Contents

Table of Cas	ses	xvii
	gislation and Conventions	xxvii
, ,	n: Examining the Conflict of Laws Within the UK	xlv
Chapter 1	ROOTS AND CONTEXT OF THE CONFLICT OF LAWS	
1	WITHIN THE UK	1
Т	Introduction	1 01
	Necessary Conditions for the Development of the	1.01
11.	Conflict of Laws	1.04
	Existence of Separate Nations	1.04
	Development of a Recognizable Body of Law	1.09
	Existence of Contact between the Peoples of Different Nations	1.16
	Existence of a Central Court	1.18
TIT	Barriers to the Development of Conflict of Laws Rules	1.21
	Refusal to Deal with Foreign Cases	1.21
	Supra-national Law	1.24
	March Laws	1.31
IV.	Failure of Seventeenth-Century Political Changes to	
	Remove the Underlying Need for Conflict Rules	1.35
	Introduction	1.35
	Union of the Crowns, 1603	1.36
	The Cromwellian Era	1.44
V.	Early Development of Conflict Rules Within the British Isles	1.48
	Introduction	1.48
	Ability to Hear Cases with Foreign Elements—Jurisdiction	1.50
	Reliance upon Foreign Law	1.53
	Recognition of Foreign Judgments	1.59
	Matters of Procedure	1.60
	Matters of Theory	1.62
VI.	Conclusion	1.64
α 1 . α		
Chapter 2	THE CONSTITUTIONALIZATION OF CONFLICTS	0.5
	Within the UK	35
I.	The Constitutionalization of Conflicts	2.01
	Introduction	2.01
	Replacement of Conflict Rules with Constitutional Rules	2.02
	Modification of Conflict Rules in the Light of the Constitution	2.04
	Conclusion	2.16
II.	The Constitutionalization of Conflicts in the UK Prior	
	to the Devolution Settlements	2.18

xii Contents

	Introduction	2.18
	Constitutional Basis of the UK	2.19
	Application of Statutes Within the UK	2.31
	Revenue Laws, Penal Laws and Other Public Laws	2.41
III.	The Constitutionalization of Conflicts and the	
	Devolution Settlements	2.49
	Introduction	2.49
	The Devolution Settlements as a Constitution	2.50
	Effect of Devolution Settlements on Existing	
	Constitutionalization of Conflicts	2.62
	Further Constitutionalization of Conflicts in the Future?	2.64
IV.	Undesirability of Further Constitutionalization of Conflicts	2.81
	Conclusion	2.85
Chapter 3	The Internationalization of Conflicts	
	Within the UK	81
T.	The Internationalization of Conflicts	3.01
	Introduction	3.01
II	UK Common Market Law	3.04
11.	Introduction	3.04
	Impact of the 1998 Devolution Settlements	3.09
	Breakdowns in Internalizing Rules in UK	0.07
	Common Market Law	3.13
	Corporate Structure	3.14
	Sale of Goods	3.18
	Negotiable Instruments	3.22
	Taxation	3.23
•	Intellectual Property	3.24
	Security over Property	3.25
	Insolvency	3.32
TTT	Recognition and Enforcement	3.65
111.	Introduction	3.65
	Effect of the 1998 Devolution Settlements	3.66
	Recognition and Enforcement of Civil Judgments: General	3.69
	Service of Documents	3.80
		3.84
	Recovery of Evidence Within the UK Interim or Provisional and Protective Measures	J.04
	Interim, or Provisional and Protective, Measures	3.91
	Within the UK	3.92
	Validity of Marriages	3.92
	Recognition of Decrees of Divorce, Annulment	2.00
	and Legal Separation	3.96
	Recognition of Decrees of Dissolution, Annulment, or	0 100
	Legal Separation, in Respect of Civil Partnerships	3.100
	Recognition and Enforcement of Custody Decisions	3.102
	Enforcement of Maintenance Orders	3.106

