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Publication of the Restatement of the Conflict of Laws

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PUBLICATION OF THE RESTATEMENT OF THE CONFLICT OF LAWS

The Restatement of the Law of Conflict of Laws, recently published by the American Law Institute Publishers, is the third project of the American Law Institute to be completed, having been preceded by the Restatements of Contracts and Agency Two volumes on Torts have also been published. Like its companion volumes this work is the result of the joint efforts of a large group of experts in this field, in this case extending over a period of eleven years. The Reporter was Professor Joseph H. Beale of the Harvard Law School, who has spent some forty years in studying and teaching this subject and is recognized as probably the outstanding authority in this country. He was assisted by a very able group of judges, lawyers, and law teachers.

The scope of this work can perhaps best be indicated by attempting to define its title. "Conflict of Laws" is, roughly, a term applied to that body of jurisprudence dealing with the selection by a court of the proper "law" to guide it in determining litigation arising from transactions or events part or all of which occurred beyond the territorial sovereignty of the state in which the court is sitting. This is the so-called "choice of law" problem. Thus there is a possible conflict of laws problem in practically every law suit, e.g., if either party was born in another state. Actually, such problems rarely rise to the surface of the court's decision or opinion. Very frequently, as would normally be true in the example given, the foreign fact may be regarded as so clearly immaterial as to be ignored entirely by counsel, or by the

court if its existence is accidentally disclosed at the trial. Again, no point may be made of the "foreignness" of an event because the laws of the state where it occurred are so similar to those of the forum that the result will be the same regardless of which are followed by the court. But as science destroys distance the number of cases presenting real problems in conflict of laws is bound to increase, particularly in the United States where there are forty-nine distinct territorial sovereigns in addition to non-contiguous territories and possessions.

The Restatement of Conflict of Laws undertakes to state the solution of the "choice of law" problem and nearly all situations where it is likely to arise. The rules are grouped in chapters according to subject-matter Status, Corporations, Property, Contracts, Wrongs, Judgments, Administration of Estates, and Procedure. In addition, chapters on Domicile and Jurisdiction of Courts are included, which treat these topics as a whole, including rules applicable to wholly domestic as well as true conflict of laws situations.

Like all the work of the American Law Institute, the Restatement of the Conflict of Laws is very carefully and thoroughly done. It is probably the nearest that human minds can come to distilling a simple, logical, and consistent body of rules out of the mass of past, present, and future—there is some attempt to forecast the trend in legal development—judicial decisions. Explanatory comments and simple illustrations clarify the meaning of the rules and render the volume especially valuable to lawyers who are not familiar with this field of law.

This work will be an even more important factor in shaping the jurisprudence of tomorrow than its companions. In the first place, at many points the drafting committee was handicapped by the dearth of case authority instead of the superabundance encountered by their colleagues in other fields. This means that future courts will be called upon frequently to solve conflict of laws problems unaided and unhampered by precedents in their states. In such cases the Restatement will, no doubt, often be followed and cited as authority. Secondly, "Conflict of Laws" does not appear as a title in the American Digest System, and, although it does appear in *Corpus Juris*, *Ruling Case Law*, and *The American Law Reports Digest*, its scope therein is not as broad as in the Restatement, several topics being treated elsewhere. As a result the case law on this subject has not been readily available to attorneys and judges. The present volume should lead to a more unified and consistent development in the future.