Conflict of Laws: Three Essays

INTRODUCTORY NOTE

The following contributions were individually conceived and executed. Yet together they represent three unique attempts to bring order into what Currie has described as that "area of superstition and sorcery" called choice of law.

The ability of choice-of-law doctrine to generate theories which are applicable to related fields of law finds expression in Professor McNulty's essay on intertemporal conflicts. Until recently, American choice of law has dealt almost exclusively with spatial conflicts between the laws of territorially distinct jurisdictions. Conflicts may also arise within one jurisdiction, however, when laws enacted at different times both purport to govern the same transaction. The idea of applying concepts from spatial choice of law to the resolution of temporal conflicts is familiar to continental scholars. Professor McNulty introduces this concept into American conflicts literature. In particular, he forcefully argues that the corporate law problems of retroactivity may be solved within a choice-of-law context.

The concept of false conflicts is the cornerstone of several choice-of-law theories. Although most students of private international law are conversant in the language of false conflicts, courts have only recently adopted this language in their opinions. The following study clarifies the terminology of false conflicts and classifies the different factual situations to which it applies. More importantly, it questions the validity of those propositions on which governmental-interest analysis rests.

Usury and the conflict of laws—an alliance as old as conflicts law itself—might seem an unlikely subject for a novel choice-of-law approach. Yet usury is no less viable a medium than married women's contracts for presenting a conflict-of-laws methodology. The following study offers the first systematic treatment of choice-of-law theory applied to a particular body of substantive law. It is also significant, however, for what it suggests about conflicts analysis itself. The study proceeds upon the assumption that choice-of-law theory must be tied to the specific policies in each area of law. It reverses the customary mode of conflicts analysis by arguing inductively from the particular problems posed by interstate loan contracts, and shapes a choice-of-law doctrine best suited to resolve these problems.