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## Book Review: Private International Law: General Part, by Albert A. Ehrenzweig; Dicey and Morris on The Conflict of Laws, Eighth Edition, edited by J. H. C. Morris

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*Private International Law: General Part.* By ALBERT A. EHRENZWEIG. Leyden: A. W. Sijthoff. Dobbs Ferry, N.Y.: Oceana Publications. 1967. Pp. 293. (\$10.50 U.S.)

*Dicey and Morris on The Conflict of Laws.* Eighth Edition. Under the General Editorship of J. H. C. MORRIS, with specialist editors. London: Stevens and Sons Limited. Toronto: The Carswell Company Limited. 1967. Pp. cxxv, 1289. (\$29.30)

*Private International Law*, a comparative treatise on American international conflicts law including the law of admiralty is another major book written by Professor Ehrenzweig, one of the most prominent and learned writers in this field of the law. For the first time an attempt has been made to deal with United States international conflicts law as distinguished from interstate conflicts law pursuant to the author's thesis that:

"Through at least a century American conflicts law has been decisively affected by the demands peculiar to the quickly tightening relations between the states of the Union. But American doctrine has failed to take account of the cleavage thus caused between the resulting body of interstate rules and remaining tradition of international conflicts law."<sup>1</sup>

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<sup>1</sup>Preface, p. 7.

As Professor Ehrenzweig indicates on the cover, this work is designed "on the one hand, to familiarize American courts, lawyers, and scholars with the results achieved by five hundred years of continental doctrine, and, on the other hand, to make accessible to readers in the commonwealth and the civil law orbits of East and West the unique laboratory of American experience and experiments".

There is a unique affinity between the world's legal systems in the field of conflict of laws which cannot be ignored.

Actually, the book is primarily concerned with an analysis and criticism of the various doctrines that have been advanced throughout the centuries to explain why in cases involving a foreign element the courts will, when appropriate, apply a law other than their own to settle the issues presented to them. It also contains an exposé of Professor Ehrenzweig's views on the subject. When reading this book, one cannot help but think of Professor Battifol's *Aspects philosophiques du droit international privé*, another excellent work of the same nature written in 1956 by an equally competent scholar. Although Professor Ehrenzweig states that "This book will, I hope, be of some help to American courts and lawyers who, when faced with an international conflicts case, now must wade through texts and digests that call for the treatment of such cases in the context of interstate law",<sup>2</sup> it is probable that very few practising lawyers in the United States and Canada will find it of direct use in their daily practice unless they are especially interested in the law of admiralty. Inclusion of admiralty was intended by the author to fill a gap in the literature of both admiralty and conflicts law as court practice in admiralty, being increasingly concerned with conflicts problems, "is likely to strengthen the development of an independent international conflicts law in [the United States of America]".<sup>3</sup> This topic also enables him to find further support for his *lex fori* approach.

A reader not thoroughly familiar with conflicts terminology, current doctrines and American practice—and the French, German and Italian languages (as well as Latin), will find it extremely difficult to read and fully understand what Professor Ehrenzweig has to say. He will be ill at ease with words such as "neo-fundamentalism",<sup>4</sup> "new nationalist fundamentalism",<sup>5</sup> "latter-day statist aperçus",<sup>6</sup> "realist revolution",<sup>7</sup> or foreign sentences or words such as "volkerrechtlichen Grundsätzen",<sup>8</sup> "freundliche Zulassung",<sup>9</sup> "pseudo-soggetto",<sup>10</sup> or "respect de la souveraineté la plus intéressée",<sup>11</sup> "si licet parvos componere magnis"<sup>12</sup> which are not translated by the author.

<sup>2</sup> *Ibid.*, p. 9.<sup>3</sup> Pp. 23-24.<sup>4</sup> P. 50.<sup>5</sup> P. 51.<sup>6</sup> P. 55.<sup>7</sup> P. 60.<sup>8</sup> P. 54.<sup>9</sup> P. 57.<sup>10</sup> P. 113.<sup>11</sup> *Ibid.*<sup>12</sup> P. 65.

