A Conflict-of-Laws Anthology
Second Edition
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A Conflict-of-Laws Anthology

Second Edition

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Introduction to the Second Edition

The second edition of the anthology preserves the structure, format and essential content of the original. To reflect intervening developments, we have revised the commentary, updated and expanded the bibliographic information now contained in Chapters Thirteen and Fourteen, and added new author contributions. We have also expanded coverage of the book by adding a section on choice-of-law codification. Moreover, we have added an entirely new chapter on choice of law in the international arena. Topics treated in this chapter include the extraterritorial application of U.S. regulatory law and the role of international treaties in harmonizing choice-of-law rules.

We are grateful for the support of the Maurer School of Law and for the research assistance of Jason Howard (Class of 2013) and Warren Thayer IV (Class of 2010).

Gene R. Shreve
Hannah L. Buxbaum
Bloomington, Indiana
2012
Introduction to the First Edition

The terms “conflict of laws,” “conflicts law,” and “choice of law” appear interchangeably in this anthology. They describe law that attempts to provide an intelligible and principled basis for choosing a substantive rule (perhaps tort or contract) over the competing rule of another place. Rules compete when their application would lead to conflicting results and when the relation of each place to the controversy is such that it is plausible for the rule of either place to govern. Conflicts law must legitimize the choice. It must explain why rejection of one law in favor of another is right. A conflicts anthology is especially useful for two reasons. First, of all important legal subjects, conflict of laws may be the most demanding in theory and complex in application. It is not an overstatement to suggest that conflict of laws must be understood thoroughly to be understood at all. To that end, the selections in this anthology offer numerous opportunities for reflection and insight. Second, conflicts writers have actually shaped a great deal of conflicts law. Frequently, American courts expressly incorporate conflicts scholarship in their opinions. It is impossible to understand the law made in such cases without a grounding in conflicts scholarship. To that end, the anthology provides an introduction to the traditions, themes and main arguments in the conflicts literature.

This anthology is designed either to supplement course materials in the basic law school course in conflict of laws, or to guide advanced study and research, or merely to serve as a reference work for those interested in conflicts law and theory. The selections appearing in the book represent the best in conflicts writing. While these selections capture important ideas of the authors, space limitations prevent me from including as much textual material as I would have liked. I have also been forced to exclude a great many of the footnotes accompanying excerpted material in its original setting. Whenever the opportunity presents itself, readers should seek out and read the originals in their entirety.

Space limitations also prevent me from presenting the work of as many authors as I would have wished. Reference to many other useful books and articles appears in comments throughout the book, in a survey of literature on additional topics in Chapter Eleven, and in an extensive bibliography of conflicts writing in Chapter Twelve. I am grateful for the support extended by the Anderson Foundation through creation of the Richard S. Melvin Professorship and for the encouragement of Dean Alfred C. Aman of the Indiana University — Bloomington School of Law. I wish to thank research assistants Jill Sears (Class of 1997), who helped in setting up the project, and Marla Wagner (Class of 1998), who provided tireless and invaluable assistance thereafter.

Gene R. Shreve
Bloomington, Indiana
1996
Note on Editing and Citation

Citations accompany the selections in the anthology as they appear, and include references to pages in the original publication from which each selection is drawn. Additions to the text or the footnotes required by the edit appear in brackets: [insertion]. The signal * * * appearing within a paragraph indicates that a portion of the paragraph has been deleted. The signal * * * * centered below a paragraph indicates the deletion of one or more intervening paragraphs not exceeding one page. The signal * * * * * centered below a paragraph indicates the deletion of more than one page of intervening material. Most footnotes that accompanied the text have been deleted without elision marks. Footnotes that are included retain their original numbering. The large bibliography appearing as Chapter Fourteen is arranged alphabetically by author. When an author has multiple listings, they are arranged chronologically. This bibliography makes it possible for us to use in our “Comments” throughout the book a short form of citation that is standard in academic writing. To illustrate, the shortform citation, “Beale 1909: p. 5,” refers to page 5 of the work appearing in the bibliography as “BEALE, Joseph H. (1909) What Law Governs the Validity of a Contract, 23 HARV. L. REV. 1.”

In addition, portions of the bibliography dealing with additional topics are reproduced in full under a series of headings in Chapter Fourteen.
Dedication

TO ARTHUR, DON, AND FRITZ, IN MEMORY

- G.S.

