

Conceptualizing Yahoo v L.C.R.A.: Private Law, Constitutional Review and International Conflict of Laws

Ariel L. Bendor (*University of Haifa - Faculty of Law*) and Ayelet Ben-Ezer (*Interdisciplinary Center Herzliyah - Radzyner School of Law*) have posted an article on SSRN entitled, "**Conceptualizing Yahoo! v. L.C.R.A.: Private Law, Constitutional Review and International Conflict of Laws**". The abstract reads as follows:

The Article deals with a topic that, despite its increasing importance, largely has been ignored in American case law and legal literature: the power of a court to review the constitutionality of foreign legal rules. The question arises in two contexts. The Court may be asked to review the constitutionality of enforcing the foreign law or judgment under the forum country's constitution, or it may be asked to do so under the foreign country's constitution. The United States District Court for the Northern District of California recently addressed these issues in Yahoo v. L.C.R.A. (169 F. Supp. 2d 1181 (2001)), which illustrates many of the difficulties courts encounter when faced with both constitutional issues and questions of international conflicts of law. The Article argues that despite numerous conceptual and pragmatic difficulties there is a strong policy justification for forum courts' constitutional review, and possible nullification, of foreign laws and judgments, at least in certain circumstances. This is since constitutional review, when carefully and appropriately limited, is an integral part of private international law that should allow for the disqualification of foreign laws and judgments only when the basic interests or other meta-principles of the forum dictate such a result. The Article, against the background of Yahoo v. L.C.R.A, attempts to conceptualize and provide a theoretical framework for the discussion and solution of problems relating to the conflux of constitutional review and international conflict of laws. The Article suggests that the central goals of private international law can still be accomplished within the framework of constitutional review. This can be achieved by fundamentally restricting the scope of constitutional review, especially when it involves "aggressive" measures such as the invalidation of foreign laws because of incompatibility with the foreign constitution. The thrust

of this proposal is that forum courts should almost never apply foreign constitutional provisions that threaten to invalidate or otherwise nullify foreign laws, because they are not the appropriate place for such review, which is best left to the domestic courts of the relevant country. This principle is not absolute, however, and the Article suggests a few exceptions.

The full article can be downloaded from [here](#).