In other words this book is not recommended reading for the non-initiated, as it assumes too much knowledge on the part of ordinary readers and is too condensed in its form. It is first of all a scholar's book.

For those who have penetrated the inner sanctum of conflicts law the rewards to be derived from a careful reading of the book are great as we find here the quintessence of many years of serious thinking by a man with an excellent background both in European and American law. Of course one must not expect him always to be objective; his analysis of the historical and doctrinal development of conflicts law is somewhat biased as he is a man with a mission: "To offer new solutions . . . in order to enable judge, lawyer and scholar to predict and analyze judicial decisions"<sup>13</sup> and in the field of admiralty to "help the courts in resisting the onslaught of that new fundamentalism which, with its language of 'governmental interests' and 'significant' contacts is now threatening the ramparts of maritime jurisdiction".<sup>14</sup>

Throughout the book, he never misses an opportunity to criticize in very strong terms the original *Restatement of the Law of Conflict of Laws* as well as the *Restatement Second*.<sup>15</sup> He fights against fundamentalism in all its forms whether it be that of the *Restatements*<sup>16</sup> or that of Professor Currie.<sup>17</sup>

The present General Part will be followed by a Special Part to be devoted to choice of law as well as the law of international jurisdiction and procedure.

An extensive bibliography to be found at the end of the book adds to its value.

In the first chapter the author describes the scope and method of the book.

From the point of view of methodology, Professor Ehrenzweig is of the opinion that to consider interterritorial choice of law as a "legal subject", as a branch of law with its own principles has caused much difficulty. "In the absence of both formulated and nonformulated rules, *each* rule of our municipal law should be examined in its conflicts aspects."<sup>18</sup>

He also believes that one must distinguish between two broad areas that require distinct treatment by scholar, judge and student. "One area is primarily that of personal and proprietary relations. Here need for certainty and the results of frequent testing have produced many formulated rules of choice of law. . . . Concerning these rules academic speculation is limited to the *lex ferenda*. Discussion *de lege lata* as to the 'theory' or 'objects' and 'structure' will prove as remote and fruitless as in any other settled field of

<sup>13</sup> P. 26.

<sup>14</sup> P. 228.

<sup>15</sup> *E.g.* p. 26.

<sup>16</sup> Pp. 66 *et seq.*, 116, 142.

<sup>17</sup> See p. 62 *et seq.*

<sup>18</sup> P. 24.

the law. The other area includes particularly the law of contractual and delictual obligations. Here formulated rules are scarce. . . . Here indeed, there is much room and need for re-examination of inveterate doctrine in the light of new insights and experience, and thus for new 'theory', not only in proposals *de lege ferenda*, but also in the understanding *de lege lata* of yet nonformulated rules."<sup>19</sup> And he adds:

"In ascertaining and stating these rules in a manner acceptable to both common law lawyers and civilians, the greatest difficulty is one that pervades all comparative endeavors, but is particularly crucial in conflicts law with its virtual absence of legislation. Here the varying priorities of judicial and scholarly doctrine become all-important. In this book a compromise will be sought between the techniques and ideologies prevailing in the two legal orbits: In view of the superior practical experience of American case law and the superior theoretical acumen of continental doctrine, fact situations adjudicated in the United States will be examined in the light of both American judicial language and continental conceptions, in both the General and the Special Part."<sup>20</sup>

Chapter two deals with the sources of international conflicts in the United States of America.

