

INTRODUCTION TO CONFLICT OF LAWS

By J. G. Castel

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Professor Castel's latest contribution to Canadian conflicts literature must be read and judged on its own terms. It is not intended to be a leading academic textbook. Nor is it intended to be the practitioner's salvation when preparing a case with a foreign element. As the Preface indicates, this is a short summary of the basic conflicts rules. For a more extensive treatment, reference should be made to the handbook's predecessor,¹ or to other leading textbooks on private international law.²

This is not to say that the *Introduction* is of limited practical importance. An excellent overview of the issues and their treatments, especially from the Canadian perspective, is furnished to the reader. In making the fundamentals easily accessible, Castel equips the novice, be it student or practitioner, with the tools necessary for a proper understanding of the relevant case law. The handbook may also serve as a quick refresher for the "once-knowledgeable" practitioner.

Given its brevity, it may be thought that the book is restricted to "black-letter law." However, several chapters, including the Contracts and Torts chapters, see Castel outlining the historical development of Canada's choice of law rules. He further undertakes to compare our approach with that of the United States and England, suggesting possible reform of Canadian law where appropriate.

The handbook contains other features of note. In the chapter on Renvoi, the author includes diagrams and a problem to aid understanding of this difficult and slippery topic. A handy little glossary of Latin terms, which frequently appear in conflicts cases, is also made available.

A few chapters embark on a comparative analysis of case law; especially where recent judicial inroads have been made. For example, the discussion of the recognition of foreign divorce and nullity decrees examines the judicial evolution of the "real and substantial connection" test of jurisdiction. Subsequently, the Torts chapter examines the case law which has spawned the "double-actionability" jurisdictional rule.

1. J. Castel, *Canadian Conflict of Laws* (1977).

2. See e.g., *Cheshire's Private International Law* (9th ed. P. North 1974); *Dacey and Morris on the Conflict of Laws* (9th ed. J. Morris 1973); R. Graveson, *Conflict of Laws: Private International Law*. (7th ed. 1974).

Although case summaries are virtually excluded, Castel has formulated his own examples, usually in a Canadian setting. Awareness that each province is a foreign country *vis à vis* all the other provinces, emphasizes the special importance of a study of the choice of law rules in a federal country.

The author also refers to the major legislative provisions which have a bearing on conflicts issues in Canada. *The Divorce Act*,³ *The Family Law Reform Act*⁴ of Ontario, and the *Reciprocal Enforcement of Judgments Act*⁵ are among those discussed. Although the emphasis is on Ontario statute law, reference is made to the legislation of other provinces where significant differences exist.

Castel must be commended for impressing upon the reader the predominant role of public policy, particularly as embodied in the law of the forum, in all aspects of a conflicts case. The student becomes aware that conflicts rules are often merely a means to an end, a judicial technique used to attain the desired objective after weighing all policy considerations: "the choice. . . may turn upon the court's desire to achieve justice in the particular case or preference for one rule of law over another."⁶

The reader is also made aware that choice of law rules must not be rigidly applied where such would contravene long cherished doctrines in a given field of law. For example, a conflicts rule should be ignored where its application would compromise the notion of freedom of contract; or may result in a decision which would not be in the "best interests of the child;" or would be contrary to constitutional principles. Such reasoning is merely an extension of the pervasiveness of public policy.

The only major criticism of the *Introduction* is the relatively meagre use of authority to support the great number of propositions asserted. While footnotes have been used for many statements, the majority go unsupported. Since the book is not intended to be an independent source, the reader should have been provided with the appropriate citations to enable further research. In its present form, the book makes such follow-up somewhat difficult.

The deficiencies are minor. Castel's *Introduction to Conflict of Laws* covers all of the major aspects of the this branch of the law. The basic rules have been "Canadianized" and updated in an interesting and easy-to-read summary. Its use will enable the student to grasp the nature and scope of conflicts and to appreciate the importance of its study. All newcomers to the study of conflicts are urged to spend a couple of worthwhile hours reading this handbook.

3. R.S.C. 1970, c. D-8.

4. S.O. 1978, c. 2.

5. R.S.A. 1970, c. 312.

6. *Supra* n. 1, at 13.