

University of Baltimore School of Law
Spring 2014

Course: Conflict of Laws

Instructor: Professor Nienke Grossman
Office Hours: Wednesdays, 3 to 4 pm, or by appointment
Office Location: Angelos Law Center Room 525
Email: ngrossman@ubalt.edu

Days/Time: Monday/Wednesday, 10:30-11:45 am

Location: Angelos Law Center Room 608

Welcome to Conflict of Laws. The information on this syllabus is vital to your success in this course. Please read it carefully.

Course Description:

This course explores one of the most fascinating and complex areas of the law: what do you do when legal problems transcend jurisdictional boundaries? What happens when more than one sovereign (e.g., two states like Maryland and Virginia, or two countries like the United States and Mexico) can apply its laws to a particular situation or transaction? Whose law applies? Whose law should apply? And how should one state treat the laws and judgments of another? What does our Constitution have to say about this? How does the US treat the laws and judgments of other countries? How should it? How do other countries deal with such issues? Finally, what do our answers say about law generally? The course will draw heavily upon your close reading, case analysis, and problem-solving skills.

Course Objectives:

- To learn about various approaches to choice of law, the role of the federal government in both domestic and international conflict of laws problems, and the recognition and enforcement of judgments from other states and countries
- To learn to identify and analyze conflict of laws issues in real life problems you may face in practice
- To be able to construct and critique arguments involving this field of law
- To understand and analyze the theories that underlie this field of law and their implications
- To continue building on skills including close reading of complex cases and distilling legal doctrines
- To perform well on quizzes and an exam involving this field of law

Course Materials:

The Casebook for this course is Laura Little, CONFLICT OF LAWS: Cases, Materials and Problems (2013). In addition, this course has a TWEN site that includes the syllabus, announcements, forums, assignments, and other class materials. All students are required to register for the site. You are required to bring the casebook and any additional assigned materials with you to class each day.

Preparation:

Like any ethical, competent and courteous lawyer, you must be on time and prepared for every class. Do not sign in if you are not prepared to participate. Also, you may not leave the room during class time unless you are experiencing an emergency. Your participation grade will suffer if you fail to meet these basic expectations.

Please note that this is a particularly challenging upper-level class that brings together materials from various other courses, including civil procedure, constitutional law, torts, contracts and family law, as well as theoretical approaches to the law. It is also cumulative. What we learn in the first unit will make a big difference to your understanding of the second one. Make sure you take the time to read carefully for each class, or you are likely to get lost.

Under UB's attendance policy, you are allowed a maximum of five absences. A student who is absent or unprepared for more than five classes may be compelled to withdraw from the course and barred from taking the final exam, resulting in an "F." UB's attendance policy is available for your reference at <http://law.ubalt.edu/template.cfm?page=267> .

Grades (Quizzes, Exam and Participation):

Your grade will be based on three quizzes, a final exam and class participation, including a pre-assigned presentation of a "Perspective" in the text. The final examination will test your knowledge of the subjects covered in this course, as well as your critical thinking, legal analysis, and argument skills. The quizzes aim to ensure that you are keeping up with the reading and understanding the concepts we are learning in the readings and during class time. Because the course contains complex material, it is especially important to keep up with and review the material periodically.

Your participation in class discussions may help or hurt your grade by up to one step (e.g., B+ to A-, or B- to C+). Participation will be graded by the quality of your contributions to class discussion. High quality participation shows that you have done the work assigned and reflected on the issues therein. Low quality participation shows that you have either not done the assignment or spent insufficient time reflecting on it before coming to class. Being late to class also constitutes low quality participation (because you can't participate if you are not there!).

Computers:

Laptops are permitted for the purpose of note-taking. On occasion, you may be required to close your laptop. Consequently, you may want to bring some paper with you to class just in case.

Class Cancellation:

If the instructor must cancel a class, notices will be sent to students via email and posted on the classroom door. If there is inclement weather, students should visit the University of Baltimore web page or call the University's Snow Closing Line at (410) 837-4201. If the University is not closed, students should presume that classes are running on the normal schedule.

