

Symeonides on Choice of Law in American Courts in 2013

Dean Symeon C. Symeonides (Willamette University – College of Law) has posted Choice of Law in the American Courts in 2013: Twenty-Seventh Annual Survey on SSRN. It is, as usual, to be published in the American Journal of Comparative Law. Here is the abstract:

This is the Twenty-Seventh Annual Survey of American choice-of-law cases. It is written at the request of the Association of American Law Schools Section on Conflict of Laws and is intended as a service to fellow teachers of conflicts law, both in and outside the United States. Its purpose remains the same as it has been from the beginning: to inform, rather than to advocate.

This Survey covers cases decided by American state and federal appellate courts from January 1 to December 31, 2013, and posted on Westlaw by midnight, December 31, 2013. Of the 1,354 cases that meet these parameters, the Survey focuses on those cases that may contribute something new to the development or understanding of conflicts law—and, particularly, choice of law. This Survey is longer than the Surveys of any of the previous 26 years because 2013 produced more, and more noteworthy, cases than any of the previous years. The following are some of the highlights:

** Five decisions of the U.S. Supreme Court holding, respectively, that: (1) The Alien Tort Statute does not apply to conduct and injury occurring entirely in another country; (2) Section 3 of the Defense of Marriage Act (DOMA), which defines “marriage” for federal law purposes so as to exclude same-sex relationships, is unconstitutional; (3) The Federal Arbitration Act trumps the provisions of the Sherman Antitrust Act; (4) The “first sale” doctrine as codified in the Copyright Act applies to copies of copyrighted works lawfully made abroad and first sold abroad; and (5) The National Voter Registration Act preempts an Arizona law that sets more stringent standard for proof of citizenship when registering to vote.*

** A sixth Supreme Court decision explaining the methodology that federal courts should use when evaluating venue challenges in cases involving choice-of-forum clauses.*

- * Two federal appellate decisions involving piracy off the Somali coast, and several decisions involving the extraterritorial reach of federal statutes in civil and criminal cases.*
- * Several state court decisions striving to protect consumers, employees, and other weak parties through the few cracks left by the Supreme Court's decisions on arbitration and choice-of-forum clauses.*
- * An assortment of interesting cases involving products liability, other cross-border torts, economic torts, and other tort conflicts.*
- * A case holding that enforcement of a Japanese tort judgment against a California Church is not "state action" triggering constitutional scrutiny under the Constitution's Free Exercise clause, and is not repugnant to the public policy.*
- * A case holding that one state's dismissal of an action on statute of limitation grounds is a dismissal "on the merits," barring a second action on the same claim in another state.*
- * A case defining "habitual residence" and "wrongful" removal or retention of a child under the Hague Convention on Child Abduction.*