0001 [ST: 1] [ED: m] [REL: 3007] (Beg Group) **Composed:** Wed Jun 25 08:36:12 EDT 2008
XPP 7.3C.1 Patch #3 FM000150 nllp 3007 [PW=540pt PD=720pt TW=380pt TD=612pt]
VER: [FM000150-Master:15 May 08 14:55]**[MX-SECNDARY:** 19 May 08 12:03]**[TT-:** 15 Apr 08 13:17 loc=usa unit=03007-fmvolsupp] **0**

AMERICAN CONFLICTS LAW: CASES AND MATERIALS
2008 Supplement

LEXISNEXIS LAW SCHOOL ADVISORY BOARD

Charles P. Craver
Freda H. Alverson Professor of Law
The George Washington University Law School

Richard D. Freer
Robert Howell Hall Professor of Law
Emory University School of Law

Craig Joyce
Andrews Kurth Professor of Law &
Co-Director, Institute for Intellectual Property and Information Law
University of Houston Law Center

Ellen S. Podgor
Professor of Law &
Associate Dean of Faculty Development and Electronic Education
Stetson University College of Law

Paul F. Rothstein
Professor of Law
Georgetown University Law Center

Robin Wellford Slocum
Professor of Law & Director,
Legal Research and Writing Program
Chapman University School of Law

Charles J. Tabb
Alice Curtis Campbell Professor of Law
University of Illinois College of Law

David I. C. Thomson
LP Professor & Director, Lawyering Process Program
University of Denver, Sturm College of Law

Judith Welch Wegner
Professor of Law
University of North Carolina School of Law

0001 [ST: 1] [ED: m] [REL: 3007] (Beg Group) **Composed:** Wed Jun 25 08:36:13 EDT 2008
XPP 7.3C.1 Patch #3 FM000150 nllp 3007 [PW=540pt PD=720pt TW=380pt TD=612pt]
VER: [FM000150-Master:15 May 08 14:55]**[MX-SECNDARY:** 19 May 08 12:03]**[TT-:** 15 Apr 08 13:17 loc=usa unit=03007-fmvolsupp] **0**

American Conflicts Law:

Cases and Materials

2008 Supplement

Fourth Edition

Robert L. Felix
James P. Mozingo III Professor Emeritus of Law
University of South Carolina

Ralph U. Whitten
Professor of Law
Creighton University

LexisNexis®

ISBN: 978-1-4224-2672-2

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc, used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

Copyright © 2008 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Library of Congress Card Number:
All Rights Reserved.

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work. Permission to copy material exceeding fair use, 17 U.S.C. § 107, may be licensed for a fee of 25¢ per page per copy from the Copyright Clearance Center, 222 Rosewood Drive, Danvers, Mass. 01923, telephone (978) 750-8400.

NOTE TO USERS
To ensure that you are using the latest materials available in this area, please be sure to periodically check the LexisNexis Law School web site for downloadable updates and supplements at www.lexisnexis.com/lawschool.

Editorial Offices
744 Broad Street, Newark, NJ 07102 (973) 820-2000
201 Mission St., San Francisco, CA 94105-1831 (415) 908-3200
www.lexisnexis.com

(2008–Pub.3007)

PREFACE

This Supplement is intended to update teachers and students on the latest cases and literature pertinent to the course in Conflict of Laws. Since the publication of the Fourth Edition in 2004, there have been no major developments in the conflicts field, no fundamental alterations in the direction of the "Conflicts Revolution" that constitutes the main subject matter of the casebook. For the seventh straight year, no state following the traditional vested-rights approach has shifted away from that approach in either torts or contracts.

