Send to: PUREVDORJ, MUNKHSELENGE
WAKE FOREST UNIVERSITY SCHOOL OF LAW
1834 WAKE FOREST DR
WINSTON SALEM, NC 27109-8758

Time of Request: Thursday, October 07, 2010 12:12:13 EST
Client ID/Project Name:
Number of Lines: 74
Job Number: 1841:246017806

Research Information

Service: Terms and Connectors Search
Print Request: Current Document: 1
Source: Restatement of the Law 2d, Conflict of Laws - Rule Sections
Search Terms: § 10 Interstate and International Conflict of Laws

1 of 1 DOCUMENT

Restatement of the Law, Second, Conflict of Laws

Case Citations

Chapter 1 - Introduction

Restat 2d of Conflict of Laws, § 10

§ 10 Interstate and International Conflict of Laws

The rules in the Restatement of this Subject apply to cases with elements in one or more States of the United States and are generally applicable to cases with elements in one or more foreign nations. There may, however, be factors in a particular international case which call for a result different from that which would be reached in an interstate case.

COMMENTS & ILLUSTRATIONS: Comment:

a. Derivation of the rules in this Restatement. The rules in the Restatement of this Subject are derived, unless otherwise indicated, from cases with elements in one or more sister States. These interstate cases provide most of the relevant authority.

b. Intranational legal units other than States. The rules in the Restatement of this Subject usually apply to other intranational Conflict of Laws cases in the United States, as a case whose elements are divided between the District of Columbia and a given State.

c. International conflicts. The rules in the Restatement of this Subject are also usually applicable to cases with elements in one or more foreign nations. This is properly so since similar values and considerations are involved in both interstate and international cases (see §§ 1 and 2).

d. Some differences in factors. There are significant differences between interstate and international cases. Some of these are: (1) The variety of political and social and legal institutions in the nations of the world. (2) Within the United States, there are safeguards under the Constitution of the United States, such as the due process clause of the Fourteenth Amendment, which give a large measure of legal assurance of fairness of official action within each State. The lack of such safeguards in an international conflicts case may call for closer scrutiny or different treatment. (3) Within the United States, there are authoritative constitutional rules, as stated in § 2, Comment *b*, which do not bind courts of other nations and which may not apply to an international conflicts case in the United States. A court in the United States, in any event, should be guided by the policies of fairness and equality embodied in these constitutional rules in deciding an international case to which these rules are not strictly applicable. (4) A legal relationship under the local law of a foreign nation, such as polygamy or a novel kind of security interest, may be unknown to the local law of the forum State. The choice-of-law rules of an American State should permit, by application of general principles and by analogy, just and predictable decisions in noval situations such as this.

REPORTERS NOTES: By and large, American courts and writers have not distinguished between international and interstate conflicts for choice-of-law purposes. Indeed some of the leading choice-of-law cases in this country involved international conflicts, and, so far as appears, this fact had no effect upon the ultimate decision. See, e. g., *Home Insurance Co. v. Dick, 281 U.S. 397 (1930); Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E. 2d 279 (1963); Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954); Hutchinson v. Ross, 262 N.Y. 381, 187 N.E. 65 (1933).* One writer has urged separate treatment of international and interstate conflicts. Ehrenzweig, Conflict of Laws, 16-21 (1962); Ehrenzweig, Interstate and International Conflicts Law: A Plea for Segregation, *41 Minn.L.Rev. 717 (1957).* See also Scoles, Interstate and International Distinctions in Conflict of Laws in the United States, *54 Calif.L.Rev. 1599 (1966).*

On occasion, however, the fact that a case involves an international conflict may lead a court to a different result. So an American court will probably require more evidence to establish the acquisition of a domicil of choice by a United States citizen in a foreign nation than in a sister State. Coudert, Law of Domicile, *36 Yale L.J. 949, 965 (1927).* Also an American court may on occasion be more reluctant to apply the local law of a foreign nation with standards and ideals different from ours than it would be to apply the local law of a sister State. See Cheatham, Book Review, *45 A.B.A.J. 1190 (1959);* Cheatham, Griswold, Reese and Rosenberg, Cases and Materials on Conflict of Laws 694-695 (5th ed. 1964); cf. Cook, The Logical and Legal Bases of the Conflict of Laws, *33 Yale L.J. 457, 487 (1924).* Likewise, proof of the law of a foreign nation may involve different procedures and problems than would proof of the law of a sister State. Cf. Nussbaum, Proof of Foreign Law in New York: A Proposed Amendment, *57 Colum.L.Rev. 348 (1957).*

Some questions can arise only in international conflicts, as questions involving the domicil of refugees, the conversion of one currency into another, exchange controls and the effect of the act of state doctrine. As to the latter doctrine, see Restatement of the Foreign Relations Law of the United States, §§ 41-43.

Judgments present different problems. Sister State judgments are entitled to full faith and credit throughout this country. This is not true of judgments rendered in foreign nations. As a result, cases may be expected to arise where effect will be denied a foreign nation judgment rendered in circumstances in which a sister State judgment would be entitled to full faith and credit (see § 98).

CROSS REFERENCES: ALR Annotations:

Acquisition of domicil in countries (such as China, Turkey, and Egypt) granting extraterritorial privileges to foreigners. *39 A.L.R. 1155.*

Digest System Key Numbers:

Action 17
International Law 10.8-10.25