

CONFLICTS IN A NUTSHELL



ALBERT A. EHRENZWEIG



CONFLICTS IN A NUTSHELL

by

ALBERT A. EHRENZWEIG

Walter Perry Johnson Professor of Law,
University of California, Berkeley

Second Edition

ST. PAUL, MINN.
WEST PUBLISHING CO.
1970

COPYRIGHT © 1965 WEST PUBLISHING CO.

COPYRIGHT © 1970
By
WEST PUBLISHING CO.
All rights reserved.

PREFACE TO THE SECOND EDITION

Both in this country and abroad American conflicts law is said to be in a crisis. Indeed, distinguished courts and writers, as well as the American Law Institute, propose to replace old established rules by new indefinite formulae. But, happily, much of the "crisis" is in fact limited to the law of enterprise liability whose obsolete structure precludes satisfactory answers in conflicts cases. Like the second edition of Louisell's and my companion book on Jurisdiction (1968), this new edition of the Nutshell is designed to help in protecting hardwon certainty of practice against a spreading anarchy of language.

In addition to the avalanche of new case law, there has been much important new writing in our field, including Cavers' "Choice-of-Law" Process and three new casebooks by Cramton and Currie, Von Mehren and Trautman, Scoles and Weintraub. Citations had to be added to Leflar's new interstate text on "American Conflicts Law" (L), which I have sought to supplement for the international area by references to my "Private International Law" (PIL) and my Hague Lectures on "Specific Principles of Private Transnational Law" (Recueil). Finally, the contro-

PREFACE TO THE SECOND EDITION

versial Proposed Official Draft of the Second Restatement (1967-1969) (RS) has required increased attention.

Reports from former students have encouraged me to assume that the Nutshell has proved of some value for bar review purposes and for a first orientation of the practitioner. Case references have, therefore, been expanded to provide access to current authority not easily available elsewhere. In addition, there remain, of course, those decisions which the student will wish to remember by name as the alphabet of our discipline. Finally, there are those mostly very recent cases which may serve as illustrative material in teaching and learning. Despite this increase in the number of citations easy readability of the text has, I hope, been preserved by their unorthodox brevity which leaves orthodox completeness to the Table of Cases. Many new subheadings are intended to facilitate quick review. But the sections have not been renumbered so as not to disturb cross-references in other books. My colleagues Bernstein, Buxbaum and Fleming, have been thoughtful critics and my students Frank Garfield, John Hoskins and Brian Sax have been faithful helpers.

A.A.E.

Berkeley, California
December, 1969

[VIII]

PREFACE TO THE FIRST EDITION

This book is intended as a text supplemental to course materials, class discussion and review notes. David W. Louisell and I, in the preface to our companion volume "Jurisdiction in a Nutshell", having professed our belief in the case method, pleaded in justification of such a text "the intricacy of the subject, the shortness of life, and a possible mellowing—some would say softening—of our judgment. Many of us may now be prepared to believe that the diligent student who has ground his way through the cases in perplexity and wonder, perhaps has earned the right to know something of the perplexity and wonder of those who have gone before him—and what they have made of it all. As for the less than diligent student—neither this nor any other text will buoy him if he has not learned from the cases how to swim in the current." What is true for jurisdiction, is also true for that equally complex branch of conflicts law which deals with choice of law.

PREFACE TO THE FIRST EDITION

The General Part of this book is a survey of history and theory. Many students will have difficulty with it until they have mastered the traditional chapters on persons, contracts, torts, property and succession. I have nevertheless put history and theory first because that is the logical order and saves clumsy references forwards and backwards. The student will do well to reread the General Part after he has studied the other chapters.

Like its companion, "Jurisdiction in a Nutshell," this book has citations only to leading, recent, and other illustrative cases. It relies for full documentation on the texts by Goodrich and Scoles (GS), Leflar (L), and Stumberg (S), as well as on my own treatise (AAE). In the current theoretical controversy which has begun decisively to affect the practice of the courts, I have tried to steer a middle course. I have juxtaposed what is still considered by many to be prevailing opinion, namely the (First) Restatement's rigid formulas, with more modern approaches such as that of the Draft Restatement Second, and with my own reading of the courts' actual holdings which is greatly indebted to my colleagues and the critics of my earlier work. Perusal of some of the literature listed in the Bibliography may help the student in forming his own opinions.

PREFACE TO THE FIRST EDITION

Dedication of this book to Chief Justice Traynor of the California Supreme Court on the occasion of the twenty-fifth anniversary of his tenure, is intended not only as a token of personal respect and affection, but as a tribute to one who has had a decisive share in the creation of the new conflicts law of this country.

A.A.E.

