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## Louisiana Conflicts Jurisprudence, A Student Symposium: Introduction

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*Editor's Note:*

The preceding article by Professor Symeon Symeonides and the following student symposium refer to Louisiana Civil Code article 10 as the keystone of Louisiana's conflicts law. The 1987 session of the Louisiana legislature, by virtue of Act No. 124, voted to redesignate article 10 as article 15, effective January 1, 1988. There will be no changes in the substance of the article.

## **LOUISIANA CONFLICTS JURISPRUDENCE, A STUDENT SYMPOSIUM: INTRODUCTION**

*Symeon C. Symeonides*

This student symposium engages in a review of recent Louisiana conflicts jurisprudence in four major areas: torts, contracts, insurance, and liberative prescription. The symposium also attempts brief comparisons with jurisprudential developments in the rest of the country. One of the authors' apparent conclusions is that we are no better off than the other sister states; that is, we are experiencing the same degree of uncertainty or confusion that has characterized American conflicts law for the last thirty years.

This uncertainty alone is a good enough reason for undertaking a symposium such as this. Another reason is the relative dearth of recent law review writings on Louisiana conflicts law.<sup>1</sup> Indeed, conflicts law remains one of the most neglected subjects in Louisiana legal literature. Busy practicing attorneys have no particular incentive to delve into a subject that, for all its inherent complexity, promises little in the way of immediate rewards; law teachers find more challenge in the national rather than the local conflicts scene; and student authors prefer to prove their writing skills in subjects they learn before rather than during their senior year. This symposium attempts to fill this gap, if only in part. It may be worth mentioning that all the authors finished their contributions several months after graduation from law school. If for nothing else, they should be commended for finding the time—amidst their preparation for the bar exam, the trouble of relocating to other cities,

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1. In the last ten years, only two contributions devoted to Louisiana conflicts law have appeared in the four Louisiana law reviews. See L'Enfant, *The Work of the Louisiana Appellate Courts for the 1975-1976 Term—Conflict of Laws*, 37 La. L. Rev. 444 (1977); Comment, *Conflicts of Law and Successions: Comprehensive Interest Analysis as a Viable Alternative to the Traditional Approach*, 59 Tul. L. Rev. 389 (1984). Rabalais, *Fifth Circuit Symposium: Conflict of Laws*, 23 Loy. L. Rev. 775 (1977) is a review of federal cases.

and the pressures of starting a new career—to fulfill their obligation to this Review.

The task of presenting Louisiana conflicts jurisprudence in a systematic and meaningful fashion is as difficult as it is useful. The cases are few and far between. Only rarely does a judge get to write more than one opinion on a conflicts subject. Consequently, judges have little opportunity and little incentive to develop a consistent pattern of analysis for conflicts problems. On the other hand, if only because they have the luxury of choosing their own subject, academic authors are usually in a better position to see beyond the isolated case, to see the forest rather than the trees. To the extent they have been able to do so, the authors of this symposium have rendered a true service to the overworked bench and the busy bar.

This symposium is a fitting way for Louisiana conflicts students to pay tribute to one of the giants of the Louisiana bench, the great Judge Albert Tate, Jr. Although he did not consider conflicts to be one of his main fields of interest, Judge Tate did more than most judges in recent Louisiana history to set Louisiana conflicts law on the path of modernization. While still a member of the Third Circuit Court of Appeals, he wrote opinions which deserve to be included in any national conflicts casebook as models of perceptive and incisive analysis of contemporary conflicts problems.<sup>2</sup> Despite repeated reversals by the Louisiana Supreme Court, he continued to explore with his discerning eye and his masterful pen the then unstable terrain of the American conflicts revolution of the early 1960's.<sup>3</sup> His intellectual independence and well justified self-sufficiency protected him from uncritically accepting any one of the then fashionable theories. Tate was mindful of Louisiana's peculiarities and respected its legislated choice-of-law rules. Unlike others, he did not ignore these rules but tried to instill new life into them by re-interpreting them in an enlightened way that reconciled them with modern conflicts learning.<sup>4</sup> This was, to be sure, the all-too-familiar

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2. See, e.g., *Universal C.I.T Credit Corp. v. Hulett*, 151 So. 2d 705 (La. App. 3d Cir. 1963) discussed *infra*; *Blanchard v. Blanchard*, 180 So. 2d 564 (La. App. 3d Cir. 1965) (concurring opinion); *Doty v. Central Mutual Ins. Co.*, 186 So. 2d 328 (La. App. 3d Cir.) (concurring opinion), cert. denied, 249 La. 486, 187 So. 2d 451 (1966).

