

AMERICAN CONFLICTS
LAW:
CASES AND MATERIALS
Sixth Edition

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AMERICAN CONFLICTS LAW: CASES AND MATERIALS

Sixth Edition

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MATTHEW  BENDER

Dedication

To the Memory of
ROBERT A. LEFLAR
(1901–1997)

LUTHER L. MCDUGAL, III
(1938–2004)

This casebook began when Robert Leflar invited Luther McDougal and Robert Felix to collaborate with him to prepare *American Conflicts Law: Cases and Materials* as companion to his treatise, *American Conflicts Law* (3d ed. 1977). The casebook was published in 1982 and McDougal and Felix joined Professor Leflar for the fourth edition of his treatise in 1986. After Professor Leflar died in 1997, Ralph Whitten joined McDougal and Felix for a third edition of the casebook in 1998 and a fifth edition of the treatise in 2001. Professor McDougal died in 2004 during the preparation of the fourth edition of the casebook, which appeared the same year. Although the present authors have since prepared further editions of the casebook and the treatise, we remain mindful of the contributions of Professors Leflar and McDougal to the subject of Conflict of Laws and especially of happy collaborations with them in the earlier editions.

Preface

Since the publication of the Fifth Edition, there have been no fundamental alterations in the direction of the “Conflicts Revolution” that constitutes the main subject matter of the casebook. States continue to switch from one conflicts methodology to another and to struggle with the methodologies they have adopted, but there have been no major developments in the basic direction of conflicts law.

The Supreme Court has been active in the areas of the *Erie* doctrine and personal jurisdiction. As a result, Chapters 8 and 10 contain some new principal cases. Because of the proliferation of the Court’s decisions under the *Erie* doctrine, the authors have chosen to compress decisions after the Court’s decision in *Burlington Northern Railroad v. Woods*, 480 U.S. 1 (1987) into an extended note that critically examines the Court’s approach to decisions under both the Rules of Decision Act and the Rules Enabling Act. This Note is followed by the Supreme Court’s latest decision in *Shady Grove Orthopedic Associates v. Allstate Insurance Co.*, 518 U.S. 415 (2010). This, with the accompanying problems, provides a comprehensive treatment of the area without the tedium of reproducing numerous additional principal cases in their entirety. The Note material following both *Burlington Northern* and *Shady Grove* examines the incoherence of the Court’s entire approach to this area.

In Chapter 10, four principal cases have been added, two to Chapter 10B.2.b(1), dealing with the topic of general jurisdiction, *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. ___, 131 S. Ct. 28461 (2011) and *Daimler AG v. Bauman*, 571 U.S. ___, 134 S. Ct. 746 (2013), and two to Chapter 10B.2.b(2), dealing with the topic of specific jurisdiction, *McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. ___, 131 S. Ct. 2780 (2011) and *Walden v. Fiore*, 571 U.S. ___, 134 S. Ct. 1115 (2014). Although these cases can be said to illustrate that the Court is cutting back on the reach of state-court jurisdiction in both the general and specific jurisdiction areas, with the exception of *Walden* and, to a lesser extent *Diamler*, they do not much clarify the due process limits on jurisdiction. *Diamler* does clarify that the reasonableness test employed in the specific jurisdiction area is not to be used to qualify an assertion of general jurisdiction. Because of this clarification, the authors have eliminated section B.2.b(3) of Chapter 10 in the Sixth Edition, which (in the Fifth Edition) had suggested that the doctrines of general and specific jurisdiction might be converging. *Walden* provides a needed clarification of the reach of personal jurisdiction in intentional tort cases.