Academic Integrity:

Students are obligated to refrain from acts that they know or, under the circumstances, have reason to know will impair the academic integrity of the University and/or the School of Law. Violations of academic integrity include, but are not limited to: cheating; plagiarism; misuse of library materials; use of another's book or study materials without consent; unapproved multiple submissions; material misrepresentation of one's academic history or standing; misrepresentation of any academic matter; intentionally giving another student false or inaccurate information about class requirements; inappropriate discussion of exams; and misrepresenting or falsifying class attendance reports. For your reference, the honor code is available on the University of Baltimore School of Law website.

Disability Policy:

If you are a student with a documented disability who requires an academic accommodation, please contact Karyn Schulz, Director of Disability Support Services at 410-837-4141 or via email at kschulz@ubalt.edu.

Secondary Sources:

A number of students appreciate knowing what secondary sources are available to assist them in learning these materials. Here is a list of a few, from most recent to oldest.

- Michael Hoffheimer, Conflict of Laws; Examples and Explanations (Wolters Kluwer 2013)
- William Richman and William Reynolds, Understanding Conflict of Laws (Lexis Nexis 2013)
- Kermit Roosevelt, Conflict of Laws (Foundation Press, 2010)
- Lea Brilmayer, Conflict of Laws (Little, Brown and Company, 1995)

List of Course Topics:

The list of topics and assignments are *subject to change* to maximize student learning (and we may not cover every topic). I will notify you in advance of any changes. All changes will be emailed to you and posted on the TWEN site in the Syllabus folder.

- I.** INTRODUCTION
- II.** CHOICE OF LAW
 - A. The Territorial Approach
 - 1. Torts: Unintentional
 - 2. Torts: Intentional
 - 3. Contracts
 - 4. Property
 - 5. Marriage
 - 6. Structural Mechanics and Escape Valves
 - a. Substance and Procedure
 - b. Characterization
 - c. Renvoi
 - d. Public Policy
 - e. Domicile
 - B. Modern Approaches
 - 1. Early Critique of the Traditional Approach
 - 2. Governmental Interest Analysis I
 - 3. Comparative Impairment
 - 4. Better Rule of Law
 - 5. Restatement (Second) of Conflict of Laws
 - a. Torts
 - b. Contracts
 - c. Property
 - d. Marriage
 - e. Structural Mechanics and Escape Valves
 - C. Critiques of Existing Approaches
 - D. Statutory Rules
 - E. Internet Choice of Law
 - F. International Issues
- III.** The Role of the Federal Government in Horizontal Choice of Law
 - A. Constitutional Constraints on Horizontal Choice of Law
 - B. Obligation to Provide a Forum
 - C. Other Constitutional Provisions
 - D. Relationship between US and International Laws
 - E. Extraterritorial Application of US Law
- IV.** Recognition and Enforcement of Judgments
 - A. Full Faith and Credit Principle
 - B. Domestic Relations Matters
 - C. Foreign Country Judgments
 - D. Foreign Judicial System Fairness Exception
 - E. Comparative Materials

CONFLICT OF LAWS- LIST OF ASSIGNMENTS

“CB” means casebook. “TWEN” is the course website. Please note that this list of assignments is subject to change to further student learning.

I. INTRODUCTION

Class 1 (January 13): Introductions and Case Study

- CB, xxv-xxxiv
- TWEN: Order Granting Plaintiff’s Motion for a Temporary Restraining Order, in *Obergefell v. Kasich* (US District Court, Southern District of Ohio, July 22, 2013)
 - What is this case about? What conflict of laws issues and themes, laid out in the introduction to the casebook, are apparent in this case?
- TWEN: Please print out, fill out and bring student information sheet to class