The fairly predictable movement of the Nevada Supreme Court to the second Restatement for torts from forum preference hedged by contacts analysis seems a slight adjustment. Even so, precedent accumulates under all conflicts systems, presenting new fact patterns and new laws in conflict, thus allowing choice-of-law doctrines to be viewed from different angles. Always of interest, for example, are the varying ways in which courts apply (or misapply?) the late Professor Leflar's Choice-Influencing Considerations. However, some courts are becoming more skilled and conscientious in applying modern conflicts systems. For example, the Illinois Supreme Court's application of the RESTATEMENT (SECOND) in *Townsend v. Sears, Roebuck & Co.,* 879 N.E.2d 893 (Ill. 2007), examined in Chapters 2A.5 and 3C of this supplement, may well become the model for significant contacts analysis in torts. Of additional interest is the Texas Supreme Court's decision in *Coca-Cola Co. v. Harmar Bottling Co.,* 218 S.W. 2d 671 (Tex. 2006) introducing a "comity" excuse for refusing to apply the laws of other states that are based on the "social needs and values" of those states and heavily dependent on policy determinations to be made by the courts of the other states during the process of interpreting the laws. *Harmar* is examined in Chapter 2.H and new subsection 6 in Chapter 10C of this supplement. Finally, *Wamsley v. Nodak Mut. Ins. Co.,* 178 P.3d 102 (Mont. 2007) attempts to create a "special" public policy exception to the enforcement of sister-state judgments that involve anticipatory declaratory judgment actions in the sister state that interfere with "important interests" of the judgment-enforcing state. It will be interesting to see whether *Wamsley* is taken to the United States Supreme Court and, if so, whether the Court will address the knotty problem of declaratory judgment proceedings that attempt to obtain a choice of law advantage over states where parallel actions for non-declaratory relief are pending. *Wamsley* is examined in Chapter 9B.2.a in a new note 5 on page 58 of this supplement.

Meanwhile, on the horizon still lurk issues regarding the inevitable encounter of Conflicts doctrine with new technologies and with diverse life-styles. For example, as this supplement was being completed, the California Supreme Court held restrictions on same-sex marriage invalid under the California Constitution. *See In re Marriage Cases*, 2008 Cal. LEXIS 5247 (2008).

As the Fourth Edition of the Casebook was being prepared our well-esteemed co-author Luther McDougal died. We miss him in this current endeavor, and we will miss him as we contemplate further editions of the casebook and its companion treatise.

Robert L. Felix
Ralph U. Whitten
May 2008

TABLE OF CONTENTS

CHAPTER 1 INTRODUCTION 1

C. A BRIEF HISTORY 1
1. Continental Origins of the Subject 1
4. The First Restatement: Beale and the Critics 1

CHAPTER 2 CHOICE OF LAW: SOME GENERAL PROBLEMS 3

A. SELECTING A CHOICE-OF-LAW THEORY 3
1. The Vested Rights Theory 3
2. Currie's Governmental Interest Analysis 3
4. Leflar's Choice-Influencing Considerations 4
5. The "Most Significant Relationship" Approach 5
7. Lex Fori Systems 6
B. CLASSIFYING RULES AS SUBSTANTIVE OR PROCEDURAL . 6
2. Burden of Proof 6
4. Statutes of Limitations 7
C. CHARACTERIZING THE ISSUES 10
D. PROTECTING THE FORUM'S PUBLIC POLICY 11
E. USING DÉPEÇAGE 12
F. COPING WITH RENVOI 12
H. PROVING FOREIGN LAW 14
I. DEALING WITH EXTRATERRITORIAL CONDUCT IN CRIMINAL CASES 15

CHAPTER 3 CHOICE OF LAW: TORTS 17

A. THE TRADITIONAL RULES METHOD 17
B. THE NEW YORK EXPERIENCE AND APPROACH 17
C. SECOND RESTATEMENT: THE MOST SIGNIFICANT RELATIONSHIP 18
D. LEFLAR'S CHOICE-INFLUENCING CONSIDERATIONS 19
E. OTHER APPROACHES 20
1. Forum Preference 20
2. Eclectic Solutions: Combining Choice-of-Law Approaches 20
4. Approaches Used in Selected Foreign Countries 22
b. Canada: Rediscovery of the Lex Loci Delicti 22
F. SPECIAL PROBLEMS: MASS TORTS 22
1. Class Actions 22
2. Choice of Law: The ALI Proposal 23

