

## BOOK REVIEWS

CASES AND MATERIALS ON CONFLICT OF LAWS. By Edmond R. Anderson, Jr. Columbia, Missouri: Lucas Brothers Publishers, 1958. Pp. x, 584. \$8.50.

Here is another "new look" in conflicts casebooks.<sup>1</sup> The traditional method has been to treat various categories of substantive law—contracts, torts, divorce, marriage, jurisdiction, judgments and procedure as independent units for study. Professor Anderson departs from this traditional method and treats the categories from the standpoint of limitations on the sovereign's freedom of judicial decision and the freedom of the sovereign in deciding cases, thus using a more generic approach—which is perhaps more scientific.<sup>2</sup>

In general, the book seems to me to be an excellent teaching tool. It is neither too "skimpy" nor too bulky for the average three hour course allotted by stern curriculum committees. It contains most, if not all, the important new decisions in the field thus saving searching the digests and journals for "outside" cases. In Professor Anderson's own words: "This casebook was prepared to present the 'big' cases and modern cases in a changing field of law."

As noted above, the book is divided into two parts. Part I deals with the limitations on sovereign freedom to decide, and Part II deals with the freedom of the sovereign in deciding cases. In the first part

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1. The first apparent departure from the traditional format of casebooks on conflicts was Stimson, *Cases and Materials on Conflict of Laws* (Mimeographed) 1954. Dean Stimson presented a novel approach to the study. He develops general rules for solving generic problems rather than treating each of the substantive subdivisions of the law as an independent field—as has been traditional in others. See, e.g., Beale, Lorenzen, Cheatham, Goodrich, Griswold and Reese, and Harper, Taintor, Carnahan and Brown. For reviews of Dean Stimson's book, see Antieau, *Book Review*, 31 *Tul. L. Rev.* 383 (1957); Read, *Book Review*, 42 *Iowa L. Rev.* 333 (1957); Dean, *Book Review*, 5 *Kan. L. Rev.* 135 (1956). See also Dean Stimson's stinging reply to Dean—5 *Kan. L. Rev.* 486 (1957) in which he states, "Professor Dean's review neither describes my casebook accurately nor contributes toward a scientific jurisprudence." Let us hope that Professor Anderson will be more charitable to this reviewer.

2. As Stimson says: "Why should our rules for ascertaining the applicable law be different for each subdivision of the digest; for torts, contracts, workmen's compensation, and what have you? Are we not in each case trying to find out what *law* is applicable? May not the real problems with which a true science of the conflict of laws has to deal be generic, that is, may they not be the same regardless of the particular section of the digest or code under which the substantive law involved may be classified? Would it not be better if the books were divided into chapters each dealing with a fundamental problem of the conflict of laws instead of with a subdivision of the substantive law field?" Stimson, *Book Review*, 16 *Texas L. Rev.* 440 (1938).

such matters as the "Erie Rule" restricting the forum in its application of law; constitutional limitations imposed by the equal protection, due process and the full faith and credit clauses are adequately handled. It is difficult, however, to see how Chapter III of Part I—"Where Persons, Things, and Relationships of Other Sovereigns are Involved"—fits into the scheme of limitations imposed on the sovereign. Cases like *Nelson v. Miller*<sup>3</sup> and *McGee v. International Life Ins. Co.*<sup>4</sup> would seem to be a freedom from limitation in the forum. The answer would seem to lie in the fact that the two parts cannot be wholly separated, but rather, in some respects, overlap.

Be that as it may, it can readily be seen that the "big" cases are included.<sup>5</sup> However, the author might have inserted references to at least some of the discussions in this expanding and important field of acquiring jurisdiction *in personam*.<sup>6</sup> He might also have referred to *Pugh v. Oklahoma Farm Bureau Mut. Ins. Co.*,<sup>7</sup> recently decided, as an extension to the *McGee* case. All this is not to be taken as severe criticism; the cases selected by Professor Anderson guide the instructor and student to the core problems; further development can and should be made by individual instructors.

Chapter IV of Part I deals with special problems of divorce, custody

3. 11 Ill. 2d 378, 143 N.E.2d 673 (1957).

4. 355 U.S. 220 (1957).

