CONFLICT OF LAWS

CASES—COMMENTS—QUESTIONS

Roger C. Cramton
David P. Currie

American Casebook Series

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By

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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, the island of China. 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 is the resolution of 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 the past twenty-five years have produced a lot of 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. The last section of Chapter 2 explores the choice-of-law analysis with which we are most sympathetic, attempting to expose its weaknesses

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. Chapters 6 and 7 deal with two subjects that have received extraordinary judicial treatment in conflict of laws: divorce and the administration of estates. The divorce cases afford an excellent opportunity for re-examining and correlating the three kin concepts of jurisdiction, choice of law, and respect for judgments; the estate cases 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 format of this book is that championed by Hart and Wechsler: Illustrative principal cases combined with extensive notes containing additional cases, statutes, academic commentary, and plenty of rhetorical questions. The sampling of law-review articles and books is especially liberal because academic circles have provided an unusually large proportion of the significant thinking about conflict of laws. It is true that the instructor can appear uncommonly brilliant if he gives his students nothing but bare cases and springs his additional learning on them only in the classroom; but this seems an insufficient justification for depriving students of the opportunity to educate themselves before class in order to challenge his ideas.

The book is designed for use in courses of three semester-hours or four quarter-hours. It may be adapted for shorter or longer courses, although we would be hard pressed, considering other pressures on the curriculum, to justify devoting more time to the subject. No at-

tempt has been made to pad the book by including several cases where one would suffice. Transitional cases in choice of law (those purporting to accept the traditional approach but in fact manipulating it) have been used sparingly since they have limited utility in illuminating the past or in preparing for the future. Many of them, however, provide useful fact situations for testing various approaches to choice of law, and for this reason are included in summary form. Economies of space, easing the amount the student must read, have been obtained by selecting cases in Chapter 1 and in the earlier portions of Chapter 2 that provide useful situations for discussion later on in Chapter 2 and throughout the remainder of the book. We have practiced this spatial economy not in order to be easy on the student but in order to leave him time to think about the more difficult problems developed in the notes.

The editorial practices followed in this book require brief explanation. In general, we have reprinted cases rather fully in a desire to provide class material that retains the texture and diversity of the originals. We have not carried this approach so far, however, as to preserve passages that are repetitious or irrelevant. Authorities cited in principal cases have been ruthlessly pruned; only those citations that build an understanding of the course as a whole or that a curious student might want to examine have been preserved. The notes are intended as a guide to thinking and discussion. Since exhaustive citation to the cases or the literature would interfere with that primary function, the notes do not attempt to double in brass as a text. For the student who, like Linus, needs a security blanket, there are several recent texts available (Ehrenzweig (1962); Goodrich (Scoles ed. 1964); Leflar (1959); and Stumberg (1962)); and we need not apologize for our refusal to encumber the note material with superfluous references to cases or articles. We have discussed and cited all of the materials that we think a careful instructor or curious student might want to examine for class purposes.

Omissions from principal cases or quoted material are indicated in all instances. Three periods (. . .) signal the omission of words within a sentence or of sentences at the start of a paragraph. Four periods (. . . .) indicate the omission of a sentence or more within or at the end of a single paragraph. Five periods (. . . . .) mark the omission of longer passages: consecutive sentences from two paragraphs or one or more full paragraphs.

The omission of citations (cases or other authorities) is indicated by three asterisks (* * *). Asterisks are not used when words containing substantive content have been omitted, whether or not a citation is contained in the omitted passage.

Footnotes in principal cases and quoted material usually have been discarded, and we have attempted to avoid them in our own note

material. Those footnotes which have been included retain their original number; our own infrequent footnotes may be readily distinguished as they are marked with a single asterisk (*).

For assistance in completing the manuscript and preparing it for the printer, we are particularly indebted to Miss Susan Sakada of Ann Arbor, Michigan, and Carl von Ende of the class of 1968, Michigan.

R.C.C.
D.P.C.

June, 1968

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In other instances, in which the author is deceased, we are grateful for permission granted by the copyright owner: Harvard University Press (Cook, *The Logical and Legal Bases of Conflicts of Laws*); The University of Chicago Law Review (B. Currie, Full Faith and Credit to Foreign Land Decrees, 21 U.Chi.L.Rev. 620; B. Currie, The Constitution and the Choice of Law, 26 U.Chi.L.Rev. 9; B. Currie & Schreter, Unconstitutional Discrimination in the Conflict of Laws: Equal Protection); Duke University Press (B. Currie, *Selected Essays on the Conflict of Laws*); Columbia Law Review (Jackson, Full Faith and Credit—The Lawyer's Clause, 45 Colum.L.Rev. 1); Yale Law Journal Co. (B. Currie and Schreter, Unconstitutional Discrimination in the Conflict of Laws: Privileges and Immunities, 69 Yale L.J. 1323); Yale University Press (Lorenzen, *Selected Articles on the Conflict of Laws*); Harvard Law Review (Morgan, Choice of Law Governing Proof, 58 Harv.L.Rev. 153); Foundation Press (Stumberg, *Conflict of Laws*).

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TABLE OF CASES

The principal cases are in italic type. The cases appearing in the authors' notes are in Roman type. References are to pages.