

CONFLICT OF LAWS

CASES—COMMENTS—QUESTIONS

Fourth Edition

By

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To
Brainerd Currie
1912-1965
who first opened our minds to these problems

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Preface

The world is divided into an inordinate number of neat geographical boxes: Arkansas, Liechtenstein, Zimbabwe. Each makes its own laws to govern its own affairs, and each has a system for adjudicating its own disputes. But people, especially within a federal nation, pay little attention to political boundaries. The California hiker orders boots from L. L. Bean in Freeport, Maine. The French tourist is murdered by a man from Hoboken, New Jersey, on a Greek ship in Tokyo harbor. The Pakistani brings two wives to live with him while he goes to college in Brooklyn. Deciding whose business it is to resolve disputes arising out of such transactions is the problem we call conflict of laws.

Within this problem lie three interrelated areas of study: choice of law, jurisdiction, and foreign judgments. What law determines whether our Californian must pay for the boots? If it comes to a lawsuit, where can the case be heard? If a judgment against Bean is rendered in California, will Maine enforce it? This book is principally concerned with these three problems as issues of the distribution of powers in the American federal system. They arise on two levels: conflicts among the states and conflicts between national and local authority.

Conflict of laws is not what it used to be. Not too long ago personal jurisdiction depended largely upon the presence of the defendant or his property; and choice of law upon where certain events, deemed significant, had taken place. It is common knowledge that recent decades have produced much new law in both fields, but many current treatments of conflicts underemphasize the extent of the change by retaining the traditional organization and tacking on the new learning as an addendum. This book is based upon the view that the basic principles of jurisdiction are found in *International Shoe*, not in *Pennoyer v. Neff*; that there exists a deep split of judicial opinion concerning the most fundamental issues underlying choice of law; and that a substantial core of common considerations underlie jurisdiction, choice of law, and judgments, on both federal and state levels.

The first two chapters are the heart of the book, presenting a comparison of the principal competing theories underlying American choice of law. The traditional subdivision of the subject into tort, contract, and other pigeonholes is avoided as irrelevant and misleading, except to illustrate the operation of the First Restatement.

Chapter 1 lays out the old learning, and Chapter 2 explores the various modern departures from it, attempting to expose the weaknesses of each approach and to work out so far as possible rational solutions