

## 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

- 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

- 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
- party autonomy
  - limitations on, 138–42
  - upholding of, 135
- performance
  - country reports, 146–8
- scope of applicable law, 142
- substantive considerations as to
  - proper law, 138
- surrogacy agreements, 232–4
- conventions *see* Hague Conventions; ICSID Convention; New York Convention; Vienna Convention on Diplomatic Relations
- costs
  - estimation, and *lex fori*, 8
  - security *see* security for costs
- custody *see* children
- 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
- 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, 39–44
  - 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*
- edictal 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

- 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, 12–13, 22–3
  - 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; *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

- torts, 150
- winding up of foreign company, 266–7
- kidnapping *see* children, abduction
- legitimacy and legitimation *see* children
- lesbian and gay relationships
  - domicile, 43–4
- Lesotho
  - administration of estates, 300
  - choice of law, conceptual issues, 4–5
  - contracts, applicable law, 132–3
  - decline of jurisdiction, 96
  - distinction between substance and procedure, 8
  - domicile of dependency, 40–1
  - domicile of origin and of choice, 30
  - enforcement of foreign judgments, statutory regime, 369–70
  - grounds of jurisdiction, 71–2
  - intestate succession, 293
  - jurisdiction agreements, 96
  - marriage
    - property rights, 187
    - recognition of foreign decrees, 202
    - validity, 184
  - matrimonial causes
    - enforcement of foreign maintenance orders, 209–10
    - jurisdiction, 192–3
    - proof of foreign law, 14–15
  - torts, 150
- letters of administration
  - see* administration of estates
- lex adoptionis*
  - as governing law, 232
- lex causae*
  - domain of, 3, 7–9
  - exclusion on public policy grounds, 24
  - see also* foreign law
- lex domicilii*
  - contractual capacity, 144–5
  - marriage validity, 183
- lex domicilii matrimonii*
  - as governing law, 187–8
- lex fori*
  - as to claims, 9
  - domain of, 3, 8–9
  - foreign law presumed to be equivalent, 22
  - see also under specific topics*
- lex loci celebrationis*
  - marriage validity, 183–5
- lex loci contractus*
  - contractual capacity, 144–6
  - marriage validity, 183–6
- lex loci delicti*
  - as governing law, 150–3
  - test of jurisdiction, 151
- lex loci solutionis*
  - contractual capacity, 144
- lex situs*
  - property *see* property
  - reference to, 4
- libel
  - jurisdiction, 150
- lien
  - lex fori*, 9
- limitation of actions
  - enforcement of foreign judgments, 352, 392–3
  - foreign arbitration awards, 420–2
  - lex causae* and, 7–9
- lis alibi pendens*
  - country reports, 91–106
  - generally, 91
- loan repayment
  - debtor resident within jurisdiction, 56
- maintenance orders *see* foreign maintenance orders
- Malawi
  - administration of estates, 300–1
  - arbitration agreements, 96–7
  - bankruptcy, 266–7
  - bills of exchange, 171–2
  - children
    - adoption, 223
    - custody, 236
  - contracts, performance, 146
  - decline of jurisdiction, 96–7
  - distinction between substance and procedure, 8

- 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

- 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, lx–lxii
  - see also* choice of law; foreign judgments; 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 situs*, 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

- exclusion of, 285
  - occurrence, 7
- repayment of loan
  - debtor resident within jurisdiction, 56
- res judicata*
  - final judgments and *see* foreign judgments, enforcement
  - lex fori* and, 9
- residence
  - domicile distinguished, 28–9, 31–2
  - see also under specific topics*
- restrictive immunity doctrine
  - enforcement of foreign judgments against states, 349–50
- revenue law
  - enforcement, exclusion of foreign law, 24, 26
- rights
  - prescription as to extinction or creation, *lex causae*, 9
  - statute extinguishing, distinction between substance and procedure, 10–11
- Roman-Dutch law
  - arrest of peregrine, 71–2, 84
  - attachment of property
    - see* attachment of property
  - incola* plaintiffs, 69, 84–5
  - jurisdiction, 68–90
  - peregrinus* defendants, 69–71, 84–5
  - peregrinus* plaintiffs, 320–1
- same-sex relationships
  - domicile, 43–4
- security for costs
  - burden of, 462
  - courts' discretion to award, 461
  - requirement for, 459–60
  - residence in economic region, 461–2
- separation and divorce *see* divorce
- sequestration *see* bankruptcy
- service
  - actions outside and within jurisdiction rules combined, 53–4
  - on agent, 53
  - 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

- 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

Cambridge University Press  
978-0-521-19969-8 - Private International Law in Commonwealth Africa  
Richard Frimpong Oppong  
Index  
[More information](#)

---

496

INDEX

- Zimbabwe (cont.)
  - jurisdiction, 197–8
  - New York Convention, 414–15
  - proof of foreign law, 19–20
  - property, jurisdiction, 260
  - remedies, 428–9
  - service of foreign process, 443
- stay of proceedings, 105
- succession
  - revocation of wills, 289
  - validity of wills, 282–4
- taking of evidence for foreign courts, 452–3
- trusts, 276