

LAW AND CONTEMPORARY PROBLEMS

VOLUME 21

SUMMER, 1956

NUMBER 3

FOREWORD

Until a truly uniform and all-pervasive system of international law obtains—and perhaps even thereafter, to some extent—the administration of justice will continue to be complicated by the possibility that a specific fact situation with foreign as well as local incidents will give rise to conflicting rights and duties under the laws of the different jurisdictions that it touches. To minimize the confusion and uncertainty that this not uncommon state of affairs would otherwise conduce, almost every modern state has promulgated, by legislative or judicial action, or both, a well-defined body of principles designed to govern the legal settlement of such situations in a regular, equitable, and generally predictable manner. These are the rules of “private international law” or “the conflict of laws,” and their operation today impinges vitally on all but the most parochial of legal practice.

The conflict of laws exhibits two complementary facets, two somewhat different, but interdependent, approaches to the disposal of conflicts problems: conflict solution and conflict avoidance. Traditionally, legal scholars have primarily been preoccupied with the former, the clinical approach, the salvage operations indicated *after* conflict situations have arisen. And, indeed, it is along these lines that formal instruction in the subject in the law schools has almost exclusively been oriented.

Yet, it is on the latter, the preventive approach, the techniques of averting conflict situations *before* they arise, that the practitioner who would render effective service to his client must rather focus his attention and energies. His primary concern must be to foresee possible difficulties and to shield the transaction with regard to which his advice is sought from the vagaries that the unexpected or undesired application of a particular body of municipal law might entail. Although he will, of necessity, advert to considerations of conflict solution in the process, they will dominate his thinking only after his efforts at conflict avoidance have proved unavailing. Paradoxically, however, this latter phase of the subject has excited but meager scholarly attention. It is, therefore, to a redressing of this misemphasis, to an examination and elaboration of some of the features of this comparatively neglected aspect of the conflict of laws, that this symposium is directed.

It is at once apparent that on the private level at least conflict avoidance can effectively be practiced only within the area in which the principle of party autonomy

applies. Thus circumscribed, our contributors have sought to define and evaluate some of the techniques that may be employed to this end. But conflict avoidance may be pursued on the national and international levels as well. Here, however, it seeks the unification of law by international agreement, the enactment of uniform legislation, and the adoption of common practices sponsored by nongovernmental bodies; and our contributors have expatiated on the problems raised by and the far-reaching implications of these facets of the subject too.

Many factors seem recently to have conspired to enhance the significance of this preventive law of conflicts and to promote its more intensive study by scholars and practitioners alike—among them, the shrinking of the world that has been effected by modern technology, the growing recognition of the interdependence of the nations of the world and its citizens, and the proliferation of international contacts, political, social, and economic. It is hoped that this symposium, by underlining this development, will help to open new perspectives of legal thought and forge new legal tools equal to the challenge of these changing times.

MELVIN G. SHIMM.