Berkeley, California
April, 1965

ABBREVIATIONS

- AAE** —Ehrenzweig, Treatise on the Conflict of Laws (1962)
- E & L** —Ehrenzweig and Louisell, Jurisdiction in a Nutshell (2d ed. 1968)
- GS** —Goodrich and Scoles, Conflict of Laws (4th ed. 1964)
- L** —Leflar, American Conflicts Law (1968)
- PIL** —Ehrenzweig, Private International Law (1967)
- Recueil**—Ehrenzweig, Specific Principles of Private Transnational Law, Hague Academy of International Law, Recueil des Cours 125 (1969) 170-370
- Rest.** —Restatement of the Law of Conflict of Laws (1934, Supp.1948, 1954)
- RS** —Restatement Second, Conflict of Laws, Proposed Official Draft, Part I (1967), Part II (1968), Part III (1969)

SELECTED TEXTS *

American Law Institute

- Restatement of the Law of Conflict of Laws (1934, Supp.1948, 1954) (*Rest.*)
- Restatement of the Law Continued, Conflict of Laws, Tent. Drafts No. 1 (1953); No. 2 (1954)
- Restatement of the Law Second, Conflict of Laws, Tent. Drafts No. 3 (1956); No. 4 (1957); No. 5 (1959); No. 6 (1960, 1961); No. 7 (1962, 1963); No. 8 (1963); No. 9 (1964); No. 10 (1964); see also RS

Bayitch and Siqueiros, Conflict of Laws: Mexico and the United States (1968)

Beale, The Conflict of Laws (1935) (3 vols.)

Carnahan, Conflict of Laws and Life Insurance Contracts (2d ed. 1958)

Castel, Private International Law: A Comparative Study of the Rules Prevailing in Canada and the United States (1960) (Canada)

* For additional references to casebooks, symposia, monographs, foreign treatises, and periodicals, see e. g., AAE XLI-LI; PIL 236-262; Cheatham, Griswold, Reese and Rosenberg, Conflict of Laws, Cases and Materials (5th ed. 1964) XLIII-IX; Cramton and D. Currie, Conflict of Laws, Cases-Comments-Questions (1968) XXXVII-XLVII.

SELECTED TEXTS

- Cavers, *The Choice-of-Law Process* (1965)
Cheshire, *Private International Law* (7th ed. 1965) (England)
Cook, *The Logical and Legal Bases of the Conflict of Laws* (1942)
Currie, *Selected Essays on the Conflict of Laws* (1963)
De Nova, *Le concezioni statunitensi dei conflitti di leggi viste da un continentale* (1964) (American law)
Dicey and Morris on the Conflict of Laws (8th ed. 1967) (England)
Ehrenzweig, *Conflict of Laws* (1962) (*AAE*)
Ehrenzweig, *Private International Law* (1967) (*PIL*)
Ehrenzweig and Louisell, *Jurisdiction in a Nutshell* (2d ed. 1968) (*E & L*)
Falconbridge, *Essays on the Conflict of Laws* (2d ed. 1954) (Canada)
Goodrich and Scoles, *Conflict of Laws* (4th ed. 1964) (*GS*)
Graveson, *The Conflict of Laws* (6th ed. 1969) (England)
Hancock, *Torts in the Conflict of Laws* (1942)
Harper and James, *The Law of Torts, Part Three, vol. 2* (1956) (Supp. 1968)
Heilman, *The Conflict of Laws and the Statute of Frauds* (1961)

SELECTED TEXTS

- Kuhn, Comparative Commentaries on Private International Law (1937)
- Lalive, The Transfer of Chattels in the Conflict of Laws (1940)
- Land, Trusts in the Conflict of Laws (1952)
- Leflar, American Conflicts Law (1968) (*L*)
- Lorenzen, Selected Articles on the Conflict of Laws (1947)
- Mádl, Foreign Trade Monopoly, PIL (1967)
- Marsh, Marital Property in Conflict of Laws (1952)
- Minor, Conflict of Laws (1901)
- Nussbaum, Principles of Private International Law (1943)
- Parker School of Foreign and Comparative Law, Bilateral Studies (ed. Nussbaum-Galston), relating to Argentine (Goldschmidt and Rodriguez-Novás), Belgium (Van Hecke), Australia (Cowen), Austria (Seidl-Hohenveldern), Brazil (Garland), Chile (Etcheberry), Columbia (Eder), Denmark (Philip), France (Delaume), Germany (Domke), Greece (Ehrenzweig, Fragistas and Yiannopoulos), Japan (Ehrenzweig, Ikehara and Jensen), Netherlands (Kollewijn), Sweden (Nial), Switzerland (Nussbaum), Turkey (Ansay), Venezuela (Lombard)

