

Symeonides: Result-Selectivism in Private International Law

Symeon C. Symeonides (Dean, College of Law – Willamette University) has posted **Result-Selectivism in Private International Law** (forthcoming on the Roman. Priv. Int'l L. & Comp. Priv. L. Rev., 2008) on SSRN. Here is the abstract:

One of the basic dilemmas of conflicts law, or private international law (PIL), is whether, in choosing the law applicable to cases involving conflicts of laws, one should aim for: (1) the law of the proper state without concern for the “justness” of the particular result (“conflict justice”); or (2) for the same quality of substantive results as in non-conflicts cases (“material justice”).

For centuries, the “conflicts justice” view has been dominant in all countries. The “material justice” view has had some recent following in the United States, but in the rest of the world it has had only marginal influence. In recent years, however, this view has gained significant ground, even in codified PIL systems. Without endorsing this view, this essay examines several recent PIL codifications and identifies a surprisingly high number of result-selective rules, namely choice-of-law rules that are specifically designed to accomplish a particular substantive result.

The fact that these rules are far more numerous now than in the past suggests that the above dilemma is no longer an all-or-nothing proposition. Material-justice considerations are gaining increasing acceptance as one of the factors that should guide the pursuit of conflicts justice. The difficult question is not whether but rather when these considerations should receive preference in uncodified systems in which the choice of law is made by judges rather than legislators.

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