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## Comments on the Conflict of Laws: By Way of Introduction

Max Rheinstein

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## Comments on the Conflict of Laws

### STUDENT SYMPOSIUM

#### *By Way of Introduction*

During the autumn quarter of 1949, I had the honor and pleasure of being a visiting professor at the Louisiana State University Law School. The three months I could spend there will be cherished in my memory.

When, shortly after the beginning of the course on Conflict of Laws, I announced to the students that they were expected to write at least two term papers, the apprehensions with which they had expected the visiting stranger seemed to be justified. I hope

that in the course of the association, which turned out to be so pleasant for me, the students too came to realize that the visiting professor was, after all, human and, perhaps, as understanding of their problems as their own properly beloved professors. But in these early days of our acquaintance they were, understandably, not too well pleased with the prospect of having to spend long hours of valuable time on term papers. The quality of most of the papers turned in gives me reason to believe that the students may have come to see that the time spent on these papers was not wasted. But, to combine such term papers with law review work was just too much. So, the law review students hit upon an idea: could the visiting professor perhaps be persuaded to accept law review work in lieu of the term papers? The plan seemed at least worthwhile trying. Representatives of the law review somewhat hesitatingly approached the visitor with the proposal of a students' symposium on conflict of laws with the idea that the law review students' contributions be accepted as term papers. Sensing possibilities of a real contribution to legal learning and development, the visiting professor assented to the proposal. The articles following constitute the result and it must be left to the readers of the Louisiana Law Review to judge whether the visiting professor is right in his satisfaction at having consented to the students' project.

Of course, readers will realize that the articles are the work not of specialist scholars of long standing and experience but of law students. The assignment of the various themes was meant primarily to be a device of pedagogy. Obviously, this aspect would not have justified the publication of the articles. Yet, the students' work has been not only conscientious but also productive. Thus, readers of the Louisiana Law Review will find in the following articles reliable information on the state of Louisiana jurisprudence on a number of important and intricate problems of the conflict of laws. The presentation of the Louisiana jurisprudence takes place within a framework of discussion based upon nationwide surveys of authorities and in a spirit of responsible criticism and creative investigation. This investigation is carried on in a method which may appear unorthodox to many a reader. There is nothing said about enforcement of vested rights, jurisdiction to create rights, extraterritorial effect of laws, or similar seemingly clear but empty concepts. Instead the student authors' discussions are moving on a plane of realistic discovery, appreciation and adjustment of conflicting interests of private parties harboring certain expectations, or of states anxious to enforce certain governmental policies. For the inculcation of this

attitude, the visiting professor gladly assumes responsibility. The application of the method to specific problems has been the students' task and responsibility. I have, of course, attempted to do my best in being available with advice and suggestions, and I have to confess that in quite a few places I have attempted to help student writers in their mode of arrangement or presentation. But, senior students of the Louisiana State University Law School all seem to possess one of the lawyer's most precious qualities, namely, independence of mind. They can be convinced, at least most of the time, but they cannot be persuaded. Thus, for his final product each of the student authors has to assume individual responsibility as he is entitled to individual credit. But it was the visiting professor's privilege to work with the law review students and to profit from their research and their ideas. He believes that similar profits can be obtained from the students' endeavors by the readers of the Louisiana Law Review.

Baton Rouge, La.

December, 1949.

MAX RHEINSTEIN\*

#### CHOICE OF LAW UNDER THE UNIFORM COMMERCIAL CODE

The American Law Institute and the National Conference of Commissioners on Uniform State Laws have recently published a proposed draft of a Uniform Commercial Code.<sup>1</sup> If the expectations of the draftsmen are realized, this code will answer the great demand of modern business for uniformity and certainty in commercial law. But, however meritorious the code may be as substantive law, maximum national *uniformity* can only be achieved by the adoption of the code in the forty-eight states and the District of Columbia. The possibility that such unanimous reception will not take place has been anticipated by the drafters. For the first time in the history of the Uniform Laws, provision has been made for that perennial problem, the conflict of laws. Section 1-105 of the Uniform Commercial Code provides:<sup>2</sup>

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1. May 1949 draft.

2. The following is a copy of the October 1949 revision of this section. Substantial changes were made between this and the proposal embodied in the May 1949 draft.