

Sanga on “Choice of Law: An Empirical Analysis”

Sarath Sanga, Yale Law School, has recently published an empirical study on the use of choice of law clauses in the US (in the area of contract law). The paper can be downloaded free of charge via SSRN. The abstract reads as follows:

I propose a new measure to study the law and economics of choice of law: “relative use of law.” Relative use of law measures the extent to which a state’s laws are disproportionately over- or under-utilized in contract. It is constructed by normalizing the distribution of choice of law clauses by the extent of contracting activity within each jurisdiction.

Using this measure, I study choice of law by analyzing the nearly 1,000,000 contracts that have been disclosed to the Securities and Exchange Commission between 1996-2012. These are all contracts that companies registered with the SEC deem “material.” I find that from 1996 to 2012, (1) only two states are relatively over-utilized: Delaware (an extreme outlier) and New York, and (2) there has been significant and robust convergence both in firms’ choice of law and relative use of law toward Delaware, New York, and Nevada.

I offer hypotheses for this convergence that are based on (1) lock-in effects of the choice of state of incorporation and (2) positive network effects of using the same law. I present suggestive evidence that lock-in effects explain convergence toward Delaware and Nevada, while network effects explain convergence toward New York.