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Announcements

Selected Papers on the Conflict of Laws by Petra Butler and John Prebble

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"Choice of Law to Determine the Validity and Effect of Contracts: A Comparison of English and American Approaches to the Conflict of Laws, Part I"

Cornell Law Review, Vol. 58, No. 3, 1973
Victoria University of Wellington Legal Research Paper No. 121/2014

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The article examines and compares the American and English approaches to choice of law rules used to resolve issues involving the validity and effect of commercial contracts.

The author notes the different theoretical basis of each system. The English approach is a classificatory and jurisdiction-

selecting method, whereas most American courts adopt the principles of interest analysis, which evaluates the specific conflicting rules and the interests of the different legal systems with a connection to the case are evaluated. This difference has led to apparently very different choice of law rules.

Part I of the article compares the rules of the two countries thematically, outlining the principles and approaches of the interest analysis, rule selection, jurisdiction selection, choice of law, true and false conflicts doctrine, and the claims of the lex fori. It then discusses approaches to party autonomy. Both countries will attempt to give effect to the intentions of the parties where this is express; however the English exceptions to this rule are narrower than the American ones. While American courts may look to considerations of policy and public policy, English courts are much more likely to strictly apply the rules attached to the legal category in question: in this case, contract.

"Choice of Law to Determine the Validity and Effect of Contracts: A Comparison of English and American Approaches to the Conflict of Laws, Part II"

Cornell Law Review, Vol. 58, p, 1973
Victoria University of Wellington Legal Research Paper No. 122/2014

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The article continues the author's examination of American and English approaches to choice of law rules used to resolve issues of validity and effect of commercial contracts. Part II should ideally be read in conjunction with Part I of the article by the same name.

Part II discusses the rules that the American and English courts apply where there is no choice of law clause in the contract at issue. It discusses the significant contacts rule applied by courts in both countries, noting that the English approach divides cases into three categories that differ from the American approach. Part II then goes on to consider the significance of renvoi, which generally has no place in contract disputes in American or English courts. The article also touches on more unorthodox theories of foreign choice of law rules.

The article concludes by tracing the differences of the two systems and arguing that the interest analysis which has developed in the United States is generally a superior system to the English one, because it allows the results of the decision to be taken into account. Interest analysis recognises that the significance of conflict of law issues goes beyond the mere theoretical. Commercial parties will argue over conflict issues only when they believe that they will be favoured by a different jurisdiction. The rules used to select the correct jurisdiction may also determine the outcome of the case. It is important that the conflict of law rules acknowledge this reality.

"The Use of Foreign Jurisprudence in New Zealand Courts"

PRIVATE LAW, NATIONAL-GLOBAL-COMPARATIVE, FESTSCHRIFT FUER INGEBORG SCHWENZER, p. 305, Intersentia, February 2012
Victoria University of Wellington Legal Research Paper No. 123/2014

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Comparativists, like Basil Markesinis, claim that comparative methodology has a key role to play in judicial decision-making. It might be stating the obvious that solutions and reasoning of judges from foreign jurisdictions, but especially from jurisdictions belonging to the same legal family, can be used to help judges in the domestic courts with the development of their own jurisprudence. And in New Zealand the immediate response of the legal profession, the academy, the judges, and even from Government lawyers would be that they are very prepared to use foreign judgments to inform their decision-making. But precisely how do New Zealand judges use comparative law has not been investigated in a comprehensive fashion.

The article attempts to shed some light on the use of comparative jurisprudence by New Zealand's highest court, the Supreme Court, and to a lesser extent the Court of Appeal in a six year period.

"The Use of the CISG in Domestic Law"

Vindobona Journal of International Commercial Law and Arbitration, Vol. 15, 2011
Victoria University of Wellington Legal Research Paper No. 124/2014

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The article gives an overview of the use of the CISG to aid the development of contract law in the major common law jurisdictions. The aim of the article is to explore whether there is cross-fertilisation in regard to the use of the CISG - the idea being that more the CISG is used in the domestic context to give content to domestic law the more familiar and comfortable courts and counsel get with it and might, therefore, ultimately apply the CISG more regularly in international sales.

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About this eJournal

The Victoria University of Wellington was founded in 1899 to mark the Diamond Jubilee of the reign of Queen Victoria of Great Britain and of the then British Empire. Law teaching started in 1900. The Law Faculty was formally constituted in 1907. The first dean was Richard Maclaurin (1870-1920), an eminent scholar of both law and mathematics. Maclaurin went on to lead the Massachussetts Institute of Technology as President in its formative years. Early professors included Sir John Salmond (1862-1924), still one of the Common Law's leading scholars. His texts on jurisprudence and torts have gone through many editions and remain in print.

Alumni include Sir Robin Cooke (1926-2006), one of the leading judges of the British Commonwealth. As Baron Cooke of Thorndon, he sat on over 100 appeals to the Judicial Committee of the House of Lords, one of very few Commonwealth judges ever appointed to do so.

Since 1996 the **Law School** has occupied the Old Government Building in central Wellington. Designed by William Clayton and opened in 1876 to house New Zealand's then civil service, the building is a particularly fine example of Italianate neo-Renaissance style. Unusually among large colonial official buildings of the time it is constructed of wood, apart from chimneys and vaults.

The School is close to New Zealand's Parliament, courts, and the headquarters of government departments. Throughout Victoria's history, our law teachers have contributed actively to policy formation and to law reform. As a result, in addition to many scholarly articles and books, the Victoria SSRN pages include a number of official reports.

Victoria graduates approximately 230 LLB and LLB(Hons) students each year, and about 60 LLM students. The faculty has an increasing number of doctoral students. Ordinarily there are ten to twelve students engaged in PhD research.

Victoria University observes the British system of academic ranks. In North American terms, lecturers and senior lecturers are tenured doctrinal scholars, not legal writing teachers. A senior lecturer corresponds approximately to a North American associate professor in rank.

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