Methods and Approaches in Choice of Law: An Economic Perspective

Giesela Ruehl (Max Planck Institute for Comparative and Private International Law) has posted *Methods and Approaches in Choice of Law: An Economic Perspective* on the Social Science Research Network (SSRN). The abstract reads as follows:

After years of disregard, the law and economics movement has finally taken note of the field of choice of law. However, up until today most of the contributions have focused on specific topics – such as the applicable law in contracts, torts or product liability – and skipped the underlying fundamental issues that determine the general design of choice of law rules: (1) Should courts apply foreign law at all or should they always resort to their own law? (2) Should courts create multistate substantive law specifically designed for international transactions or should they apply the law of one of the states involved? (3) Should choice of law rules resort to the unilateral method and define the reach of forum law only or should they apply the multilateral method and determine the reach of both forum and foreign law? (4) Should courts search for material justice or rather for conflicts justice? (5) Should choice of law strive for legal certainty or rather for flexibility? This article provides a comparative overview as well as an economic analysis of the answers legal scholarship has provided to these questions over time and across countries. It argues that courts should (1) be open towards application of foreign law, (2) apply the law of one of the states involved (3) determine the reach of both foreign and forum law, (4) strive for conflicts justice, and (5) apply rules instead of standards.

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