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## Conflict of Laws: Cases, Problems, and Essays

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## BOOK REVIEW

### *Conflict of Laws: Cases, Problems and Essays*

By

David H. Vernon<sup>1</sup>

Matthew Bender 1973

Pp. xx, 1144 \$18.50

David Vernon's recent book on conflict of laws contains materials as well as cases. Its central feature for teaching purposes is a series of 135 problems which students are expected to work on before class and be prepared to discuss in class. A fairly typical selection of cases, most of them severely shortened by editing, makes up about three-fourths of the book. These cases are the leading ones, old and new, plus a number presenting interesting and recent fact variations from lower courts. Nearly 200 pages of the book (on first reading I thought it was more than that) consist of text material, mostly excerpts from well-known law review articles, including Dean Vernon's own, but also some short summarizations prepared by him. There are appropriate excerpts from the Restatement, from Uniform Acts, and a few other prime sources of conflicts law.

Unlike some current casebooks, the book is not designed as a research aid. It is altogether for use in law school classes. The idea is that students who won't do much outside reading in the library will at least read the text materials, as well as the cases, in the course-book. They will to that extent be prepared to deal with the problems around which classroom discussion will be centered. Case citations appended to most of the problems will induce additional outside reading on the part of those students whose advance preparation for class is extensive enough to cause them to check up on their tentative answers to the problems. Most students, however, will know that the answers previously given by courts to similar problems may not be very relevant to modern conflicts law. Also, they will discover enough variations between the facts of cited cases and Dean Vernon's problems to discourage the automatic acceptance of old answers.

Nearly every law teacher today, and for some generations past, agrees that third-year law students have moved beyond the effective reach of Langdellian case teaching. Small seminar-type classes afford a partial response to the need for more suitable teaching methods at this level. But small seminars cannot do the job when four-fifths of

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the senior class sign up for the elective course in conflicts on the sound assumption that it can give them in a short space an historical and jurisprudential look at the judicial process plus an evaluative review of most of the standard law school subjects. (What conflicts teacher will deny that this is a sound assumption?) Large conflicts classes, if they are to be well conducted, have to do more than talk about the cases in the casebook.

Dean Vernon's new course book is in direct line from Waashington University's late Professor Wendell Carnahan's *Cases and Materials on Conflict of Laws* (1935). Carnahan's book had more pages excerpted from law review articles, and Vernon's problems are more varied and ingenious. By reason of these differences a better quality of preparation can be expected of students using Vernon's book. The basic pedagogical idea is the same, but the content of the new book gives greater assurance of successful use in the classroom. The fact that some teachers, after the first year or two, will wish to substitute problems of their own for some of those in the book will not in any way detract from its value as the principal teaching tool.

I have long argued in academic bull sessions that law study could start almost anywhere, with almost any subjects, and that the order in which the grist of any particular course is taken up can be similarly varied. That argument, however, applies to the study of the law, or of a subject in the curriculum, and does not apply to the student's ability to come up with good answers at the beginning of his study to all the problems that may be raised. For that reason I worry about some of the choice-of-law problems that appear in the early part of the new book. They ask students to reach conclusions at a stage in their conflicts study when they are not prepared to reach them. These problems may tend to harden their views in accordance with the older and traditional choice-of-law goals, that are quite properly emphasized in the book's long first chapter, before all the possibilities for choice of laws have been recognized. There are problems that can be kept in narrow context, such as those dealing with domicile or with renvoi under specific definitions, that can be answered quickly, but broad choice-of-law are not among these.

There is always the difficulty, not just in conflict of laws but everywhere, that all problems are interrelated. We need to study everything before we study anything, because everything we haven't yet studied has bearing on whatever we study first. Nevertheless, we have to start somewhere. The best we can do is to be firm in postponing our ultimate answers until we have fairly covered the area from which the answers should be discovered. That is the major

problem with the problem approach to teaching. It is hard to identify problems that are ready for discussion, let alone solution, at the beginning of one's study. Professor Vernon has done a good job of picking out several separable topics, narrow areas of conflicts law, within which narrow problems could be posed, but on some early problems teachers will have to fight hard to avoid wastefully uninformed discussion and premature conclusions. There is much to be said for delaying most of the problem-solving until the latter half of the course.

A related concern is with the fact that Vernon's chapter on contracts precedes the much longer chapter on torts. Nearly all of the material on choice-of-law method, the modern post-Bealian approaches to the law of choice of law, is printed (quite appropriately) in the chapter on torts. Yet these approaches have to be taken into account in modern contracts cases just as in torts cases. The student may conclude that approaches used in torts cases are not appropriate in contracts cases, but he needs to know about those approaches before he undertakes to reach conclusions. A teacher using the Vernon book can of course take care of this concern by assigning the contracts chapter later. The property chapter does come later.

The only quarrel that I have with Vernon's treatment of the substance of conflicts law concerns so-called "false conflicts." He uses the term<sup>2</sup> to refer, as the late great Brainerd Currie did, to cases in which there is "no conflict of governmental interests" between the involved states. In that sense the term has real meaning, but the words "false conflict" by themselves imply that there is no conflict of laws problem in the case. "False conflict" is taken to mean "no conflict." That is wrong. A true conflict of laws problem exists whenever the Constitution<sup>3</sup> permits a court to choose between the conflicting but possibly governing laws of two or more states. When a true conflict of laws problem exists, it is wrong to say that there is a "false conflict." There may be a "false conflict of governmental interests," which fact when ascertained can help the court to resolve its choice-of-law problem. But to say, without more, that there is a "false conflict" when there is a real conflict of laws question that under the law could be decided either way comes close to self-contradiction.

In the chapters on jurisdiction, judgments, and domestic relations, which make up the last one-third of the book, the treatment is standard and the problems present no such difficulties as do the early

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2. D. Vernon, *Conflict of Laws: Cases, Problems and Essays* 3-31 to 3-41 (1973).

3. Usually the due process clause as applied in *Home Insurance Co. v. Dick*. See *id.* at 1-25.

chapters on choice of law. Some teachers in a three-hour course will not even get to this part of the book, or will deal with it only briefly. The number of pages devoted to jurisdiction and to judgments takes this time shortage into account. But the last four chapters (220 pages) covering marriage, divorce, alimony and support, custody, adoption, legitimation, and marital property are sufficiently complete to make the conflicts course a realistic substitute for a course in family law, if enough semester hours (four) be allotted so that these final chapters can be taken up.

The Vernon course book is the best one that has appeared in print for use of the problems method in teaching conflict of laws. The doubts about it that have been expressed relate to the problems method of course book construction and teaching rather than to the book as such. Dean Vernon is one of America's true scholars in the conflict of laws field, and his contributions to our learning on the subject have been and remain invaluable. This new course book maintains the high quality of those contributions.

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