The most important chapter of the book is no doubt chapter three entitled "Theory". It is also the most difficult to read due to its abstract and condensed style. The part dealing with current doctrine should be of particular interest to the reader as it is there that Professor Ehrenzweig analyses and criticises the late Professor Currie's government interests theory to the effect that a court should apply its own law whenever the forum government can claim a legitimate governmental interest that is "a reasonable basis for the application of [its] law in order to effectuate the specific policies that it embodies".<sup>21</sup> "A competing foreign governmental interest is to be disregarded, since only the legislator is capable of properly weighing and deciding conflicting interests."<sup>22</sup> "A disinterested forum is to apply the law of that state which has a reasonable interest. If more than one state can claim such an interest, the disinterested court may either apply its own law or that foreign law which it considers superior."<sup>23</sup> Professor Ehrenzweig points out and I believe rightly so that: "Currie's theory

<sup>19</sup> P. 25.

<sup>20</sup> *Ibid.*

<sup>21</sup> Currie and Schreter, *Unconstitutional Discrimination in the Conflict of Laws: Privileges and Immunities* (1960), 69 *Yale L.J.* 1323, at p. 1361.

<sup>22</sup> Currie, *Selected Essays in the Conflict of Laws* (1963), pp. 357-358.

<sup>23</sup> Currie, *The Disinterested Third State* (1963), 28 *Law & Contemp. Prob.* 754, at pp. 778, 788-789.

remains vulnerable on several grounds. At least in terms, it ignores the all-important fact that 'governments' are, outside the law of admiralty, 'interested' in the solution of conflicts problems only in such exceptional cases as tax or currency matters. Secondly, Currie's distinction between the governmental interests existing in the 'effectuation' of policies, and these policies themselves, is quite obscure. And the selection of foreign interests, even if relevant, even if identified with policies, and even if based on forum policy, would face courts with an impossible task. To determine policy 'even in connection with one's own legal system . . . is often very difficult to do; how much the more so with respect to foreign law'. Moreover, any choice-of-law rule based on the 'legitimacy' or 'reasonableness' of interests is as wrong or circular as any theory based on legislative jurisdiction, vested rights, or the 'significance' of contacts. Such a rule is wrong if legitimacy and reasonableness, like 'vesting', 'jurisdiction' and 'significance', are deduced from a nonexisting superlaw. And such a rule is circular in so far as it must, in recognition of the nonexistence of such a superlaw, be based on rules of choice, a need for which it is designed to avoid. The same circularity, as we shall see, affects Currie's non-choice disposition of 'false problems'.

Most important for present purposes: Currie's theory was not devised for international conflicts cases. Its very ancestor, the 'governmental interests' language of the United State Supreme Court, was merely used in interstate cases to deny a constitutional compulsion to apply the *lex contractus* or *delicti* of a sister state. Never was a 'governmental interest' held or said to be capable of constitutionally compelling or excluding application of any law, let alone an extranational law. Decisive, however, in this respect is the fact that Currie's theory stands and falls with the availability of a legislative body able and willing to find, if not to resolve, the conflict. Only because Currie feels that Congress could and should declare its preference for one state's interest over that of another, does he call for the application of the forum's law in the absence of such a declaration. Since no legislative body is available on the international scene outside the treaty area, courts of all countries must look, and have in fact looked, for solutions other than one that calls for the application of the *lex fori* whenever the forum has an 'interest' in such application.

As we shall see, all courts and writers who have adopted Currie's language, have therefore rejected his basic message. They have insisted on weighing competing interests and given effect to what they have held to be the prevailing one. And since such holdings are always based on the forum's own policies, courts have in effect abandoned the concept of an 'interest' distinguishable

from that of policy. With this transformation, Currie had lost not merely a battle, but his war."<sup>24</sup>

"In its final form, Currie's theory permits and expects courts to apply foreign laws even in the presence of a legitimate forum interest. They must do so, we now learn, if that interest can be construed in 'restraint and moderation', as a long-range 'enlightened self-interest', 'altruistically' inducing regard for another state's competing interests. Not only did Currie with these formulas return to statist tradition with its 'side-glance' at the foreign law's intent, but, contrary to his earlier crucial distrust of judicial discretion, he now entrusted the courts 'with an exacting task for which instructions have not been furnished'. He thus destroyed that one value of his analysis, that of relative certainty, in favor of an uncharted regime of those very rules of choice whose abolition he had demanded. The best that can be said, I fear, for a governmental-interest terminology, is that 'it does not harm to say that . . . policy analysis is a continuing search for governmental interests, provided we recognize that what we ought to do in any event is to analyse the problem in terms of all the relevant choice-of-law considerations, of which the interest behind the forum's internal rule is only one'."<sup>25</sup>