TO ED

- H.L.B.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Chapter 1</th>
<th>AN OVERVIEW — THEMES ANIMATING CONFLICT OF LAWS</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Gene R. Shreve, <em>Choice of Law and the Forgiving Constitution</em></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Comments</td>
<td>5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 2</th>
<th>HISTORIC DIVISIONS — MULTILATERAL AND UNILATERAL APPROACHES TO CHOICE OF LAW IN EUROPE</th>
<th>7</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Friedrich K. Juenger, <em>CHOICE OF LAW AND MULTISTATE JUSTICE</em></td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Comments</td>
<td>25</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter 3</th>
<th>LEX LOCI — THE DOMINANCE AND PARTIAL DECLINE OF MULTILATERALISM IN AMERICAN CONFLICTS LAW</th>
<th>27</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>STORY, BEALE, AND THE ORIGINAL RESTATMENT</td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>Joseph Story, <em>COMMENTARIES ON THE CONFLICT OF LAWS</em></td>
<td>28</td>
</tr>
<tr>
<td></td>
<td>Joseph H. Beale, <em>History and Doctrines of the Conflict of Laws</em></td>
<td>36</td>
</tr>
<tr>
<td></td>
<td>Herbert F. Goodrich, <em>YIELDING PLACE TO NEW: REST VERSUS MOTION IN THE CONFLICT OF LAWS</em></td>
<td>37</td>
</tr>
<tr>
<td></td>
<td>American Law Institute, <em>RESTATMENT OF THE LAW OF CONFLICT OF LAWS</em></td>
<td>41</td>
</tr>
<tr>
<td></td>
<td>Comments</td>
<td>43</td>
</tr>
</tbody>
</table>

| B.        | CLASSICAL THEORY UNDER ATTACK                                                          | 46 |
|           | Elliott E. Cheatham, *American Theories of Conflict of Laws: Their Role and Utility*    | 46 |
|           | Hessell E. Yntema, *The Hornbook Method and the Conflict of Laws*                       | 47 |
|           | David F. Cavers, *A Critique of the Choice of Law Problem*                              | 53 |
|           | Comments                                                                               | 58 |

<table>
<thead>
<tr>
<th>Chapter 4</th>
<th>CONFLICTS REVOLUTION — THE WATERSHED CASE OF BABCOCK v. JACKSON</th>
<th>61</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Symposium, <em>Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws</em></td>
<td>61</td>
</tr>
<tr>
<td></td>
<td>Comments</td>
<td>75</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

Chapter 5  INTEREST ANALYSIS — THE EMERGENCE OF
UNILATERALISM IN MODERN AMERICAN CONFLICTS
LAW ................................................. 77

Brainerd Currie, Notes on Methods and Objectives in the Conflict of Laws . 77
William M. Richman, Diagramming Conflicts: A Graphic Understanding of
Interest Analysis ........................................ 82
Comments .................................................. 89

Chapter 6  INTEREST ANALYSIS ON TRIAL ........................................ 93

A.  CRITICS .................................................. 94
Harold G. Maier, Finding the Trees in Spite of the Metaphorist: The Problem
of State Interests in Choice of Law ............................ 94
P. John Kozyris, Postscript: Interest Analysis Facing Its Critics — And,
Incidentally, What Should Be Done About Choice of Law for Products
Liability? .................................................. 95
Friedrich K. Juenger, Conflict of Laws: A Critique of Interest Analysis . 100
Lea Brilmayer, Interest Analysis and the Myth of Legislative Intent ...... 109
Aaron D. Twerski, Neumeier v. Kuehner: Where are the Emperor’s Clothes? .............................. 113
Comments .................................................. 115

B.  DEFENDERS ........................................... 116
Russell J. Weintraub, A Defense of Interest Analysis in the Conflict of Laws
and the Use of that Analysis in Products Liability ........................ 116
Robert A. Sedler, Reflections on Conflict-of-Laws Methodology ......... 125
David E. Seidelson, Resolving Choice-of-Law Problems Through Interest
Analysis in Person Injury Actions: A Suggested Order of Priority Among
Competing State Interests and Among Available Techniques for Weighing
Those Interests ........................................... 128
Louise Weinberg, On Departing From Forum Law ....................... 133
Bruce Posnak, Choice of Law: Interest Analysis and Its “New Critics” . 136
Comments .................................................. 139

Chapter 7  COMPLETING THE PICTURE — AMERICAN CONFLICTS
THEORY APART FROM MULTILATERALISM AND
UNILATERALISM ........................................ 143

A.  JUSTIFIED EXPECTATIONS ...................................... 144
Max Rheinstein, The Place of Wrong: A Study in the Method of Case Law
.................................................................................. 144
Elliott E. Cheatham and Willis L.M. Reese, Choice of the Applicable Law
................................................................................. 147
Aaron D. Twerski, Enlightened Territorialism and Professor Cavers — The
Pennsylvania Method ............................................. 148
TABLE OF CONTENTS

