COURSE DESCRIPTION
Conflict of Laws

Required book:


Overview: This course focuses on transactions that have legal implications involving more than one sovereign. The course book primarily concerns relations among sovereigns within the American federal system, but growth in international travel and trade demands that U.S. lawyers also learn more about conflicts issues in an international context (what lawyers outside America call private international law).

The principal topics include: (1) jurisdiction, (2) choice of law, and (3) judgments. Since these issues mainly arise in the context of litigation, this course is, in essence, an advanced civil procedure course. It is important for those lawyers who expect to engage in litigation or who want to learn how to draft documents such as contracts best to protect their clients against the costs of experiencing an unfavorable jurisdiction or choice of law. Conflict of Laws is tested on the Oregon and on other state bar examinations.

Topics (Sections in Course Book)

Chapter 1: Introduction (pp. 1-18) [Tues. Aug. 27]
I. About the Subject
II. A Brief History of Choice-of-Law Doctrine
III. General Bibliography
   E&E: pp. 1-7

JURISDICTION

Chapter 8: Personal Jurisdiction in Interstate Cases (pp. 744-842) [Thur. Aug. 29 to Thur. Sept. 5]
I. Introduction and History
II. Underlying Theory of Personal Jurisdiction
III. Personal Jurisdiction in Practice
IV. Relationship between Limits on Judicial and Legislative Jurisdiction
   E&E: pp. 11-65

Chapter 9: Jurisdiction in International Cases (pp. 853-66, 872-89) [Tues. Sept. 10]
[Skip sections I & II]
III. Adjudicatory Authority: American Theory and Practice
IV. Adjudicatory Authority: Foreign Theories and Practice
   [Skip section V]
VI. Forum Selection Agreements and Forum Non Conveniens
   E&E: pp. 67-77

RECOGNITION OF JUDGMENTS

Chapter 10: Sister-State Judgments (pp. 892-907, 923-31, 946-67) [NO CLASS on Thur. Sept. 12; makeup on Tues. & Thur. Sept. 17 & 19, 1:00 pm to 1:40 pm. Coverage on Tues. Sept. 17 & Thur. Sept. 19]
I. Overview of Res Judicata Rules
II. Full Faith and Credit [Skip pp. 908-22 & 932-45]
III. Special Recognition Problems of Family Law
   E&E: pp. 429-35, 447-73

Chapter 11: Federal-State Recognition (pp. 968-76) [Thur. Sept. 19]
I. Introduction
II. State and Federal Court Recognition of Federal Judgments
   [Skip section III]

Chapter 12: Foreign-Country Judgments (pp. 1014-23, 1042-52) [Thur. Sept. 19]
   [Skip sections I & II]
III. Basic Texts
   [Skip sections IV & V]
VI. Substantive Defenses
   E&E: pp. 436-46

CHOICE OF LAW

Chapter 2: Traditional American Approach (pp. 20-123, 129-30) [Tues. Sept. 24 to Thur. Oct. 3]
I. Introduction
II. Torts & Contracts
III. Other Areas
IV. Domicile
V. First Restatement
VI. Structure, Operation, and Escape Mechanisms
VII. Judicial Notice & Proof of Foreign Law [Read only N. 6 (pp. 129-30); skip pp. 123-28, 131-34]
   E&E: pp. 81-105, 151-95

I. Introduction
II. The Scholastic Revolution
III. Beginning of the Judicial Revolution [Skip pp. 144-46]
IV. The Revolution Takes Off [Skip pp. 291-313, 322-37, 343-49]
V. The Revolution of Late [Skip pp. 355-90]
VI. Territoriality and Personality
VII. Methodological Landscape
   E&E: pp. 199-324

Chapter 5: Constitutional Limits (pp. 571-650) [Tues. Nov. 5 to Tue. Nov. 12]
I. Introduction
II. Due Process Clause
III. Full Faith and Credit Clause
IV. The Supreme Court’s Current Approach
V. A State’s Obligation and Right to Provide a Forum
VI. Privileges and Immunities, Equal Protection, and Commerce Clauses
   E&E: pp. 387-425

Chapter 4: Conflicts across the Curriculum (pp. 508-70) [Thur. Nov. 14 & Tue. Nov. 19]
[Review summary of choice of law rules for subjects in Chap. 4; skip sections I to VII]
VIII. Property
IX. Marital Property
X. Successions
XI. Status
XII. Corporations
   E&E: pp. 107-47

Catchup and Review of Course Coverage (Student Questions) [Thur. Nov. 21]

Learning Outcomes

Reasoning and Analysis
- Learn the various types of legal reasoning that involve interpretation and use of statutory and court rules, Restatements, and prior case decisions and opinions.
- Distinguish levels of law, including the U.S. Constitution, federal statutes, and federal common law and how their interaction affects legal analysis.
- Differentiate between the logic of inductive and deductive reasoning.
- Understand how a policy or policies influence legal interpretation.
- Mobilize information useful in determining a substantive rule’s policy.

Knowledge and Research
- Learn about the use of Latin and law French in U.S. law and the origins of American conflict rules.
- Distinguish between legal and factual issues and identify the basic categories of law, including the distinction between procedure and substance and between public and private law.
- Understand that other countries, especially those influenced by the civil law tradition, approach conflict of laws and procedure in general with different premises that affect the way judges and lawyers handle cases.
- Gain familiarity and skill with Oregon judicial jurisdiction and choice of law rules.
• Learn to interpret procedural statutes, such as those dealing with subject matter and territorial jurisdiction.
• Learn more about the United States federal system of law and the interaction between the national and state jurisdictions as well as interactions between states.

Communication
• Appreciate persuasive advocacy and avoid irrelevant or misleading writing or speaking.
• Develop oral fluency by speaking in class about legal issues and doctrine.

Organization of Information and Collaboration
• Develop an integrated outline of course material, class discussion, and outside reading to prepare for an examination in the subject matter.
• Consider working with others in building a team outline that would improve one’s own personal performance.

Conflict Resolution
• Understand how litigation is an adversarial process that fits within a broader dispute resolution framework.
• Learn how the plaintiff’s choice of forum can affect the outcome of a case.
• Understand why issues of conflict of laws are for the judge and not the jury to decide.
• Learn to construct a persuasive choice of law analysis in jurisdictions with multi-factor analysis.

Notes

(1) My office hours are on Wednesdays from 3:15 to 4:15. Extra copies of class handouts (but not slides) are available at the fourth-floor course box near the elevator.

(2) In general, please read the next 30 to 35 pages in the course book (CB) from where we stop (further if necessary to finish a case) for the upcoming class period. This syllabus attempts to guide you in determining which days we discuss individual topics. The CB usually provides you relevant procedural rules and statutes; if not, I will provide it in class.

(3) The recommended book aims to provide you an alternative approach to understand conflict of laws with simplified explanations and examples. I note the appropriate pages to read on the syllabus. Some students believe they benefit from student outlines, note cards, recordings, and other devices, but they are usually of lower accuracy and quality.

(4) Review the Notes and Questions in the CB, some of which we will discuss in class. If you have a problem in understanding some material for an upcoming class, please ask a question about it during the class in which we discuss it, since other students may have the same problem. If the problem is with past material, please ask me or stop by my office during office hours.

(5) Class participation is a factor in your final grade. Prepare for each class. Excellent participation will increase your final grade by one grading category. Lawyers are expected and paid to talk: make the effort.

(6) The final examination (3 hours) consists of essay questions. The exam is open-book and notes. It is scheduled for Monday, December 9 at 1:30 pm.

15 August 2019