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Review of "The Law of Conflict of Laws," By Robert A. Leflar

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BOOK REVIEWS

THE LAW OF CONFLICT OF LAWS. By Robert A. Leflar. Indianapolis: Bobbs-Merrill Co., 1959. Pp. 487. $13.50.

Professor Leflar has long been a worker in Conflict of Laws and this book is a useful addition to the literature in that field. Notice will first be taken of the reasons for and purposes of the book as stated in its Preface.

Mention is there made that very great growth and change in the conflict of laws has occurred within the past twenty years. In the middle thirties, Professor Leflar worked on Arkansas annotations to the Restatement of Conflict of Laws and found that, to express accurately the effect of that state's decisions, it was necessary to write a short treatise on the Arkansas law; this material has long since been out of print. The Preface closes with this statement: "At any rate in this new book all the Arkansas cases up to January 1, 1959, are dealt with, but they are treated as part of an American law of Conflict of Laws, and the effort of the work is to give a fair picture of the American law as it typically operates in any one of the states today."

Of course there are important variances between the states on many conflict of laws issues. On merely a cursory perusal of this relatively short volume dealing primarily with Arkansas law, one may have the impression that the book could not "give a fair picture of the American law." But more extensive examination will lead most to the conclusion that that objective has in fact been accomplished.

The volume is of a convenient size, and the single column text on good paper makes for easy reading. It consists of 221 sections, comprising twenty-five chapters of which two relate to criminal law and state taxation. The text is in the form of a summary—a statement of the general rule—and the style of writing is clear. The endeavor of the author to compress a great amount of information into a relatively small space has been met; but those limitations of plan and space necessarily result in lack of amplifications and in omissions. In a book of this size it is impossible to elaborate points of analysis or to discuss factual situations of cases in detail; to do so would undoubtedly entail a multi-volume treatise.

Citations are not limited to Arkansas cases. Very frequently they extend to cases by other state courts, by the Supreme Court of the United States, and to some of the leading articles in legal periodicals. Very properly, for length if for no other reason, the citations are not exhaustive.

Frequent references are also made to the Restatement of Conflict of Laws, prepared under the leadership of Professor Beale. Although there are many cases in accord with the principles enunciated in the Restatement, it has had a history of controversy. Initial attacks under the leadership of Professor Lorenzen and Cook have been continued throughout the years by more recent writers, and it is now in the process of far-reaching revision. While this book does not contain detailed theoretical analysis, one can nevertheless conclude that Professor Leflar is neither a Bealian nor an advocate of the Restatement in its entirety. His references to the Restatement are essentially for comparative purposes.

As indicated, the characteristic of the book is the compression of a great amount of information into small spaces. Several examples may be mentioned. Chapter 17, on Movables, comprises twenty pages. For details, footnote reference is made (page 286) to an article by this reviewer comprising thirty-nine pages and (page 293) to one by the author which contains eighteen pages. The basic discussion of renvoi appears in section 6. There the general principles are concisely set forth and, for elaboration, the footnotes refer the reader to several cases and some excellent periodical materials. The topic of homestead is treated in section 17. Some writers would have omitted this, but a substantial amount of worthwhile general information is given in the short space allotted to it. The sections on marriage (159-161) and the one on custody (180) are also examples of effective compression.

Inevitably any reader will find instances in which he believes that even minor additions would have been helpful. For example, pages 40-41 contain a brief discussion of interpleader, centering upon *New York Life Ins. Co. v. Dunlevy,* and a footnote reference is made to the federal interpleader statute. The importance of the statute, as it affects the problem represented by the *Dunlevy* case, would justify some elaboration in the text.