The *Restatement's Second* "most significant relationship and legislative jurisdiction" does not escape Professor Ehrenzweig's acerb but nevertheless constructive criticism:

"At first glance, the *Second Restatement* appears to join the revolution. For its predecessor's right formulas, the *leges contractus*, *delicti*, and *domicilii*, it has substituted a near-general reference to the law of the 'most significant relationship', based on 'contacts' and 'interests', not only in the ever changing laws of contracts and torts, but even in such a stable field as that of the law of trusts. But such tests are mere 'catch-words representing at best not methods or bases of decision but considerations to be employed in setting up new rules or laws required by changing times. Counting up "contacts" or locating the "centre of gravity" or weighing the respective "interests" of two states can never be a satisfactory way of deciding actual lawsuits. . . . The Institute's new formula thus entails serious danger for the administration of justice, since it is all-too-easily used by busy courts which, were it not for that formula, would articulate the policy grounds of their decisions for the guidance of other courts and parties."<sup>26</sup>

The last part of this chapter contains an exposition of Professor Ehrenzweig's theory, the so called "*lex fori* approach".<sup>27</sup> After stating that conflicts rules refer or should refer to individual

<sup>24</sup> Pp. 63-64.

<sup>25</sup> P. 65.

<sup>26</sup> P. 67.

<sup>27</sup> P. 90 *et seq.*

foreign rules rather than foreign legal systems or "jurisdictions"<sup>28</sup> he points out that:

"Unless application of a foreign rule is required by a settled (formulated or nonformulated) rule of choice, all choice of law should be based on a conscious interpretation *de lege lata* of that 'domestic rule' which either party seeks to displace. If that interpretation does not lead either to the dismissal of the suit or to the application of a foreign rule, the forum rule, in a proper forum applies as the 'basic', or as I now prefer to call it, the 'residuary' rule, as a matter of 'nonchoice'. In this sense, any rule applied as a matter of choice or nonchoice is a 'règle d'application immédiate', 'räumlich bedingte Sachnorm', 'direct rule', and thus tied to municipal institutions 'comme l'ombre ou corps parce qu'elles ne sont pas autre chose que le projection de ces institutions elles-mêmes sur le plan du droit international'. In this sense, then, there is no conflicts law because there can never be a conflict, true or false, between the rule of a forum and any other rule invoked by it. As Dicey has it: 'The only "conflict" possible is . . . that in the mind of the judge who has to decide which system of law to apply to the facts before him'.<sup>29</sup> "Assume that, in the absence of both formulated and nonformulated (true) conflicts rules, interpretation of the domestic rule and its policy has neither referred us to that rule as applicable to foreign facts nor to a foreign rule, and that this interpretation does not require the court to dismiss the case. On this (unrealistic) assumption, the court will apply its own rule as the residuary rule",<sup>30</sup> or as the author calls it "a trend to stay at home", and he adds "the recognition here proposed of the domestic rule as that both basic for the application of foreign rules and residuary in case of their nonapplication, would compel and permit articulation of those forum policies which call for the application of a foreign rule and would thus avoid overgeneralization of both rules and exceptions".<sup>31</sup>

As for the foreign rule, in the absence of a settled formulated or nonformulated rule of choice, it is applied by virtue of an interpretation of the domestic rule in the light of its policy.<sup>32</sup>

Chapter four is devoted to an analysis of the structure of conflicts rules. The author when discussing characterization points out that, "The controversy between the adherents of the *lex fori* and the *lex causae* disappears if we realize that characterization, unless contained in a formulated rule, is just another phase in that process of interpretation which is common to all legal reasoning. For, all interpretation, unless regulated by rules of construction, be it of instruments or of laws, is always that of the interpreter, the

<sup>28</sup> P. 75.