Comments .................................................. 149
B. SUBSTANTIVISM ........................................... 150
   Robert A. Leflar, Choice-Influencing Considerations in Conflicts Law ... 150
   Joseph W. Singer, Real Conflicts .......................... 154
   William F. Baxter, Choice of Law and the Federal System ............ 158
   Arthur T. von Mehren, Special Substantive Rules for Multistate Problems: Their Role and Significance in Contemporary Choice of Law Methodology .......... 159
   Patrick J. Borchers, Conflicts Pragmatism ....................... 161
   Comments .................................................. 163

Chapter 8 PREVAILING CHOICE-OF-LAW APPROACHES .......... 167
A. THE RESTATEMENT (SECOND) ................................ 168
   American Law Institute, RESTATEMENT OF THE LAW (SECOND) CONFLICT OF LAWS .................. 168
   Michael S. Finch, Choice-of-Law Problems in Florida Courts: A Retrospective on the Restatement (Second) ................................................. 190
   Symeon C. Symeonides, Exception Clauses in American Conflicts Law ... 198
   Comments .................................................. 202

B. LEFLAR’S CHOICE-INFLUENCING CONSIDERATIONS .......... 205
   Robert A. Leflar, Choice-Influencing Considerations in Conflicts Law ... 205
   Robert A. Leflar, Conflicts Law: More on Choice-Influencing Considerations ................................................. 214
   James R. Pielmeier, Some Hope for Choice of Law in Minnesota .... 221
   Comments .................................................. 229

C. SURVEYING JUDICIAL PREFERENCES ....................... 230
   Symeon C. Symeonides, Choice of Law in the American Courts in 1995: A Year in Review ................................................. 230
   Comments .................................................. 239

Chapter 9 CONSENSUS OR CHAOS IN AMERICAN CONFLICTS LAW? ...... 241
A. THE ECLECTICISM DEBATE ............................... 242
   Robert A. Leflar, Choice of Law: A Well-Watered Plateau ............ 242
   James E. Westbrook, A Survey and Evaluation of Competing Choice-of-Law Methodologies: The Case for Eclecticism, ......................... 244
   William A. Reppy, Eclecticism in Choice of Law: Hybrid Method or Mishmash? ................................................. 246
   Joseph W. Singer, A Pragmatic Guide to Conflicts .................... 250
   Comments .................................................. 255
# TABLE OF CONTENTS

## B. RULES OR APPROACH?  .................................................. 256

Comments  ........................................................................... 266

## C. THE CODIFICATION OF CONFLICTS LAW  ................. 267

Michael H. Gottesman, *Draining the Dismal Swamp: The Case for Federal Choice of Law Statutes*  ................. 283
Comments  ........................................................................... 290

## D. ENDURING PROBLEMS OF COHERENCE AND JUSTICE IN CHOICE OF LAW  .................................................. 290

Stewart E. Sterk, *The Marginal Relevance of Choice of Law Theory* 290
Arthur T. von Mehren, *Choice of Law and the Problem of Justice* 299
Gene R. Shreve, *Every Conflicts Decision is a Promise Broken* 300
Comments  ........................................................................... 304

### Chapter 10 CONFLICTS THEORY AT A CROSSROADS  ................. 309

A. **EMPIRICAL STUDIES**  .................................................. 310

Comments  ........................................................................... 315

B. **NEW HORIZONS IN CONFLICTS THEORY**  .................................................. 315

Erin A. O’Hara and Larry E. Ribstein, *From Politics to Efficiency in Choice of Law* 315
Comments  ........................................................................... 327

### Chapter 11 CHOICE OF LAW AND THE CONSTITUTION  ................. 329

A. **THE CONSTITUTIONAL CONCERN OF CONFLICTS LOCALISM**  .................................................. 330

Comments  ........................................................................... 339

B. **FULL FAITH AND CREDIT AND DUE PROCESS — TRADITIONAL SOURCES FOR REGULATING CHOICE OF LAW**  .................................................. 340
# TABLE OF CONTENTS

Robert H. Jackson, *Full Faith and Credit — The Lawyer’s Clause of the Constitution* ................................................. 340

Louise Weinberg, *Choice of Law and Minimal Scrutiny* .................. 345

Robert A. Sedler, *Constitutional Limitations on Choice of Law: The Perspective of Constitutional Generalism* ............... 348


Comments ................................................................................. 359

C. REGULATORY POSSIBILITIES UNDER OTHER PARTS OF THE CONSTITUTION .................................................. 361


John H. Ely, *Choice of Law and the State’s Interest in Protecting Its Own* ........................................................................... 366

Harold W. Horowitz, *The Commerce Clause as a Limitation on State Choice of Law Doctrine* ........................................... 369


Comments ................................................................................. 373

