

Private International Law



Avoiding and Resolving Conflict of Laws

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Preface

The genesis of this book was a conversation between two of us—Ved and Jim—during a lengthy bus ride while we were both teaching in Mexico City. We decided then and there to do a coursebook together. Although we kept the idea alive and well, it remained only that for a long time until we had the good sense to entice Anastasia to join us. Then things began to happen.

We readily agreed on what we wanted to do and what we didn't want to do. Accordingly, this coursebook sets new directions in the conflict-of-laws field by, for example, thoroughly integrating and striking a balance between interstate and international materials. Gone are the days of separating international from domestic dimensions of the subject. In a world in which individuals regularly cross borders within the United States and beyond, whether physically or virtually, and business contracts span entire continents, a knowledge of the field is essential for resolving disputes whenever critical events, the disputing parties or both transcend territorial borders.

A brief introductory chapter is designed to alert students to the multi-layered scope of the subject and a few analytic pitfalls. Later in the book, we have introduced some observations about the still underexplored topic of avoiding conflicts-based litigation, as reflected in our book's title. (Of course not all conflicts litigation is avoidable.) As to other words in the title, Chapter 1 discusses the inadequacies of the core terms "private international law" and "conflict of laws."

Given the growing interrelationship between private and public international law, our innovations include two foundational chapters that are designed to familiarize students with the conflicts-relevant role of public international law and international issues in the U.S. constitutional system. These chapters include several core topics that often raise conflicts issues such as the Alien Tort Statute, sovereign immunity and the act-of-state doctrine. Other less essential material in the two chapters can be skipped or skimmed in the interest of time. This book also offers expanded treatment of several topics of increasing importance to legal practitioners: limiting jurisdiction and litigation procedures, conflicts in arbitration, complex litigation and tribal law.

One thing we didn't want in this book was extensive bibliographic referencing. In putting students front and center as our primary readership, we somewhat reluctantly limited scholarly citations in the textual material, notes and questions to those that are less accessible or, on the other hand, truly pathfinding. We felt comfortable

clearing the academic underbrush in this way because of the easily accessed scholarship cited in the Restatements and treatises on conflict of laws as well as the immediacy of digital resources.

We have otherwise tracked the established structure and classic cases of conflicts law, focused, of course, on jurisdiction, choice of law, and recognition and enforcement of foreign judgments. We are convinced of the continuing importance of diverse methodologies and experimentation among different jurisdictions as well as the critical need to apply the resulting conflicts rules and approaches with integrity and consistency. Numerous recent developments will demonstrate to students how dynamic the subject is and will continue to be. The objective of sharpening classroom discussion has guided our selection of both old and new cases and our drafting of numerous problems, notes and questions throughout the book.

We would like to thank Marisa Walker, Katharine Nanda and Rachel Blue for their valuable assistance in processing the manuscript, as well as *The New Yorker* for permission to include our single illustration: the cartoon on page 277. Finally, we thank our always supportive friends at the Carolina Academic Press, first and foremost Keith Sipe and Linda Lacy.

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