

(c) Article 18. Formation of illegitimate parent-child relationship . . .	64
(d) Article 19. Legitimation . . . . .	64
(e) Article 20. Formation of adoption . . . . .	65
6. Concurrence of claims . . . . .	65
Chapter V. Identification of connecting factors: Step 2 . . . . .	68
1. Introduction . . . . .	68
2. Identification of nationality . . . . .	68
3. Identification of habitual residence . . . . .	69
(a) Discussions . . . . .	69
(b) The notice of the Ministry of Justice . . . . .	70
(c) Interpretation of "the law of the most closely connected place" . . . . .	73
Chapter VI. Identification of governing law in certain cases: Step 3 . . . . .	76
1. Introduction . . . . .	76
2. Countries with territorially non-unified legal systems . . . . .	77
(a) Indirect method . . . . .	77
(b) Relationship with interstate choice-of-law rules . . . . .	78
(c) Discussion . . . . .	80
(d) Case example . . . . .	82
3. Countries with personally non-unified legal systems . . . . .	84
(a) What are personally non-unified legal systems . . . . .	84
(b) Critical discussion on Article 31 of the Horei . . . . .	86
(c) Interpretation of Article 31 . . . . .	87
(d) Relationship with <i>renvoi</i> . . . . .	88
(e) Common national law . . . . .	89
4. Conclusions of this chapter . . . . .	91
Chapter VII. Application of governing law: Step 4 . . . . .	93
1. Introduction . . . . .	93
2. International public policy versus domestic public policy . . . . .	94
3. Correlation between the degree of discrepancy of results and the degree of intimacy to domestic society . . . . .	95
(a) Reverse proportion . . . . .	95
(b) A case on limitation of time concerning action for postmortem acknowledgment . . . . .	97
4. Passage of time and public policy . . . . .	100
5. Ex-post disposal after the exclusion of application of foreign law . . . . .	102
6. Conclusions of this chapter . . . . .	106
Chapter VIII. Conclusion . . . . .	108
Appendix 1. The Horei — Act on the Application of Laws, Law No. 10 of 1898 . . . . .	111
Appendix 2. The outline of the New Private International Law Code at March 2005 . . . . .	118
Bibliography . . . . .	138

## CONTENTS

Chapter I. Introduction . . . . .	21
1. The objectives and composition of this article . . . . .	21
(a) Objectives . . . . .	21
(b) Composition . . . . .	22
2. Brief history of choice-of-law rules in Japan. . . . .	23
3. The amendment in 1989. . . . .	25
4. The proposed amendment of 2005 . . . . .	26
Chapter II. Scope of application of choice-of-law rules . . . . .	28
1. Introduction . . . . .	28
2. International Cases Theory . . . . .	29
3. All Cases Theory . . . . .	30
(a) Critical analysis of International Cases Theory . . . . .	30
(b) Grounds for All Cases Theory . . . . .	32
(c) Party autonomy in determining the law applicable to contracts . . . . .	33
(1) Problem at issue . . . . .	33
(2) Special application of Absolute Mandatory Rules . . . . .	33
4. Conclusions of this chapter . . . . .	35
Chapter III. The four-step process of choice-of-law system . . . . .	36
1. Introduction . . . . .	36
2. Four-step process in choice-of-law rules . . . . .	38
(a) Step 1. Characterization. . . . .	38
(1) Interpretation stage . . . . .	38
(2) Drafting stage: setting up categories of issues . . . . .	39
(b) Step 2. Identification of connecting factors . . . . .	42
(1) Interpretation stage . . . . .	42
(2) Drafting stage: setting up connecting factors . . . . .	43
(c) Step 3. Identification of governing law in certain cases. . . . .	52
(1) Interpretation stage . . . . .	52
(2) Drafting stage: setting up measures to identify governing law in certain cases . . . . .	53
(d) Application of governing law. . . . .	54
(1) Interpretation stage . . . . .	54
(2) Drafting stage: implementing safeguards . . . . .	55
Chapter IV. Characterization: Step 1. . . . .	57
1. Introduction . . . . .	57
2. Category and legal issues comprising the category . . . . .	57
3. The scope of reference . . . . .	58
4. Adaptation . . . . .	59
5. Relationship between categories of issues . . . . .	61
(a) Categories of issues relating to the formation of parent-child relations . . . . .	61
(b) Article 17. Formation of legitimate parent-child relation . . . . .	63

ACADÉMIE DE DROIT INTERNATIONAL  
FONDÉE EN 1923 AVEC LE CONCOURS DE LA  
DOTATION CARNEGIE POUR LA PAIX INTERNATIONALE

# RECUEIL DES COURS

COLLECTED COURSES OF THE HAGUE  
ACADEMY OF INTERNATIONAL LAW

2005

*Tome 315 de la collection*



2006

MARTINUS NIJHOFF PUBLISHERS  
Leiden/Boston