Also, page 47 contains this passage (with emphasis here added):

> Likewise a plaintiff who brings a suit thereby subjects himself to the jurisdiction of the court in which he sues as to all counterclaims and cross-actions *which may properly, by the local laws then in effect,* be set up against him in his own action. If he takes advantage of judicial facilities maintained by the forum he should take them as they are, and not just the features that are advantageous to him. *Usually the effect of this is to permit the litigation of related claims in one lawsuit.*

Footnote reference is made to *Adam v. Saenger,* decided by the Supreme Court of the United States. Although the note does not indicate, that case involved the question of full faith and credit to a California judgment rendered upon a cross-claim permitted under a statute applicable only to related claims. Hence there is also involved a matter

of due process of law in the state of original rendition. Neither the text nor the footnote makes it clear whether the author considers that the scope of permissive cross-claims or counter-actions must, constitutionally, be limited to related issues. Another instance in which amplification would be helpful is in regard to trusts; chapter 24 devotes eight pages to this topic.

The subject of Contracts is particularly difficult to compress. This is dealt with in Chapter 14, containing fourteen sections, and comprising twenty-five pages. Some of the sections deal with the following aspects: (122) The Creation of the Contract; (123) General Validity: Traditional Rules; (125) Validity: "Center of Gravity"; (132) Insurance.

It is stated (page 230): "[S]ometimes the acts of chaffering which constitute offer and acceptance are scattered over more than one state. The authorities are reasonably clear that, in this event, the contract is made at the time and place 'where the last act necessary to the completion of the contract was done—that is, where the contract first created a legal obligation. . . .'" Reference is made to Williston, Contracts, and Restatement of Conflict of Laws, both of which give these principles.

Section 132, dealing with Insurance, starts with the statement: "Since there is usually no fixed place for performance of insurance policies, the law of the place of making is more often taken as determinative of rights under them than with other types of contracts, and it becomes especially important to ascertain what is the place of making. As with contracts generally, an insurance contract is made at the place where the last act necessary to the completion of the contract is done." And, on page 250: "The substantial weight of authority is that the validity, interpretation and effect of an insurance contract are governed by the law of the place where it is made."

The text is correct in saying that the majority of courts, in most contracts cases, apply the test of the place of making; but, as indicated in section 123, a substantial number also apply the other tests to matters of validity (as well as to performance and discharge, which are dealt with in section 129). The source of confusion in the cases applying the "making rule" lies in the fact that most courts use a meat-cleaver approach through phrases such as "the place of making," "the place where the contract came into existence," or "the place of the last necessary act to create a contract," without specifying what act, or why that act, was determinative. In insurance cases the courts often purport to be more definite by stating that "the last necessary act" is that of delivery of the policy. But this, too, is a delusion because the word "delivery" is as indefinite as the others.

In fact, the courts, as the text on page 249 briefly suggests, have used the term "delivery" so as to localize the contract at either of several states to effectuate the purposes of various specific issues. Indeed, there is never an issue of "delivery" of an insurance policy (or "making" of other contracts) as an abstract proposition and for its own sake. Always in insurance it is a step in determination of the state whose law is to govern smaller issues such as breach of warranty, rights to conversion of the policy, non-forfeiture provisions, validity of an assignment, etc.* Also application of the so-called place of making rule in insurance cases is frequently altogether different than in other types of contract situations, because of the differences in issues and of social policies. And the issues in life insurance are vastly different than in other types of insurance. Consequently cases dealing with one type of insurance are not necessarily persuasive—to say nothing of authoritative—as to other kinds.

The lack of analysis by the courts, use of indefinite terminology, and failure to differentiate between specific issues has, indeed, justified the author's conclusion (page 232): "No area in the conflict of laws is more confused than that concerning the general validity of contracts." These considerations make it extremely difficult to compress the rules of conflict of laws applicable to contracts within a limited space. However, as stated at the outset, the book does not purport to be an exhaustive treatise and it is a useful addition to the literature in this field.

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* For elaboration on the traditional rules in general, see Carnahan, Conflict of Laws of Life Insurance Contracts (2d ed. 1958) § 12; and, as to delivery, §§ 32-43.

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