, 375–6
  exclusion of foreign law, 24–5
  foreign arbitration awards
    enforcement, 399
  New York Convention, 411–13
  foreign currency obligations, 158–9
  forum non conveniens, 101–2
  grounds of jurisdiction, 73–81
  insolvency, 269–71
  intellectual property, 277
  international judicial assistance
    service of foreign process, 441–2
    taking of evidence for foreign courts, 450–1
  jurisdiction agreements, 79–80, 102
  lis alibi pendens, 100–1
  marriage
    property rights, 187–8
    recognition of foreign decrees, 202–3
    validity, 184
  matrimonial causes
    enforcement of foreign
      maintenance orders, 213–14
      jurisdiction, 195–6
    proof of foreign law, 17–18
  property
    jurisdiction, 259
    nature and legal situs, 256
    ownership and transfer, 262
    remedies, 427–8
    service of foreign process, 441–2
    stay of proceedings, 100–2
  succession
    intestate succession, 293
    revocation of wills, 288
    validity of wills, 281–2
    taking of evidence for foreign courts, 450–1
  torts, 150–1
  sovereign immunity
    court’s mandate to give effect, 124–5
    diplomatic immunity distinguished, 122
    restrictive or absolute doctrine, 123
    violations of immunity, 125–6
    waiver, 124
  states
    capacity to invoke jurisdiction, 127
    enforcement of foreign judgments
      against see foreign judgments, enforcement
    statutes
      distinction between substance and procedure, 10–11
    as evidence of foreign law, 22
  statutory regimes
    bills of exchange, 177–8
    capacity to invoke jurisdiction, 127
    contracting party autonomy, 139–40
    defences against enforcement and recognition of foreign judgments, 344
    domicile, 29–30, 37
    enforcement of foreign judgments
      see statutory regimes for enforcing foreign judgments
      enforcement of foreign maintenance orders, 217–18
exclusion of foreign law, 25
fixed sum judgments, 330
foreign arbitration awards see foreign arbitration awards
inter-country adoption of children, 229
judicial notice of federal laws, 16–17, 22–3
jurisdiction, 65–6
matrimonial proceedings, recognition of foreign decrees, 205
presumption of equivalence of home and foreign law, 15–16, 22
renvoi, 7
surrogacy agreements, 232–3
statutory regimes for enforcing foreign judgments
country reports, 357–86
exclusivity, 353–6
foreign currency judgments, 393–4
international competence, 390–1
issues generally, 353
limitation of actions, 392–3
power to make foreign judgments unenforceable, 356–7
registration see foreign judgments, registration
scope and application, 386–9
stay of proceedings
decline of jurisdiction, 107
jurisdiction agreements, 107–8
pending actions, 109–10
submission to arbitration
enforcement at common law, 400–1
submission to jurisdiction see jurisdiction
substantive law
country reports, 7–9
procedural law distinguished, 3, 10–11
see also lex causae
substituted service (alternative method of service)
as basis of jurisdiction, 47–9
succession
interpretation of wills
country reports, 286–9
generally, 290
intestate succession
choice of law, 4
country reports, 290–4
governing laws, 295
lex domicilii, 295
lex situs, 294
issues generally, 278
matrimonial property, choice of law, 4–5
revocation of wills
country reports, 286–9
generally, 289–90
validity of wills
bases of, 284–5
country reports, 278–84
essential validity, 285–6
international conventions, 284
law at time of making of will as governing law, 286
renvoi, 285
see also administration of estates
surrogacy agreements see children
Swaziland
capacity to invoke jurisdiction, 126–7
contracts, applicable law, 133
decline of jurisdiction, 103
enforcement of foreign judgments, statutory regime, 377
grounds of jurisdiction, 81–2
jurisdiction agreements, 103
matrimonial causes, jurisdiction, 196
proof of foreign law, 18
recognition of foreign marriage decrees, 203
Tanzania
administration of estates, 303–4
arbitration agreements, 103
bankruptcy, 271
bills of exchange, 174–5
capacity to invoke jurisdiction, 126–7
children
adoption, 226
custody, 237
Tanzania (cont.)

- legitimacy and legitimation, 247
- choice of law, conceptual issues, 4 contracts
  - applicable law, 134
  - capacity and formal validity, 143
  - decline of jurisdiction, 103
  - diplomatic immunity, 119–20
  - distinction between substance and procedure, 9
  - domicile of origin and of choice, 34
  - enforcement of foreign judgments
    - defences against recognition and, 343
    - res judicata, 338
  - statutory regime, 378–80
  - foreign arbitration awards, 413
  - foreign currency obligations, 160
  - international judicial assistance, 451
  - intestate succession, 293–4
  - marriage
    - recognition of foreign decrees, 203
    - validity, 184–5
  - matrimonial causes
    - enforcement of foreign
      maintenance orders, 214
    - jurisdiction, 196–7
  - New York Convention, 413
  - proof of foreign law, 19
  - property ownership and transfer, 262
  - stay of proceedings, 103
  - succession, intestate, 293–4
  - taking of evidence for foreign courts, 451
  - winding up of foreign company, 271

