

Interesting New Book: The Law Market, by Professors Erin O’Hara and Larry E. Ribstein

I just caught wind of an interesting new read from Oxford University Press. Here’s the quick summary on their website:

Today, a California resident can incorporate her shipping business in Delaware, register her ships in Panama, hire her employees from Hong Kong, place her earnings in an asset-protection trust formed in the Cayman Islands, and enter into a same-sex marriage in Massachusetts or Canada—all the while enjoying the California sunshine and potentially avoiding many facets of the state’s laws. In this book, Erin O’Hara and Larry E. Ribstein explore a new perspective on law, viewing it as a product for which people and firms can shop, regardless of geographic borders. The authors consider the structure and operation of the market this creates, the economic, legal, and political forces influencing it, and the arguments for and against a robust market for law. Through jurisdictional competition, law markets promise to improve our laws and, by establishing certainty, streamline the operation of the legal system. But the law market also limits governments’ ability to enforce regulations and protect citizens from harmful activities. Given this tradeoff, O’Hara and Ribstein argue that simple contractual choice-of-law rules can help maximize the benefits of the law market while tempering its social costs. They extend their insights to a wide variety of legal problems, including corporate governance, securities, franchise, trust, property, marriage, living will, surrogacy, and general contract regulations. The Law Market is a wide-ranging and novel analysis for all lawyers, policymakers, legislators, and businesses who need to understand the changing role of law in an increasingly mobile world.

In a recent talk on the book at the American Enterprise Institute, Professor Ribstein contended that “widespread enforcement of choice-of-law clauses powerfully enhances [the] ‘law market,’ whose forces can in turn profoundly affect legal systems.” When people can choose the laws by which they are governed or create contracts, they said, “a new set of political actors gains

influence, and state lawmakers are thereby more effectively disciplined.” Professor Ribstein called for:

a federal statute to require that states adhere to contractual choice-of-law provisions, except in cases where states pass “explicit legislation” to designate which choice-of-law provisions they will refuse to enforce. Ribstein contended that this solution offers “predictability, which is one thing we’re not getting from the chaos of state choice-of-law rules now,” as well as more interest group and individual involvement in state legislative processes. Over time, he argued, the proposal will produce an “equilibrium” that protects contractual rights, allows states and local jurisdictions to enact “reasonable regulations,” and offers contracting parties “a way out of the tangle” of existing federal, state, and local laws.

I haven’t read it yet, but I certainly will soon. The early reviews have certainly been very good. You can order the book [here](#).