CHAPTER 4 CHOICE OF LAW: CONTRACTS 25

A. TRADITIONAL APPROACHES 25
2. The First Restatement 25
B. SOME MODERN APPROACHES 26
1. When the Contract Does Not Contain A Choice-of-Law Clause . . 26
2. When the Contract Contains A Choice-of-Law Clause 29
C. SOME SPECIAL PROBLEMS 33
2. The Uniform Commercial Code 33

CHAPTER 5 CHOICE OF LAW: PROPERTY, TRUSTS, AND ESTATES . . 35

A. LAND 35
B. PERSONALTY 35
C. TRUSTS 36
D. WILLS AND INHERITANCE 36
E. DECEDENTS' ESTATES 36

CHAPTER 6 CHOICE OF LAW: FAMILY LAW 37

A. MARRIAGE AND ITS TERMINATION 37
1. Marriage 37
2. Divorce 41
B. SUPPORT: DECREES/ORDERS 41
1. "Divisible Divorce" 41
2. Support-Generally 41
C. CUSTODY 42
2. Full Faith and Credit to Child Custody Determinations 42
3. Adoption 43
4. Paternity and Legitimacy 44
D. MARITAL PROPERTY 44
1. Common Law and Community Property Regimes 44
2. Party Autonomy in Marital Property Arrangements 44
b. Bilateral Party Choice 44

CHAPTER 7 CHOICE OF LAW: SOME CONSTITUTIONAL PROBLEMS 47

A. THE DUE PROCESS AND FULL FAITH AND CREDIT CLAUSES 47
B. OTHER CONSTITUTIONAL CLAUSES 48
2. The Privileges and Immunities Clause 48
3. The Commerce Clause 48
4. Foreign Affairs and Separation of Powers 49

CHAPTER 8 VERTICAL CHOICE OF LAW 51

B. THE *ERIE* DOCTRINE 51
C. HORIZONTAL CHOICE OF LAW UNDER *ERIE* 51
D. ASCERTAINING STATE LAW 52
E. FEDERAL COMMON LAW AFTER *ERIE* 53

CHAPTER 9 JUDGMENTS 55

B. ENFORCEMENT OF STATE JUDGMENTS 55
1. The Full Faith and Credit Implementing Statute 55
2. Basic Policies and Exceptions 55
a. Basic Policies 55
b. Exceptions and Potential Exceptions to the Basic Rules 57
(1) Lack of Personal Jurisdiction 57
(3) Fraud 58
(4) Statutes of Limitations 59
(5) Judgments Based on Penal Laws or Governmental Claims . . 59
(6) Administrative Adjudications 60
(7) Nonfinal and Modifiable Judgments 61
(8) State Judgments Adjudicating Federal Claims 61
(9) The Permissibility of Giving Greater or Lesser Effect to State Judgments Than They Would Receive in the Judgment-Rendering State 62
C. ENFORCEMENT OF FEDERAL JUDGMENTS 62
D. ENFORCEMENT OF FOREIGN NATION JUDGMENTS 63

CHAPTER 10 PERSONAL JURISDICTION 67

A. SERVICE OF PROCESS AND NOTICE 67
2. Long-Arm Process 67
3. Due Process Requirement of Adequate Notice 67
B. FOURTEENTH AMENDMENT RESTRICTIONS ON STATE-COURT JURISDICTION 68
2. Development of Modern Restrictions on State-Court Jurisdiction . 68
a. Status of Traditional Territorial Rules After International Shoe . 68
b. General and Specific Jurisdiction 68
(1) General Jurisdiction 68
(2) Specific Jurisdiction 69
(3) Convergence? 71
c. Amenability to Process in Federal Court 71
C. GROUNDS FOR DECLINING JURISDICTION 71
1. Forum Selection Clauses 71
2. Forum Non Conveniens 72
3. Penal and Governmental Claims 74

5. Local Actions 74
6. Comity? 74
D. INJUNCTIONS AGAINST EXTRASTATE ACTIONS 75
TABLE OF CASES TC-1