<sup>29</sup> P. 93.

<sup>30</sup> P. 103.

<sup>31</sup> P. 105.

<sup>32</sup> P. 99.

forum. It should, therefore, not have been necessary for modern legislation expressly to subject characterization to the *lex fori*".<sup>33</sup>

He recognizes that, although characterization under the *lex causae*, be it primary or secondary, must be rejected, it may be necessary to adjust characterization under the *lex fori* to different concepts of the *lex causae* by what he calls recharacterization.<sup>34</sup>

Renvoi, although perhaps the most fertile and futile source of learned discussion in conflict of laws, has hardly produced a proportionate interest in judicial practice in the United States or Canada<sup>35</sup> and should be rejected. The solutions arrived at by resort to this doctrine can be reached by other methods such as common sense interpretation of the forum policies involved in the particular situation.<sup>36</sup>

After reviewing all the arguments pro and con the renvoi, Professor Ehrenzweig comes to the conclusion that renvoi statutes and conventions can be successful only if limited to such narrow fact situations as the nationality-domicile conflict.<sup>37</sup>

The author acknowledges that reliance on public policy for application of the *lex fori* has always been the last resort of any court faced with an overgeneralized rule of choice of law.<sup>38</sup> However he points out that in the absence of rigid conflicts rules it is unnecessary to resort to public policy in order to achieve justice in cases involving foreign elements. This explains why in Canada, England and in the United States of America as opposed to countries where conflicts rules are codified, very few cases have been decided on the basis of public policy.

Actually, the present structure of choice of law "is largely the result of an overgeneralization of formulated conflicts rules, following the replacement of the statist choice of rules by universalist schemes of chosen 'laws', based on partly publicist, party conceptualist theories. With the progressive reduction of this overgeneralization and return to a choice of rules, resort to the several phases of the structure becomes ordinarily dispensable".<sup>39</sup>

Chapter five devoted to the "Application of the foreign rule" contains valuable suggestions based on comparative law. The author examines in turn situations involving, a failure to *plead* a foreign rule as applicable, and a failure to *prove* the applicable foreign rule.

Whenever the *lex fori* is applied, it is not through a presumption of identity but by virtue of a residuary rule.

In the process of ascertainment of the foreign law, Professor Ehrenzweig, after examining the defects of the present system, comes to the conclusion that "perhaps court-appointed advisors

<sup>33</sup> P. 115.<sup>34</sup> P. 118.<sup>35</sup> P. 141.<sup>36</sup> See p. 143.<sup>37</sup> Pp. 152-153.<sup>38</sup> P. 153.<sup>39</sup> P. 177.

who would be subject to both parties' and the judge's questioning and whose fees would be collected from the losing party, might come closest to a satisfactory solution".<sup>40</sup>

The last chapter is entitled "Choice of Law in Admiralty: Epitome of Conflicts Law".

The author is of the opinion that general conflicts doctrine may draw a needed lesson from admiralty law "whose development has been compressed in a short century, unburdened by ancient doctrine and assisted by common-sense considerations freely expressed".<sup>41</sup> Thus ". . . we shall see that the initial and primary role of the law of the forum, which is so controversial for conflicts law in general appears overtly in the past and current practice of admiralty. This fact has so far protected admiralty from that disorderly growth of 'imperative' conflicts rules which has disturbed general conflicts law ever since the decline of imperial superlaws".<sup>42</sup>

Professor Ehrenzweig then proceeds to analyse the various techniques by which admiralty courts have justified the application of their own law. He recognizes that "In admiralty, too, it is true, there are unmistakable signs of danger. 'Statutist' advocacy for a ubiquitous law of the flag, on the one hand, and a. fortunately yet isolated, inclination toward the nonrule of the most significant relationship, on the other hand, threaten to do to the conflicts law of admiralty what fundamentalist and nihilist doctrine has done to conflicts law in general".<sup>43</sup>

Fortunately "courts, in admiralty have so far largely avoided this danger by adhering to their unilateral interpretation of both doctrine and statutes, and by limiting choice of law to specific rules based on treaty, custom, statute, and precedent. And they will, we may hope, be enabled to continue to do so by a wise and fair limitation of their jurisdiction".<sup>44</sup>

Although one may not agree with all the theses advanced by the author, one must recognize that he has been true to his objectives. New solutions are offered that are based on comparative experience, learning, and deep comprehension of the subject matter.

