

Choice of Law in the American Courts in 2015: Twenty-Ninth Annual Survey

Prof. Symeonides' Survey of American Choice-of-Law Cases, now in its 29th year, you can download it from SSRN by clicking on this link. It is also forthcoming in the American Journal of Comparative Law, Vol. 64, No. 1, 2016. The following are some of the cases discussed in this year's Survey:

*Three Supreme Court decisions, the first declaring unconstitutional all state laws against same-sex marriages, the second interpreting the commercial activity exception of the Foreign Sovereign Immunity Act, and the third further constricting the range of state law in matters relating to arbitration;

* A Second Circuit decision resuscitating for now that court's theory that corporations are not accountable for international law violations under the Alien Tort Statute (ATS), and two decisions holding that the violations at issue did not "touch and concern the territory of the United States . . . with sufficient force";

* Two cases refusing to allow a Bivens action for an extraterritorial violation of the Fourth Amendment and an intra-territorial violation of the Fifth Amendment, respectively, and several cases upholding the extraterritorial application of criminal statutes;

*Several cases refusing (and some not refusing) to enforce choice-of-law and forum-selection or arbitration clauses operating in tandem to deprive employees or consumers of their otherwise unwaivable rights;

* A New York Court of Appeals case explaining why a New York choice-of-law clause in a retirement plan did not include a conflicts rule contained in New York's substantive successions statute;

* Several cases involving the "chicken or the egg" question of which law governs forum-selection clauses;

* A New Jersey decision ruling on actions for "wrongful birth" and "wrongful life," and several other cases arising from medical malpractice, legal malpractice,

deceptive trade practices, alienation of affections, and, of course, traffic accidents, along with products liability cases involving breast implants and pharmaceuticals;

* The first case granting divorce to a spouse married under a “covenant” marriage in another state, and a Texas case recognizing a Pakistani talaq;

* An Alabama Supreme Court decision refusing to recognize a Georgia adoption by a same-sex spouse on the ground that the Georgia court misapplied its own law regarding subject matter jurisdiction;

* A Delaware case holding that the Full Faith and Credit clause mandates recognition of a sister-state judgment that has recognized a foreign judgment, and does not allow examination of the underlying foreign judgment; and

* A case recognizing a foreign judgment challenged on the ground that the foreign country did not provide impartial tribunals or procedures compatible with due process.