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# Reflections on Conflict-of-Laws Methodology: A Dialogue

UC Hastings College of the Law

# Reflections on Conflict-of-Laws Methodology: A Dialogue*

Members of the judiciary and scholarly commentators seek to develop and refine guiding doctrines of law. In elucidating underlying principles, judges and academicians strive to attain the law's basic goals of predictability and fairness. In the choice-of-law context, however, new decisions and approaches have only added to the long-standing confusion. In this dialogue, Professor Sedler, Professor Trautman, and Dean Hay examine four approaches to conflict-of-laws methodology.

(1) *Traditional Choice-of-Law Rules.* These rules require that a particular state's laws control, while blindly ignoring the policies underlying the laws and the pertinence of these policies to the facts of a particular case. The traditional choice-of-law rules have been criticized for excessive rigidity.

(2) *Professor Currie's Interest Analysis.* The center of controversy in this policy analysis involves the means by which courts resolve so-called "true" conflicts of laws. A "true" conflict of laws occurs when two states have legitimate, conflicting interests in the subject matter of a dispute. Professor Currie proposed that, when faced with a true conflict of laws, the court should simply apply the forum state's law.

(3) *New York Interest Analysis.* In a famous line of cases involving guest statutes, the New York Court of Appeals applied an interest analysis while struggling with the policy considerations inherent in that approach. Ultimately, in *Neumeier v. Keuhner,*[1] the court adopted three rules to be applied in future cases. By returning to a rules approach and deciding to refer to the place of the accident when faced with what most courts would agree is a true conflict, the New York Court of Appeals appears to have come full circle, perhaps returning to the traditional approach with some new rules.

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1. 31 N.Y.2d 121, 286 N.E.2d 454, 335 N.Y.S.2d 64 (1972).

(4) *California Interest Analysis.* California has seen several rapid changes, culminating in *Offshore Rental Co. v. Continental Oil Co.*[2] This latest pronouncement states that the California court remains committed, at least in theory, to an interest approach, but will resolve true conflicts by looking to the "comparative impairment" of the states' respective policies. Furthermore, the court may consider which state's law is the better law.

Professor Sedler, Professor Trautman, and Dean Hay first respond to the questions set out below. In their concluding remarks, each scholar responds to the remarks of his colleagues and suggests ways in which their views can be distinguished and ways in which their views are similar.

1. In your opinion, do any of these approaches create a tenable method for deciding choice-of-law issues?

2. Is the basic problem with an interest analysis that courts simply are not equipped to determine the policies underlying a state's laws, especially the laws of a foreign state?

3. Is there any way of distinguishing true conflicts from apparent true conflicts and false conflicts, so that judges can readily understand these concepts and can apply them with ease and some uniformity?

4. Do the frequent judicial changes in this area suggest that the courts require legislative advice directed specifically at resolving choice-of-law questions?

*(i)* If so, should the statutes be drafted as federal legislation or should some attempt be made to design uniform legislation to be considered by the states for adoption?

*(ii)* If left to the states, is a uniform act preferable to the independent formulation of each state's own scheme?

Recent decisions of the United States Supreme Court in *Shaffer v. Heitner,*[3] *World-Wide Volkswagen Corp. v. Woodson,*[4] and *Rush v. Savchuk,*[5] represent major pronouncements in the area of state personal jurisdiction. The Court has made clear that in some instances the contacts of the litigants and the dispute with the forum are insufficient for jurisdictional purposes, although these contacts are sufficient for the finding of a legitimate forum interest for choice-of-law purposes. Consequently, many cases potentially in-

2. 22 Cal. 3d 157, 583 P.2d 721, 148 Cal. Rptr. 867 (1978).
3. 433 U.S. 186 (1977).
4. 444 U.S. 286 (1980).
5. 444 U.S. 320 (1980).

volving choice-of-law issues now may be dismissed on jurisdictional grounds.

5. Do you believe that these cases actually signal a retrenchment of the Court's jurisdictional reach?

6. Is the application of stricter jurisdictional requirements a good means of avoiding the resolution of difficult choice-of-law issues?

7. To what extent, if at all, are the policies underlying the jurisdiction and choice-of-law areas interrelated?