To many the *lex fori* approach represents a reasonable and to some extent logical philosophical basis for conflicts law which at the present time is caught between revolution and counter revolution. To others it is only one explanation which like many others constitutes merely one step in the process of evolution of the law throughout the ages.

The eighth edition of *Dicey and Morris on the Conflict of Laws* prepared by Dr. Morris and other specialists<sup>45</sup> does not differ sub-

<sup>40</sup> P. 192.

<sup>41</sup> P. 196.

<sup>42</sup> *Ibid.*

<sup>43</sup> P. 197.

<sup>44</sup> *Ibid.*

<sup>45</sup> Messrs Leonard Hoffmann and G. H. Treitel, Drs O. Kahn Freund, K. Lipstein and M. Mann.

stantially from the previous edition. Although it is primarily designed for practitioners, it is interesting to note that the authors have given more space to theory and structural analysis.<sup>46</sup> No change has been made in the general arrangement of the book. However, the editor has abandoned the practice originated by Dicey, of stating positive rules of law in the form of exceptions to negative propositions. For instance the rule in *Armitage v. Att.-Gen.*<sup>47</sup> and the rule in *Travers v. Holley*<sup>48</sup> are no longer exceptions to a rule that foreign divorces will not be recognized in England if the parties were not domiciled in the foreign country.<sup>49</sup> The effect of this change of policy is that the number of Rules and Exceptions has been substantially reduced. "This does not mean that we have lost faith in the mode of exposition by Rule, Comment and Illustration that has always been a characteristic feature of Dicey."<sup>50</sup> The editor recognizes, however, "that the Illustratives form the most debatable element in the trilogy and that opinions may differ on the wisdom of retaining them".<sup>51</sup> Even though care has been taken to indicate whether each Illustration is intended to be a summarized statement of a reported case, a variant on a reported case or is purely hypothetical, I would prefer to see the summary of reported cases transferred to the Comment, which could also contain some indications as to what the courts might be expected to decide in cases that have not yet come before them. To incorporate the facts of decided cases in the Comment would not necessarily make it less readable. This, it seems to me, would make the Comment easier to understand and less abstract. Also one may not always agree with the choice of Illustrations. Of course the Illustrations facilitate the work of students who have not read the assigned cases, they also help law professors to prepare examination questions!

The eighth edition contains a very important new chapter entitled *The Time Factor*<sup>52</sup> that deals with changes in the content of the conflict rule of the forum, or in the content of the connecting factor, or in the content of the foreign law to which the connecting factor refers.<sup>53</sup>

Many passages are entirely new.<sup>54</sup> Of particular interest are: Rule 47 on jurisdiction to make declarations as to status;<sup>55</sup> Rules

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<sup>46</sup> See for instance Ch. 5 (*The Time Factor*) and Ch. 30 (*Torts*), especially pp. 916-918, 937-939.

<sup>47</sup> [1906] P. 135.

<sup>48</sup> [1953] P. 246 (C.A.).

<sup>49</sup> See (7th ed., 1958), pp. 310-324, rule 43, now see rule 40(2) and (3), pp. 308-324.

<sup>50</sup> Preface, pp. ix-x.

<sup>51</sup> *Ibid.*, p. x.

<sup>52</sup> Ch. 5, p. 40 *et seq.*

<sup>53</sup> In Canada see Castel (1961), 39 Can. Bar Rev. 604.