- third parties
  - attachment of property, 86

- torts
  - country reports, 149–51
  - double actionability rule, 151–3
  - issues generally, 149
  - lex fori, 151
  - lex loci delicti, 150, 153
  - test of jurisdiction, 151

- trustee in bankruptcy
  - vesting of property, 274

- trusts
  - contract creating trust, governing
    law, 276–7
  - jurisdiction, 276

Uganda

- administration of estates, 304
- arbitration agreements, 105
- bills of exchange, 175–6
- capacity to invoke jurisdiction, 126–7
- children, adoption, 226–7
- contracts, interpretation, 148
- decline of jurisdiction, 104–5
- diplomatic immunity, 120
- domicile of dependency, 42
- domicile of origin and of choice, 34–5
- enforcement of foreign judgments
  - defences against recognition and, 343
  - international competence for, 324–5
  - res judicata, 338
  - against states, 349
  - statutory regime, 380–2
  - foreign arbitration awards, 414
  - foreign currency obligations, 160
  - grounds of jurisdiction, 62–3
  - international judicial assistance
    - service of foreign process, 442
    - taking of evidence for foreign courts, 452
- intestate succession, 294
- jurisdiction agreements, 104–5
- marriage, property rights, 188
- matrimonial causes
  - enforcement of foreign
    maintenance orders, 214–15
  - jurisdiction, 197

- New York Convention, 414
- proof of foreign law, 19
- service of foreign process, 442
- stay of proceedings, 104
- succession, intestate, 294
- taking of evidence for foreign courts, 452

- unilateral conflicts rule
  - surrogacy agreements, 233–4
Vienna Convention on Diplomatic Relations
  parties, 121–2
voided marriage
  continuing legitimacy of children, 250–1

welfare principle
  best interests of child as to custody, 240
wills see succession
winding up of foreign company jurisdiction, 275
wives see marriage

Zambia
  administration of estates, 305
  arbitration agreements, 105
  bankruptcy, 272–3
  bills of exchange, 176
children
  adoption, 227–8
  legitimacy and legitimation, 247–8
  contracts, performance, 147
  decline of jurisdiction, 105
  domicile of origin and of choice, 35
  enforcement of foreign judgments international competence for, 325
  statutory regime, 382–4
  foreign arbitration awards, 414
  foreign currency obligations, 160
  grounds of jurisdiction, 63–4
  insolvency, 272–3
  international judicial assistance, 442–3
matrimonial causes
  enforcement of foreign maintenance orders, 215–16
New York Convention, 414
  proof of foreign law, 19
  recognition of foreign marriage decrees, 204
  service of foreign process, 442–3
  stay of proceedings, 105
succession
  revocation of wills, 288
validity of wills, 282
winding up of foreign company, 272–3
Zimbabwe
  administration of estates, 305–6
  arbitration agreements, 106
  bankruptcy, 273
  bills of exchange, 176–7
  capacity to invoke jurisdiction, 126–7
children
  adoption, 228–9
  custody, 238–9
choice of law, conceptual issues, 6
contracts
  applicable law, 134
  performance, 147
  decline of jurisdiction, 105–6
  diplomatic immunity, 121
  distinction between substance and procedure, 9
  domicile of dependency, 42
  domicile of origin and of choice, 35–6
  enforcement of foreign judgments
  defences against recognition and, 343–4
  final judgments, 334
  international competence for, 325–6
  statutory regime, 385–6
  foreign arbitration awards, 414–15
  foreign currency obligations, 161–2
  grounds of jurisdiction, 82–4
  international judicial assistance
  service of foreign process, 443
  taking of evidence for foreign courts, 452–3
lis alibi pendens, 105
marriage
  property rights, 188
  recognition of foreign decrees, 204–5
  validity, 185
matrimonial causes
  enforcement of foreign maintenance orders, 216–17
<table>
<thead>
<tr>
<th>Index</th>
<th>496</th>
</tr>
</thead>
<tbody>
<tr>
<td>Zimbabwe (cont.)</td>
<td></td>
</tr>
<tr>
<td>jurisdiction, 197–8</td>
<td></td>
</tr>
<tr>
<td>New York Convention, 414–15</td>
<td></td>
</tr>
<tr>
<td>proof of foreign law, 19–20</td>
<td></td>
</tr>
<tr>
<td>property, jurisdiction, 260</td>
<td></td>
</tr>
<tr>
<td>remedies, 428–9</td>
<td></td>
</tr>
<tr>
<td>service of foreign process, 443</td>
<td></td>
</tr>
<tr>
<td>stay of proceedings, 105</td>
<td></td>
</tr>
<tr>
<td>succession</td>
<td></td>
</tr>
<tr>
<td>revocation of wills, 289</td>
<td></td>
</tr>
<tr>
<td>validity of wills, 282–4</td>
<td></td>
</tr>
<tr>
<td>taking of evidence for foreign courts, 452–3</td>
<td></td>
</tr>
<tr>
<td>trusts, 276</td>
<td></td>
</tr>
</tbody>
</table>