

A Conflict-of-Laws Anthology Second Edition

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A Conflict-of-Laws Anthology

Second Edition

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MATTHEW  BENDER

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 legitimate 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.

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