

Roosevelt on Choice of Law in US Courts

Kermit Roosevelt III, who is a professor of law at the University of Pennsylvania Law School, had posted Choice of Law in Federal Courts: from Erie and Klaxon to Cafeteria and Shady Grove on SSRN.

The article offers a new perspective on choice of law in federal courts. I have argued in a series of articles that ordinary choice of law problems are best understood through application of a particular conceptual framework, which I call the two-step model. Rather than thinking of choice of law as some sort of meta-procedure, this model takes it to address two substantive questions: what are the scope of the competing states' laws, and which should be given priority if they conflict?

My previous articles have explored the utility of this framework for tackling some perennial problems in choice of law. This one moves to a different context: choice of law in federal courts under the Erie doctrine. It argues that Erie is best understood as a straightforward application of this two-step model and that the model consequently offers a useful guide for Erie analysis. It shows how thinking about the Erie question in this way offers novel and satisfying solutions to a number of puzzles that have troubled courts and commentators in the wake of Erie. These puzzles include the effect that federal courts must give to state choice of law rules (the Klaxon issue), how Klaxon should interact with the Class Action Fairness Act of 2005, and the Court's most recent venture into the Erie arena, Shady Grove v. Allstate. These issues have received substantial attention in the scholarly literature, but never from the two-step perspective.