II. CHOICE OF LAW

A. The Territorial Approach

Class 2 (January 15): Torts: Unintentional

- CB, 167-185

Monday, January 20 – No School – Martin Luther King Day

Class 3 (January 22): Torts: Intentional – Perspectives on (1) Proof of Foreign Law, and (2) Raising and Preserving Conflict of Laws Issues in Litigation

- CB, 185-201
- Perspective 1, on Proof of Foreign Law: _____ (191-94)
- Perspective 2: on Raising and Preserving Conflict of Laws Issues in Litigation: _____ (194-96)

Class 4 (January 27): Contracts/Property

- CB, 196-207 (191-96 is review)
- CB, 217-25

Class 5 (January 29): Marriage

- CB, 226-43
- Perspective 3, Perspective on Same Sex Marriage: _____ (240-43)

Structural Mechanics and Escape Valves

Class 6 (Feb. 3): Substance and Procedure; Characterization

- CB, 243-56

Class 7 (Feb. 5): Renvoi; Public Policy

- CB, 257-75

- Perspective 4, on Public Policy: _____ (273-75)

Class 8 (Feb. 10): Domicile

- CB, 275-91

B. Modern Approaches

Class 9 (Feb. 12): Early Critique of the Traditional Approach; Governmental Interest Analysis I (False Conflicts)

- CB, 291-98
- CB, 303-315
- *QUIZ 1: On Territorial Approach/Structural Mechanics and Escape Valves*

Class 10 (Feb. 17): 1. Governmental Interest Analysis II (Apparent or True Conflicts; No Interest or Unprovided-for Cases; Experimenting with True Conflicts)

- CB, 315-35

Class 11 (Feb. 19): Comparative Impairment

- CB, 340-59

Class 12 (Feb. 24): Better Rule of Law

- CB, 365-80

Restatement (Second) of Conflict of Laws

Class 13 (Feb. 26): Torts

- CB, 381-401

Class 14 (March 3): Contracts

- CB, 412-15, 429-43

Class 15 (March 5): Property; Marriage

- CB, 464-65 (up to case)
- CB, 471-87
- Perspective 5, on Same-Sex Marriage: Choice of Law Proposals: _____ (480-81)

Class 16 (March 10): Structural Mechanics and Escape Valves

- CB, 488-504

Class 17 (March 12): *(Extended) Quiz 2 on Modern Approaches*

Monday, March 17-Sunday, March 23: Spring Break

C. Critiques of Existing Approaches
D. Begin Statutory Rules

Class 18 (March 24)

- CB, 543-67

E. Internet Choice of Law

Class 19 (March 26)

- CB, 606-22

F. International Issues

Class 20 (March 31)

- CB, 628-45
- Perspective 7, on Relationship between International Law and Conflict of Law: _____ (628-31)

III. The Role of the Federal Government in Horizontal Choice of Law

Class 21 (April 2): Constitutional Constraints on Horizontal Choice of Law

- CB, 647-665

Class 22 (April 7): Constitutional Constraints on Horizontal C-o-L Cont'd; Obligation to Provide a Forum; Other Constitutional Provisions

- CB, 665-83, 691-95

Class 23 (April 9): Relationship Between US and International Laws

- CB, 782-803

Class 24 (April 14): Extraterritorial Application of US Law

- CB, 812-26
- *Quiz 3 on Critiques of Existing Approaches and Role of Federal Government*

IV. Recognition and Enforcement of Judgments

Class 25 (April 16): Full Faith and Credit Principle – Introductory Concepts

- CB, 827-41
- Perspective 7, on Claim Preclusion and Issue Preclusion: _____ (830-33)

Class 26 (April 21): Domestic Relations Matters

- CB, 889-904
- Perspective 8, on Relationship between Judgments and Marriage: _____ (900-904)

Class 27 (April 23): Foreign Country Judgments; Foreign Judicial System Fairness Exception

- CB, 952-72
- Perspective 9, Comparative Material—The Brussels Regime: Judgment Enforcement and Recognition in the EU: _____ 1000-04

Class 28 (April 28): Wrap up and Review

April 28-29 – Possible Make Up Days

Final Exam