

CONFLICT OF LAWS

CASES-COMMENTS-QUESTIONS

Fourth Edition

Roger C. Cramton

David P. Currie

Herma Hill Kay

American Casebook Series



CONFLICT OF LAWS

CASES—COMMENTS—QUESTIONS

Fourth Edition

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AMERICAN CASEBOOK SERIES



WEST PUBLISHING CO.
ST. PAUL, MINN., 1987

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50 West Kellogg Boulevard
P.O. Box 64526
St. Paul, Minnesota 55162-0526

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Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Cramton, Roger C.
Conflict of laws.

(American casebook series)

Includes index.

1. Conflict of laws—United States—Cases.

I. Currie, David P. II. Kay, Herma Hill. III. Title.

IV. Series.

KF410.C7 1987 342.73'942 87-8209
ISBN 0-314-39866-X 347.30242

C., C. & K. Conflict of Laws, 4th Ed. ACB



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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

to cases of true conflict. It seems premature, however, to abandon the teaching of traditional theories; quite apart from jurisprudential considerations, judicial acceptance of the new learning is by no means unanimous, and the careful lawyer should be prepared to argue various theories in support of his case. Chapter 3 is concerned with constitutional limits of choice of law, raising for the first time the question whether federal authority can serve to resolve disputes of this nature that the states have not satisfactorily settled.

Chapters 4 and 5 deal with jurisdiction and with foreign judgments, respectively. *Res judicata*, in the domestic sense, presumably has been covered in first-year procedure courses, and, very likely, so has jurisdiction. To study jurisdiction in a conflicts course before considering choice of law would be simply repetitive; our notion is that a review of the subject in the light of a choice-of-law background adds useful new insights to familiar problems. Similarly, the chapter on judgments considers the impact of *res judicata* policy upon the principles underlying jurisdiction and choice of law. Chapter 6 deals with three subjects that have received extraordinary treatment in conflict of laws: divorce, child custody, and the administration of estates. The divorce cases afford an excellent opportunity for reexamining and correlating the three kin concepts of jurisdiction, choice of law, and respect for judgments; the child custody field illustrates the potential of uniform legislation to solve interstate conflicts; and the estate cases, reduced to an extended note in this edition, focus upon a peculiar affectation of the courts that has lingered too long from a bygone day. The final chapter centers upon the myriad conflicts between federal and state authority, once again bringing to bear the familiar analytical implements developed in the earlier chapters in order to demonstrate, for example, that such problems as preemption of state law by the Commerce Clause have a great deal in common with the choice of law between states.

The pace of change in conflicts has subsided since 1981, when the prior edition of this book was published. It is not surprising that a period of consolidation has followed the whirlwind developments that marked the years from 1950–1980. The courts are now engaged in digesting and integrating the new learning; and the scholarly ferment in the law reviews has declined in volume and passion. Nevertheless, the passage of some half-dozen years since the prior edition has led to a substantial revision and tightening of the book.

Chapter 2, on modern approaches to choice of law, has been revised to take account of recent cases that have abandoned the old learning for newer approaches. It also contains an updated and expanded account of the current scholarly debate over choice-of-law theory. Chapter 3, on the constitution and choice of law, now contains the latest U.S. Supreme Court pronouncements about constitutional limits on choice of law, including *Shutts* and *Piper*. The Court's continuing interest in due process limits on state-court jurisdiction has added new wrinkles—some would say confusion—to this area; these developments