SELECTED TEXTS

Rabel, *The Conflict of Laws, A Comparative Study* (Vols. I-III, 2d ed. 1958, 1960, 1964; Vol. IV, 1st ed. 1958)

Stimson, *Conflict of Laws* (1963)

Story, *Commentaries on the Conflict of Laws* (1st-8th ed. 1834-1883)

Stumberg, *Conflict of Laws* (3d ed. 1963)

Symposia and Other Collections (see also
AAE p. XLIII)

—— New Trends in the Conflict of
Laws, 28 *Law and Contemporary
Problems* 673-869 (1963)

—— *De Conflictu Legum*, Essays Pre-
sented to Kollewijn and Offer-
haus (1962)

—— *Twentieth Century Comparative
and Conflicts Law*, Legal Essays
in Honor of Hessel E. Yntema
(ed. Nadelmann, von Mehren,
and Hazard 1961) 295-432

—— *Selected Readings on Conflict of
Laws*, Association of American
Law Schools (ed. Culp 1956)

—— *A Symposium on Conflict of Laws*,
6 *Vanderbilt Law Review* 441-
742 (1953)

—— *Selected Essays in Conflict of
Laws*, *Harvard Law Review*
(1952)

SELECTED TEXTS

- Harvard Studies in the Conflict of Laws, vol. I-V (1933-1942) (Harding, Read, Nékám, Robertson, Cook)
- Symposium on Conflict of Laws, 24 Ohio St.L.J. 223 (1962)
- Recueil des Cours, Académie de Droit International, Lectures on American and English law by: Bellot, vol. 3, at 99-175 (1924); Kuhn, vol. 21, at 188-278 (1928); Davies, vol. 62, at 427-546 (1937); Foster, vol. 65, at 399-559 (1938); Wortley, vol. 71, at 5-109 (1947); de Vries, vol. 75, at 205-271 (1949); Graveson, vol. 99, at 25-118 (1960); Cheatham, vol. 99, at 237-355 (1960); Cheshire, vol. 108, at 119-188 (1963); Reese, vol. 110, at 313 (1964); Kegel, vol. 112, at 93 (1964); De Nova, vol. 118, at 441 (1966)
- "Ehrenzweig's Proper Forum and Proper Law," 18 Okla.L.Rev. 233 (1965)

Wright, Federal Courts (2d. ed. 1970)

TABLE OF CASES

References are to Pages

A

- Aboitiz & Co. v. Price, 99 F.Supp. 602 (D.C.Utah 1951), 183
- Addison v. Addison, 62 Cal.2d 558, 399 P.2d 897 (1965), 302
- Air Products & Chemicals, Inc. v. Lummus Co., 252 A.2d 543 (Del.Ch.1969), 93
- A. J. Armstrong Co. v. Lincoln Finance & Thrift, Inc., 291 F.Supp. 1008 (E.D.Tenn.1968), 179
- Alaska Packers Ass'n v. Industrial Accident Comm'n, 294 U.S. 532, 55 S.Ct. 518 (1935), 61
- Alexandravicius' Estate, In re, 83 N.J.Super. 303, 199 A.2d 662 (1964), cert. denied, 209
- Allied Thermal Corp. v. James Talcott, Inc., 3 N.Y.2d 302, 165 N.Y.S.2d 91, 144 N.E.2d 66 (1957), 267
- American Banana Co. v. United Fruit Co., 213 U.S. 347, 29 S.Ct. 511 (1909), 214, 241
- American Serv. Mut. Ins. Co. v. Bottum, 371 F.2d 6 (8th Cir. 1967), 198
- American State Bank v. United States Fidelity & Guaranty Co., 331 F.2d 479 (7th Cir. 1964), 201
- Amforg Trading Corp. v. Camden Fibre Mills, 304 N.Y. 519, 109 N.E.2d 606 (1952), 212
- Anderson v. A/S Berge Sigval Bergesen, 29 A.D.2d 756, 287 N.Y.S.2d 712 (1968), aff'd 22 N.Y.2d 944, 242 N.E.2d 393 (1968), 172
- Angel v. Bullington, 330 U.S. 183, 67 S.Ct. 657 (1947), 84
- Annesley, In re (1926) Ch. 692, 74
- Antelope, The, 10 Wheat. (23 U.S.) 66 (1825), 78
- Arciero v. Hager, 397 S.W.2d 50 (Ky.1965), 133
- A. S. Ramoell, Inc. v. Hyster Co., 3 N.Y.2d 369, 144 N.E.2d 371 (1957), 150