3. For a synoptic *ex post facto* view of this revolution see Korn, *The Choice-of-Law Revolution: A Critique*, 83 *Colum. L. Rev.* 772 (1983). For Tate's views on the revolution, see his contemporaneous approving review of the writings of one of the revolution's chief protagonists, Professor Brainerd Currie, in Tate, *Book Review*, 39 *Tul. L. Rev.* 163 (1964).

4. See especially his opinions in *Hulett*, 151 So. 2d 705, discussed in *Conflict of Laws—Contracts: Louisiana Conflicts Jurisprudence, A Student Symposium*, *infra* this issue at 1181, 1197, and in *Bell v. State Farm Mut. Auto. Ins. Co.*, 680 F.2d 435 (5th Cir. 1982), discussed in *Conflict of Laws: Insurance: Louisiana Conflicts Jurisprudence*,

Tate technique of pouring new wine into old bottles.<sup>5</sup> But it was also the only way for these archaic provisions of the Louisiana Civil Code to sustain the pressures of modern multistate activity.

When Judge Tate joined the Louisiana Supreme Court, his power of persuasion proved instrumental in forging a new majority in favor of abandoning the old and mechanical rule of *lex loci delicti* in tort cases.<sup>6</sup> His contributions to conflicts law continued when he joined the United States Court of Appeals for the Fifth Circuit, except that now he was making waves on the national conflicts scene.<sup>7</sup> When one of his decisions proved to be more controversial than even he had anticipated, he responded to his critics in his inimitable way through a law review article which he titled, "*Fisher v. Agios Nicolaos V* and Choice of Law: What Was All the Fuss About? And What the Fuss Should Have Been About (Maybe)."<sup>8</sup> The title of that article is just a small sample of Judge Tate's wonderful, self-deprecating humor. The content of that

A Student Symposium, *infra* this issue at 1213, 1219. See particularly the following excerpt from *Bell*, Louisiana Civil Code Article 10 provides that

the effect of acts passed in one country to have the effect in another country, is regulated by the laws of the country where such acts are to have effect." In the case of an insurance policy issued in one state on an automobile that within reasonable intention will be operated in interstate travel, the law of the forum state in which an accident occurs may be deemed to be the place in which the policy was intended to have effect and to have the most significant relationship in determining the application of a standard automobile liability policy . . . particularly where the vehicle is principally located in such other state.

680 F.2d at 436-37. Thus, in a single sentence, Tate was liberating Civil Code article 10 from the rigid territorialist premises of its drafters and was introducing to Louisiana the flexibility that became the trademark of modern American conflicts law. He was also demonstrating that, in the hands of sophisticated judges, legislative choice-of-law rules need not be an obstacle to progress.

5. For Tate's mastery in pouring new wine into old bottles, see, *inter alia*, his famous opinions in *Holland v. Buckley*, 305 So. 2d 113 (La. 1974) and *Loescher v. Parr*, 324 So. 2d 441 (La. 1975). One of the earliest, less known "vignettes from the Tate legend" is *Sanders v. Hisaw*, 94 So. 2d 486 (La. App. 1st Cir. 1957), discussed in *Yiannopoulos, Civil Law in Judge Tate's Court: Three Decades of Challenge*, 61 Tul. L. Rev. 743 (1987).

6. See *Jagers v. Royal Indemnity Co.*, 276 So. 2d 309 (La. 1973) discussed in *Couch, Louisiana Adopts Interest Analysis: Applause and Some Observations*, 49 Tul. L. Rev. 1 (1974); *Choice of Law in Louisiana: Torts: Louisiana Conflicts Jurisprudence*, A Student Symposium, *infra* this issue at 1109, 1111. See also his concurring opinions in *Deane v. McGee*, 261 La. 686, 260 So. 2d 669 (1972) and *Esteve v. Allstate Ins. Co.*, 351 So. 2d 117 (1977).

7. See especially *Fisher v. Agios Nicolaos V*, 628 F.2d 308 (1980), *reh'g denied*, 636 F.2d 1107 (5th Cir. 1981), *cert. denied*, *sub nom. Valmas Bros. Shipping, S.A. v. Fisher*, 454 U.S. 816, *reh'g denied*, 454 U.S. 1129 (1981).

8. 7 Mar. Lawyer 199 (1982).

article, like his many judicial opinions on conflicts law, is a true gem of wisdom. He will be sorely missed for both.

Finally, this symposium comes at an opportune time, that is, at a time that the Louisiana State Law Institute is engaged in a comprehensive legislative reform of Louisiana conflicts law.<sup>9</sup> This may mean that the "law" as presented in this symposium may soon become the "old law." But "old" is by no means "useless." Quite the contrary, as students of Napoleon's codification are acutely aware, the old law remains highly relevant, even when the new law purports to break completely from the past and to begin with a *tabula rasa*.

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9. See, Symeonides, Exploring the "Dismal Swamp": The Revision of Louisiana's Conflicts Law on Successions, *supra* this issue at 1029.