The Sixth Edition of the casebook continues the organizational pattern of the Fifth Edition. This pattern represents the editors’ judgment that it is pedagogically sound to present all of the basic foundational matter to students first before exploring the operation of conflicts methodologies in the context of particular topics, such as torts, contracts, etc. Thus, Chapter 1 continues to provide a brief general introduction to the course, along with a succinct historical exposition of the developments of conflicts law without enmeshing students in details and complexities better provided in later chapters. Chapter 2 continues to introduce the general problems in choice of law and the variety of conflicts methods utilized in the United States. Chapter 3 then presents the constitutional limits — principally under the Full Faith and Credit and Due Process Clauses — on state choice of law. After this foundational material, Chapters 4–7 then examine the operation of the American conflicts law in the subject areas of torts, contracts, property, and domestic

Preface

relations, respectively. This organizational structure allows the flexibility to omit material in Chapters 4–7 to accommodate the interests of teachers and students and the time allotted to the Conflict of Laws course in different law schools. Problems are still provided to better facilitate students’ understanding of the cases and textual material. They appear at the end of discrete topics in each chapter and are designed to allow the exploration of the topics in concrete settings that are similar, but not identical, to the settings presented in the case and textual material.

The Sixth Edition continues to treat the *Erie* doctrine, Judgments, and Personal Jurisdiction in Chapters 8–10, respectively. This reflects the view of the editors and other conflicts teachers that choice of law should represent the dominant theme of Conflict of Laws — a theme which virtually all Conflicts courses emphasize. “Vertical” choice of law (*Erie*) is given separate, expanded treatment in Chapter 8 in order to better represent the importance of vertical choice-of-law problems in American conflicts law, as well as to accommodate treatment of the topic in law schools in which the basic Civil Procedure course has been shortened and cannot treat, or cannot fully treat, the *Erie* doctrine, thus presenting the need to provide that treatment in Conflict of Laws or Federal Courts. Judgments issues are explored in Chapter 9 because the experience of the editors is that the topic can be taught at the end of the course, prior to personal jurisdiction, without loss of understanding of material presented earlier in the book. (The extensive treatment of both jurisdiction and judgments in new Chapter 7 on domestic relations does not require a prior, general introduction to those topics beyond that which the students have acquired in their Civil Procedure course.) Finally, Chapter 10 continues to present a thematic treatment of personal jurisdiction to reflect developments, primarily in the modern evolution of standards restricting state-court jurisdiction under the Due Process Clause of the Fourteenth Amendment. Personal jurisdiction is placed at the end of the casebook because many law school courses in Civil Procedure give it extensive treatment, and, as a result, many teachers may choose to omit the topic altogether from their courses. The material covered in this chapter is entitled Personal Jurisdiction, rather than Judicial Jurisdiction, in order to reflect more clearly the emphasis on the authority of a court to bind parties by its judgments and to correspond with the terminology employed in Civil Procedure books.

The casebook chapters are organized in a way that allows them to be taught “out of order.” Thus, the editors have taught the chapters in various sequences with success. For example, Chapter 10, on personal jurisdiction, can be taught at the end of the course or at the beginning, prior to teaching Chapter 2. Or it can be taught immediately after Chapter 2 or Chapter 3 with equal facility. Chapter 9 on judgments can be covered before or after Chapter 10 or before or after Chapter 7 on domestic relations. The editors hope that this will increase the appeal of the book to teachers with a variety of pedagogical preferences. (Teachers should consult the teachers’ manual accompanying this edition for further suggestions about course coverage.)

Since the publication of the Fifth edition of the casebook, a Sixth Edition of the companion treatise has been published. See ROBERT L. FELIX & RALPH U. WHITTEN, AMERICAN CONFLICTS LAW (6th ed. 2011). The casebook cites extensively to the treatise. The material cited in the casebook is timely and useful to students and provides a source from which they can obtain more detailed information about the issues examined in the casebook.

As this edition was being prepared for publication, the American Law Institute

Preface

announced that it would begin a project in 2015 to prepare a RESTATEMENT (THIRD) OF CONFLICT OF LAWS. Supplements to this edition and future editions of the casebook will examine this project as it develops.

September 2014

Robert L. Felix

Ralph U. Whitten

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