TABLE OF CASES

- Associates Discount Corp. v. Palmer, 47 N.J. 183, 219
A.2d 858 (1966), 92
Atha v. Bockius, 39 Cal.2d 635, 248 P.2d 745 (1952),
280
Atlas Credit Corp. v. Ezrine, 25 N.Y.2d 219, 250 N.E.2d
474 (1969), 89
Aubushon v. Witt, 412 S.W.2d 136 (Mo.1967), 248
Auglaize Box Board Co. v. Kansas City Fibre Box Co.,
35 F.2d 822 (6th Cir. 1929), 191
Austin Bldg. Co. v. National Union Fire Ins. Co., 432
S.W.2d 697 (Tex.1968), 197
Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954),
164, 182

B

- Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279
(1963), 256
Baffin Land Corp. v. Monticello Motor Inn, Inc., 70
Wash.2d 893, 425 P.2d 623 (1967), 203
Baker v. Baker, Eccles & Co., 242 U.S. 394, 37 S.Ct. 152
(1917), 142
Balts v. Balts, 273 Minn. 419, 142 N.W.2d 66 (1966),
258
Banco do Brasil, S. A. v. A. C. Israel Commodity Co.,
12 N.Y.2d 371, 190 N.E.2d 235 (1963), cert. denied
376 U.S. 906, 84 S.Ct. 657 (1964), 183
Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 84
S.Ct. 923 (1964), 51, 88
Bannowsky v. Krauser, 294 F.Supp. 1204 (D.Colo.
1969), 218
Barnett, In re, 12 F.2d 73 (2d Cir. 1926), cert. denied
273 U.S. 699, 47 S.Ct. 94 (1926), 272
Barrons v. United States, 191 F.2d 92 (9th Cir. 1951),
121
Bassi, Estate of, 234 Cal.App.2d 529, 44 Cal.Rptr. 541
(1965), 129
Bauer's Trust, In re, 14 N.Y.2d 272, 251 N.Y.S.2d 23,
200 N.E.2d 207 (1964), 315
Bell v. Tug Shrike, 332 F.2d 330 (4th Cir. 1964), cert.
denied 379 U.S. 844, 85 S.Ct. 84 (1964), 54
Berchtold, In re, [1923] 1 Ch. 192, 305

TABLE OF CASES

- Bernkrant v. Fowler, 55 Cal.2d 588, 12 Cal.Rptr. 233,
360 P.2d 906 (1961), 169
- Bigelow v. Burnham, 83 Iowa 120, 49 N.W. 104 (1891),
180
- Biner v. Dynallectron Corp., 458 P.2d 616 (Nov.1969),
61
- Bir, Estate of, 83 Cal.App.2d 256, 188 P.2d 499 (1948),
122
- Bittner v. Little, 270 F.2d 286 (3d Cir. 1959), 231
- Bjorgo v. Bjorgo, 402 S.W.2d 143 (Tex.1966), 136
- Black Diamond S. S. Corp. v. Robert Stewart & Sons,
Ltd. (The Norwalk Victory), 336 U.S. 386, 69 S.Ct.
622 (1949), 55, 211
- Blum v. American Youth Hostels, Inc., 40 Misc.2d
1056, 244 N.Y.S.2d 351 (1963), aff'd on other
grounds 21 A.D.2d 683, 250 N.Y.S.2d 522 (1964),
260
- Blythe v. Ayres, 96 Cal. 532, 31 P. 915 (1892), 128
- Boomer v. New York Cent. R. Co., 409 F.2d 382 (7th
Cir. 1969), 99
- Boivin v. Talcott, 102 F.Supp. 979 (N.D.Ohio 1951), 86
- Boseman v. Connecticut General Life Ins. Co., 301 U.S.
196, 57 S.Ct. 686 (1937), 151
- Boudreaux v. Taylor, 353 S.W.2d 901 (Tex.Civ.App.
1962), 41
- Bowles v. Zimmer Mfg. Co., 277 F.2d 868 (7th Cir.
1960), 262
- Boys v. Chaplin, [1969] 1 W.L.R. 322 (House of Lords),
213, 224
- Brackett v. Norton, 4 Conn. 517 (1823), 97
- Bradford Electric Light Co. v. Clapper, 286 U.S. 145,
52 S.Ct. 571 (1932), 61
- Braniff Airways, Inc. v. Curtiss-Wright Corp., 411 F.2d
451 (2d Cir. 1969), 91
- Breen v. Aetna Casualty & Surety Co., 153 Conn. 633,
220 A.2d 254 (1966), 103, 198
- Brendle v. General Tire & Rubber Co., 408 F.2d 116
(4th Cir. 1969), 63
- Bridgeman v. Gateway Ford Truck Sales, 296 F.Supp.
233 (E.D.Ark.1969), 178

[XXXVII]