

Zaremby on the Restatements (First and Second) of Conflict of Laws

Justin Zaremby has posted “Restating the Restatement of Conflicts: Approaching the Legitimacy Question in Choice-of-Law Theory” on SSRN. The paper can be downloaded [here](#). The abstract reads as follows:

Since the so-called conflicts revolution, choice-of-law theory continues to reject the vested rights approach of the First Restatement of Conflicts without fully criticizing the failures of the governmental interest theory in the Second Restatement of Conflicts. At the same time, neither approach adequately examines the question of what constitutes a legitimate resolution to a conflict between states. This Article suggests that the choice between the rights language of the First Restatement and the governmental interest language of the Second Restatement is actually a debate between legal formalism and legal realism. Both choices lead to a legitimacy deficit for theorists and judges who attempt to resolve conflicts. This Article applies liberal and republican political theory to the debate between vested rights and governmental interest, suggesting an approach to resolving conflicts that is grounded in the legitimate exercise of judicial discretion.