5. The section dealing with jurisdiction seems to me to be one of the best found in any casebook. Other cases dealt with are: *Olberding v. Illinois Cent. R.R.*, 346 U.S. 338 (1953); *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306 (1950); *Smyth v. Twin State Improvement Corp.*, 116 Vt. 569, 80 A.2d 664 (1951). Much is going on in this area. See, e.g., O'Connor and Goff, Expanded Concepts of State Jurisdiction over Non-Residents: The Illinois Revised Practice Act, 31 Notre Dame Law. 223 (1956); Cleary and Seder, Extended Jurisdictional Bases for the Illinois Courts, 50 Nw. U.L. Rev. 599 (1955); Tone, Recent Developments in Illinois Civil Practice, 46 Ill. B.J. 687 (1958); Sobeloff, Jurisdiction of State Courts Over Nonresidents in Our Federal System, 43 Cornell L.Q. 196 (1957); Cardozo, The Reach of the Legislature and the Grasp of Jurisdiction, 43 Cornell L.Q. 210 (1957); Ehrenzweig, Pennoyer Is Dead—Long Live Pennoyer, 30 Rocky Mt. L. Rev. 285 (1958). Cf. *Erlanger Mills, Inc. v. Cohoes Fibre Mills, Inc.*, 239 F.2d 502 (4th Cir. 1956) (included in Professor Anderson's book at 274) with *Hellriegel v. Sears Roebuck & Co.*, 157 F. Supp. 718 (N.D. Ill. 1957). See also *Sunday v. Donovan*, 147 N.E.2d 401 (Ill. App. 1958).

6. See note 5 *supra*.

7. 159 F. Supp. 155 (E.D. La. 1958). This case was discussed in 26 U.S.L. Week 1121: "Not even *McGee v. International Life Ins. Co.*, . . . was the last word on suing foreign insurance companies. While in that case the company at least had a policyholder residing in the forum state, the Federal District Court for Eastern Louisiana ties personal jurisdiction to the mere happening of an insured accident, in the state where suit was brought. . . . This holding and the *McGee* case raise an intriguing question: How would *Pennoyer v. Neff*, 95 U.S. 714, be decided today? After all, the defendant over whom personal jurisdiction was denied in that case actually owned real estate in the forum state."

and support. The "big" cases are here also—from *Williams I* and *II*<sup>8</sup> through *Vanderbilt v. Vanderbilt*.<sup>9</sup> Perhaps more prominence could have been given to the *Estin* case,<sup>10</sup> but it is included in a comment.

Part II shows that the sovereign is free to apply certain conflict rules in areas dealing with torts, contracts and personal relationships presenting special problems. While the basic problems are indicated in both chapters on contracts and torts, it seems to this reviewer that these chapters could have been more desirable. One gets the definite impression that Part I is superior to Part II. There does not seem to be an adequate treatment in these areas of the difficult problems surrounding "substance-procedure." Two cases only stand out. *Lams v. F. H. Smith Co.*<sup>11</sup> and *O'Leary v. Illinois Terminal R.R.*<sup>12</sup> But the overall problems presented are not clearly defined or delineated. The problem of *forum non conveniens* and the change of venue in the federal courts<sup>13</sup> is touched upon in *Elliott v. Johnson*,<sup>14</sup> but the two principles are not included in one section.

The author refuses to enter the arena of theoretical controversies prevalent among scholars.<sup>15</sup> His approach is to present a factual analysis of the decisions as they are so that the student will understand the basic concepts needed in the practical field. It seems to me that he has done that admirably.

All in all, it is a refreshing book. The basic material—traditional and modern—is present. As a tool, to be reinforced with adequate discussion, it does its job more than satisfactorily. It should be highly recommended to all teachers of conflicts who desire to be "up-to-date."

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8. *Williams v. North Carolina*, 317 U.S. 287 (1942); *Williams v. North Carolina*, 325 U.S. 226 (1945) (*Williams II*).

9. *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957).

10. *Estin v. Estin*, 334 U.S. 541 (1948). See Note, *The Development of the Doctrine of Divisible Divorce*, 1956 Wash. U.L.Q. 224.

11. 36 Del. 477, 178 Atl. 651 (1935). (*Statute of Frauds*.)

12. 299 S.W.2d 873 (Mo. 1957). (*Contributory negligence v. freedom from fault*.)

13. 62 Stat. 937 (1948), 28 U.S.C. § 1404(a) (1952).

14. 365 Mo. 881, 292 S.W.2d 589 (1956). The author might have compared the *Elliott* case with *Loftus v. Lee*, 308 S.W.2d 654 (Mo. 1958), but perhaps it was decided too late to be inserted. Such is the trouble facing casebook authors—the courts won't stand still.

15. See, e.g., the colloquy between Dean Stimson and Professor Dean as to which school Stimson belongs. *Dean*, Book Review, 5 Kan. L. Rev. 135 (1956); *Stimson*, Review of a Book Review, 5 Kan. L. Rev. 486 (1957).

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