

Borchers on Conflict of Laws in Human Rights Actions

Patrick J. Borchers, who is the Dean of Creighton University School of Law, has posted Conflict-of-Laws Considerations in State Court Human Rights Actions on SSRN.

As U.S. Supreme Court decisions have curtailed the availability of civil redress for human rights violations under the Alien Tort Statute, victims of human rights abuses are beginning to consider U.S. state courts as a possible forum. In some cases, state courts may prove to be a superior forum, however in many cases they will offer little — if any — hope of meaningful redress. In the paradigmatic case of a civil plaintiff seeking redress for torture, forced labor or other atrocities — usually as the result of an alleged conspiracy between foreign governments and private corporations or individual operating abroad — state choice-of-law doctrines will often require the application of the tort law of the foreign country, as well as the law relative to damages available. In many cases, the law choice will prove to have a crippling effect on the viability of U.S. litigation. Moreover, recent U.S. Supreme Court decisions limiting the personal jurisdictional reach of state courts over foreign corporations may make state courts unavailable for jurisdictional reasons. Finally, the common law doctrine of forum non conveniens may make state courts unavailable to victims of human rights abuses even if the state court has jurisdiction. In some cases, state courts will prove to be a preferable forum to federal court. However, prospective litigants and their counsel will need to carefully consider the potential pitfalls of filing in state court.

The article was recently published in the *U.C. Irvine Law Review* as part of a symposium on Human Rights Litigation in State Courts and Under State Law.