<sup>54</sup> See for instance, pp. 76-77 on judicial residual discretion to refuse to recognize a foreign status conferred or imposed upon a person by the law of his domicile, pp. 88-89 on ordinary residence.

<sup>55</sup> P. 379.

100 and 106 on the formal validity of wills<sup>56</sup> which present and analyse the Wills Act, 1963,<sup>57</sup> that gives effect to the *Fourth Report of Private International Law Committee*<sup>58</sup> and to a Draft Convention on the Formal Validity of Wills made at the Hague in 1961,<sup>59</sup> and the analysis of recent American developments on the choice of law for torts.<sup>60</sup> It should be noted that Dr. Morris' prophetic words that "there are somewhat faint indications that it may not be entirely impossible for an English court to adopt this more flexible approach, [social environment test, law of the state having the 'greatest concern' in the case] at any rate in a situation in which the nationality or the residence or place of business of all the parties concerned indicates their social environment at the time when the tort was committed"<sup>61</sup> were approved by Lord Denning in *Boys v. Chaplin*.<sup>62</sup> In Chapter 14 devoted to matrimonial causes, the reader will regret that the book was published just before the House of Lords gave its decision in *Indyka v. Indyka*, a case that revolutionizes the law with respect to the recognition of foreign divorce decrees.<sup>63</sup> Several passages of the book have been almost entirely rewritten.<sup>64</sup>

Finally the definition of the proper law of a contract has been altered "to make it conform with the more recent judicial formulations".<sup>65</sup>

The eighth edition of this classic work will continue to prove most helpful to all those who are interested in the development of English conflict of laws. Although a few Canadian cases and statutes are cited in the book, I do not believe that this is sufficient material to satisfy Canadian practitioners as it can no longer be assumed that Canadian conflict of laws, is the same as English conflict of laws. In the last twenty years, Canadian courts and legislatures have often adopted rules that differ materially from those followed in England.<sup>66</sup> Furthermore, some of the English conflicts rules are of no use in Canada as they fail to take into consideration the

<sup>56</sup> Pp. 596 and 618. <sup>57</sup> 1963, c. 44. <sup>58</sup> (1958), Cmnd 491.

<sup>59</sup> (1961), 10 Int. & Comp. L.Q. 45. In Canada, see Castel, Conflict of Laws (2nd ed., 1968), p. 770 *et seq.*

<sup>60</sup> Pp. 916-918, 937-939. <sup>61</sup> Pp. 917-918.

<sup>62</sup> [1968] 1 All E.R. 283 (C.A.), now before the House of Lords. See also the pioneer article by Dr. Morris, The Proper Law of a Tort (1951), 64 Harv. L. Rev. 881.

<sup>63</sup> [1967] 2 All E.R. 689, [1967] 3 W.L.R. 510 and Bale (1968), 46 Can. Bar Rev. 113.

<sup>64</sup> See for instance, pp. 374-377 on the recognition of foreign nullity decrees, pp. 461-478 on the recognition of foreign adoptions and the right of adopted children to succeed to property.

<sup>65</sup> Preface, p. xi. See Rule 127, p. 691.

<sup>66</sup> See for instance new Divorce Act, 1968, S.C., c. 24. D. Mendes da Costa, Some Comments on the Conflict of Laws Provisions of the Divorce Act, 1968 (1968), 46 Can. Bar Rev. 252. Castel, *op. cit.*, footnote 59, p. 442 *et seq.*

special demands of the members of the Canadian federation. Thus Canadian sources and textbooks must be consulted. Of course, this does not mean that inspiration cannot be found in this excellent, although perhaps overly conceptualized,<sup>67</sup> eighth edition of Dr. Morris' work.

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<sup>67</sup> Note that though the editor purported to abandon Dicey's foreign vested rights theory, p. 8, Rule 2 states that "The court will not enforce or recognize a right, power, capacity, disability or legal relationship arising under the law of a foreign country . . .", p. 72.

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