Buxbaum on "Determining the Territorial Scope of State Law in Interstate and International Conflicts: Comments on the Draft Restatement (Third) and on the Role of Party Autonomy"

Professor Hannah L. Buxbaum of Indiana University Bloomington Maurer School of Law hast just released an article adressing the treatment of geographic scope restrictions in state law in the current draft of the Restatement (Third) of Conflicts of Law.

The article begins by analyzing the role of the presumption against extraterritoriality in supplying implied restrictions on the scope of law. It considers the role of the presumption in both international and interstate conflicts of laws, and argues that the Restatement (Third) should differentiate clearly between those two contexts. It then turns to the question whether geographic scope restrictions should properly be considered part of a state's internal law. The paper analyzes that question through the lens of a common problem: a contract dispute involving a transaction or event that falls outside the scope of the law chosen by the parties to govern their agreement. On the basis of that analysis, it concludes that forthcoming sections will need to address the implications of the draft's categorical treatment of legislative scope.

The Indiana Legal Studies Research Paper No. 372 is available on SSRN and will be published in the Duke Journal of Comparative & International Law, Vol. 27, 2017.