D. CONSTITUTIONAL INTERSECTIONS OF CHOICE OF LAW AND PERSONAL JURISDICTION ........................................ 375

Gene R. Shreve, *Interest Analysis as Constitutional Law* ............... 375

Courtland H. Peterson, *Proposals of Marriage Between Jurisdiction and Choice of Law* ......................................................... 378

Peter Hay, *Judicial Jurisdiction and Choice of Law: Constitutional Limitations* .............................................................. 381

James A. Martin, *Personal Jurisdiction and Choice of Law* ............ 382

Friedrich K. Juenger, *Supreme Court Intervention in Jurisdiction and Choice of Law: A Dismal Prospect* ........................................... 383

Comments ................................................................................. 389

Chapter 12  CHOICE OF LAW IN THE INTERNATIONAL CONTEXT .......... 391

A. DISTINCTION BETWEEN INTERSTATE AND INTERNATIONAL CHOICE OF LAW .................................................. 392


Eugene F. Scoles, *Interstate and International Distinctions in Conflict of Laws in the United States* ......................................................... 395

Mathias Reimann, *A New Restatement — For the International Age* .... 397
TABLE OF CONTENTS

Comments .................................................................................................................. 399

B. CHOICE-OF-LAW AND THE EXTRATERRITORIAL APPLICATION OF U.S. LAW .............................................................................................................. 400

Donald T. Trautman, The Role of Conflicts Thinking in Defining the International Reach of American Regulatory Legislation ................................................. 400
Andreas F. Lowenfeld, Public Law in the International Arena: Conflict of Laws, International Law, and Some Suggestions for Their Interaction ..................... 403
American Law Institute, RESTATEMENT OF THE LAW (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES ........................................... 407
Harold G. Maier, Extraterritorial Jurisdiction at a Crossroads: An Intersection Between Public and Private International Law ....................................................... 408
Comments .................................................................................................................. 411

C. HARMONIZATION AND UNIFICATION OF CHOICE OF LAW RULES ............................................................................................................................. 413

Hannah L. Buxbaum, Conflict of Laws Conventions and Their Reception in National Legal Systems: Report for the United States, in THE IMPACT OF UNIFORM LAW ON NATIONAL LAW: LIMITS AND POSSIBILITIES ............ 413
Curtis R. Reitz, Globalization, International Legal Developments, and Uniform State Laws ............................................................................................................. 417
Comments .................................................................................................................. 420

Chapter 13 A GLIMPSE AT THE LITERATURE ON ADDITIONAL CONFLICTS TOPICS ........................................................................................................ 423

A. CONFLICTS WRITING IN SUBSTANTIVE AREAS ........................................... 423

1. Torts ...................................................................................................................... 423
2. Contracts ............................................................................................................ 425
3. Insurance and Products Liability ....................................................................... 427
4. Property .............................................................................................................. 427
5. Trusts and Estates .............................................................................................. 428
6. Family Law ....................................................................................................... 428
7. Business Law .................................................................................................... 430
8. Intellectual Property .......................................................................................... 431

B. ASSORTED RULES AND CONCEPTUAL DEVICES FOR CONFLICTS CASES ......................................................................................................... 433

1. Domicile .............................................................................................................. 433
2. Renvoi ............................................................................................................... 433
3. Dépeçage .......................................................................................................... 433
4. Characterization ............................................................................................... 434
5. Public Policy ..................................................................................................... 434
6. Substance-Procedure Distinctions in Choice of Law .......................................... 435
7. Pleading and Proving Foreign Law .................................................................... 435
TABLE OF CONTENTS

C. CODIFYING CONFLICTS LAW .................................................. 436

D. INTERSECTIONS OF CONFLICTS LAW WITH OTHER FORMS OF PROCEDURE ......................................................... 437
   1. Personal Jurisdiction .......................................................... 437
   2. Intersystem Preclusion ........................................................ 437
   3. Complex Litigation ............................................................ 438
      (a) Issues Under Current Law ............................................... 438
      (b) Proposals for Reform-Mass Tort Cases .......................... 439

E. CHOICE OF LAW IN THE FEDERAL SYSTEM ............................. 440
   1. Conflicts Law and the *Erie* Doctrine ................................. 440
   2. Federal Common Law for Conflicts? .................................... 440

F. COMPARATIVE PERSPECTIVES ................................................. 441
   1. *Africa and the Middle East* ............................................ 441
   2. *Asia and Australia* ........................................................ 441
   3. *Canada* ........................................................................ 442
   4. *England* ....................................................................... 442
   5. *Europe* ......................................................................... 443
   6. *Latin America* ............................................................... 445

Chapter 14  BIBLIOGRAPHY ...................................................... 447