	Contents	xiii
	Adoption Administration of the Succession Internalization of Conflicts and Judge-made Law Conclusion	3.107 3.111 3.117 3.122
Chapter 4	THE APPLICATION OF CONFLICT RULES WITHIN THE UK	129
I.	Introduction	4.01
II.	Similarity of Conflict Rules Within the UK	4.02
	Introduction	4.02
	Jurisdiction	4.07
	Incomplete Reception of Case Law	4.08
	Family Law and Succession	4.11
	Delict	4.14
111.	Procedural Matters	4.15
	Proof of Law Within the UK	4.15
TT 7	Recovery of Evidence Within the UK	4.38 4.39
IV.	Status Llee of Demicile as a Connecting Factor in	4.39
	Use of Domicile as a Connecting Factor in Matters of Status	4.39
	Change of Domicile Within the UK	4.41
	Habitual Residence	4.46
	Different Connecting Factors	4.47
	Different Interpretation of Rules Relating to	
	Connecting Factors	4.49
V.	The Laws of Property and Succession	4.53
	Classification of Property Rights	4.53
	Application of Conflict Rules in Intra-national Cases	
	Relating to Property	4.56
	Trusts	4.60
	General Conflicts Rules in the Law of Succession	4.61
	Restrictions on Testate Provision	4.63
	Intestacy	4.67
	Deceased Dying Without Heirs	4.69
T 7T	Legitimacy and Legitimation	4.71
VI.	Tort and Delict Chains of Lavy Conoral Demonto	4.73 4.73
	Choice of Law: General Remarks Choice of Law under Statute	4.75
	Choice of Law under Statute Choice of Law at Common Law	4.78
	M'Elroy v M'Allister: a Study	4.80
	Damages in Tort or Delict	4.85
VII.	Intra-national Forum Shopping in the UK	4.91
V II.	Introduction	4.91
	Availability of a Remedy	4.92
	Size of Financial Awards	4.95
	Cost and Speed of Litigation	4.97

	Resolving Competition between Fora	4.99
VIII.	The Effect of the New Constitutional Arrangements	
	on Intra-national Conflicts in the UK	4.104
	Introduction	4.104
	Divergence in Underlying Private Law Rules	4.105
	Geographically Limited Reform of Conflict Rules	4.109
IX.	Conclusion	4.126
Chapter 5	The Impact of European Union Legislation	
	ON INTRA-UK CONFLICT RULES	187
I.	Introduction	5.01
	Jurisdiction	5.03
	Civil and Commercial Matters: Brussels I	5.03
	Insolvency	5.35
	Family Matters: the Brussels II bis Regulation	5.38
	Matrimonial Property	5.50
	Maintenance Obligations	5.51
	Succession	5.53
III.	Choice of Law	5.54
	Contractual Obligations	5.54
	Non-contractual Obligations	5.61
	Insolvency	5.63
	Family Law	5.64
	Matrimonial Property	5.66
	Maintenance Obligations	5.67
	Succession	5.68
IV.	Recognition and Enforcement	5.69
	Civil and Commercial Matters	5.69
	Insolvency	5.71
	Family Law	5.72
	Matrimonial Property	5.74
	Maintenance Obligations	5.75
	Uncontested Claims	5.76
	Succession	5.77
V.	Europeanization: the Beginning of the	
	End for Conflict of Laws?	5.78
Chapter 6	Public Policy in Intra-UK Conflict of Laws	221
I.	The Different Facets of Public Policy	6.01
	Introduction	6.01
	Underlying Public Policy	6.03
	Internal Public Policy	6.04
	External Public Policy	6.05
Π.	Underlying Public Policy and Internal Public Policy in the UK	6.08
	Introduction	6.08

	Contents	XV
	Similarities and Differences between Underlying Public Policy in the UK's Jurisdictions	6.09
	Similarities and Differences between Rules of	_ 1 1
	Internal Public Policy in the UK's Jurisdictions	6.14
***	Conclusion	6.19
111.	The Application of External Public Policy Within	C 01
	the UK at Common Law	6.21
	The Foreign Interests of the UK	6.21
** *	Other External Public Policy Objections	6.23
IV.	The Availability of External Public Policy Objections	
	under Statute Within the UK	6.35
	Introduction	6.35
	Choice of law in Contractual and	· · · ·
	Non-contractual Obligations	6.36
	Applicable Law and the Recognition of Trusts	6.40
	Recognition and Enforcement of Judgments in Civil	_ 44
	and Commercial Matters	6.41
	Recognition and Enforcement of Judgments in	c 10
	Family Law Matters	6.43
	The Impact of the 1998 Devolution Settlements	6.44
٧.	Constitutionalization and External Public Policy	6.46
	Australia	6.46
	Canada	6.47
	Conclusion	6.50
	Community Public Policy	6.51
	Human Rights	6.53
VIII.	Conclusion	6.54
Chapter 7	Conclusion	245
I.	Development of Conflict Rules in the UK	7.01
	Dealing with Intra-national Conflicts	7.04
	General Remarks	7.04
	Internalization of Conflicts	7.05
	EU Legislation	7.08
	Constitutionalization	7.09
III.	Scope of Traditional Conflict Rules in Intra-national	
	Disputes in the UK	7.12
	Conflict Rules in the UK: Sources and Similarities	7.12
	Choice of Law	7.14
	Forum Shopping Within the UK	7.16
	Connecting Factors in Matters of Status	7.17
IV.	Public Policy	7.18
	The Impact of European Union Membership	7.21
	General Remarks	7.21

vi	Contents	
	Recognition and Enforcement of Judgments	7.22
	Jurisdiction	7.23
	Choice of Law	7.26
	The Future	7.27
Bibliogra	aphy	257
ndex		271