

Recent publications by Prof. Symeonides

Prof. Symeon C. Symeonides, Willamette University – College of Law, uploaded recently two articles on SSRN.

The Third Conflicts Restatement's First Draft on Tort Conflicts

Abstract

This Article discusses the first draft of the proposed Third Conflicts Restatement dealing with tort conflicts. The Draft's most noteworthy features include: (1) the distinction between conduct-regulating and loss-allocating tort rules; (2) the application of the law of the parties' common home state in loss-allocation conflicts; and (3) a rule giving victims of cross-border torts the right to request the application of the law of the state of injury, if the occurrence of the injury there was objectively foreseeable,

The Draft is a vast improvement from the Second Restatement. It accurately captures the decisional patterns emerging in the more than forty U.S. jurisdictions that have joined the choice-of-law revolution, and which have been cast in statutory form in the successful codifications of Louisiana and Oregon. It strikes an appropriate equilibrium between certainty and flexibility and generally makes good use of the lessons of the revolution without reproducing its excesses.

Suggested citation:

Symeonides, Symeon C., The Third Conflicts Restatement's First Draft on Tort Conflicts (August 5, 2017). Tulane Law Review, Vol. 92, 2017. Available at SSRN: <https://ssrn.com/abstract=3014068>

What Law Governs Forum Selection Clauses

Abstract

This Article examines how American courts answer the question of which law governs the enforceability and interpretation of forum selection (FS) clauses in cases that have contacts with more than one state. It divides the cases into categories, depending on whether the question is litigated in the court chosen in the FS clause or in another court, and whether or not a choice-of-law clause accompanies the FS clause.

The Article finds that: (1) When the action is filed in the court chosen in the FS clause, all courts apply the internal law of the forum state, without any choice-of-law analysis, both in interpreting the clause and in determining its enforceability; and (2) When the action is filed in another court, most courts apply the internal law of the forum (with or without a choice-of-law analysis) in determining whether the clause is enforceable and the law that governs the contract in interpreting the clause.

The Article explains why the distinction between interpretation and enforceability is necessary, and why the application of forum law to the question of enforceability is appropriate.

Suggested Citation:

Symeonides, Symeon C., What Law Governs Forum Selection Clauses (August 5, 2017). Louisiana Law Review, Vol. 78, No. 4, 2018. Available at SSRN: <https://ssrn.com/abstract=3014070>

In addition, mention needs to be made to his recent lecture at the Hague Academy, which was published June this year.

Private International Law: Idealism, Pragmatism, Eclecticism. General Course on Private

International Law, Volume 384

More details can be found [here](#).