Private International Law by **Reid Mortensen** [2000, Butterworths, Sydney, xxxvi + 359 pages, ISBN 0-409-31107-3, soft cover]

Conflict of Laws, or Private International Law, as the author Reid Mortensen prefers to call it, is held widely to be a difficult field of law. Yet, it all boils down to three fundamental issues: (a) jurisdiction, (b) recognition and enforcement of foreign or interstate judgments and decrees, and (c) the rules governing choice of law in areas such as contracts, torts, restitution, property transactions, matrimonial causes, succession and international arbitration. Mortensen, in common with most other contemporary authors of textbooks on the subject, concentrates on these three issues "as they would normally fall in the course of a dispute."

Butterworths published this text on *Australian* private international law at the same time as a more comprehensive casebook on the subject.[1] Those who like using casebooks for teaching purposes would probably prefer to use the larger work, but Mortensen's book fills the gap between the casebook and the standard work by Nygh,[2] which is now somewhat dated. Further, it is convenient that Mortensen gives references to the relevant sections in both these works at the end of every chapter.

Apart from providing students with a useful historical introduction to the field, Mortensen covers in a straightforward manner the three core issues mentioned above, as well as family law matters, property law and the law of obligations. An additional chapter on "Parenting and Custody of Children" is also available on-line from the publisher. In keeping with the intention of the "Butterworths Tutorial Series" to which this text belongs, each chapter contains a fairly comprehensive problem intended to help students acquire "effective problem-solving skills." Throughout the text, there are brief boxed summaries of key cases and hypothetical problems, and a suggestion for tutorial discussion keyed to the various chapters.

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[1] Davies M and ors, Conflict of Laws – Commentary and Materials (2000, Butterworths, Sydney).
[2] Nygh PE, Conflict of Laws in Australia (1995, 6th edition, Butterworths, Sydney).

While the book would be useful in tutorials because of the features described above, and in particular its concentration on the key issues, it is not adequate as a sole text. Although a rather large number of cases – including most of the leading Australian and English ones – are referred to and described briefly in the text, actual quotations from judgments are few and far between. For example, the important consideration of *dépeçage* by Evatt J in *Wanganui-Rangitikei Electric Power Board v Australian Mutual Provident Society*[3] really requires students to read more than just over three lines as shown at 106.[4] The only way that a student may gain an appreciation of the development of legal thought, judicial reasoning and differences between judges is to see it in action in actual judgments, or at the very least, extracts contained in a casebook.

This is not to criticise the author's case summaries, many of which are quite fittingly succinct. The treatment of *Breavington v Godleman*[5] at 257-258 on choice of law rules in torts is a good example. Rather, it is to suggest that the present text needs to be used *in conjunction with* a casebook or in a course combining lectures and tutorials, where the lecturer can expound on the key cases, statutes and conventions in greater detail.

This book has been written for an Australian audience. For this reason, Mortensen does not discuss the important impact of the 1968 Convention on Jurisdiction and Judgments in Civil and Commercial Matters,[6] or the EFTA counterpart, the 1988 Lugano Convention, on common law and statutory conflict of laws rules. This contrasts with the position adopted by conflict of laws textbooks published in England or elsewhere in Europe. Probably, this is of no great import to Australian students who instead have to contend with differing interpretations of the "dual liability" rule in the various Australian jurisdictions discussed at 259-263 and the aftermath of the High Court decision in *Re Wakim, Ex parte McNally.*[7]

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[3] (1934) 50 Commonwealth Law Reports 581, 603-4.
[4] Incidentally, "Rangitikei" is misspelt.
[5] (1988) 169 Commonwealth Law Reports 41.
[6] More commonly known as "the Brussels Convention".
[7] (1999) 198 Commonwealth Law Reports 511.

Generally, it would be useful in an Australian textbook to include, in particular, New Zealand case law. The United Kingdom and Ireland, for reasons noted already, are diverging increasingly from approaches taken by the Australian courts. As noted by Mortensen, the United States has not only a federal common law but also a common law at State level, leading to a wide range of possible decisions as seen at 18. Furthermore, not all "uniform" law is as uniform as the description suggests. However, although cases from the United States are often interesting intrinsically, they are not always particularly apposite to Australia. On the other hand, and to a greater extent, New Zealand and Australian law are converging, or are at least developing in tandem. This occurs not only in legislation, such as the recent amendments to the (NZ) 1986 Commerce Act, but to judicial decisions also. Of course, in some areas, New Zealand and Canadian law are developing more in common because of broadly similar approaches to rights issues.

The High Court has original jurisdiction in only a small range of personal actions under section 75(iv) of the (Cth) Constitution and it cannot exercise its "diversity jurisdiction" in all possible cases. The courts may, generally speaking, decline jurisdiction or transfer cases. The cross-vesting scheme was an important exercise in trying to overcome some of the jurisdictional disputes that plagued State Supreme Courts (at 171-176). At present, it is too premature to say where the scheme is heading, and Mortensen acknowledges rightly that the "nightmarish problems of choice of law under the cross-vesting scheme" may occupy the State Supreme Courts even more in the future (at vi).

There are some signs that this book was published somewhat hastily. Apart from typographical errors, there are some misleading passages, such as the treatment of the (Cth) 1991 Carriage of Goods by Sea Act (at 16 and 242). While it is true that the Hamburg Rules have been incorporated in the legislation, they are not in force in Australia where the Hague-Visby Rules still apply.

There is a confusing reference to "*The* Hague Convention." *(emphasis added)* Although in family law circles this may be a convenient shorthand for the 1980 Convention on the Civil Aspects of International Child Abduction, in a conflict of laws context, it needs to be remembered that there is a large number of 'Hague Conventions' in

this field as a result of the work of the Hague Conference on Private International Law. Further, there are others dealing with family law matters such as the 1965 Convention on Adoption, 1970 Convention on Recognition of Divorces and Legal Separations, 1973 Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations and 1978 Convention on Celebration and Recognition of the Validity of Marriages. Undoubtedly, Mortensen is aware of this since he refers to the importance of international conventions in conflict of laws (at 16).

Actually, the best part of the book is that dealing with family law, and the two chapters on the validity of marriage and its dissolution and annulment can both be given with profit to students. The important topic of child abduction is, as has already been noted, covered in an additional on-line chapter. The only major area not covered by the book is that of arbitration, which could perhaps have been treated as an extension to Part 6 on Recognition and Enforcement of Foreign Judgments.

Mortensen's book is not intended to be a "stand-alone" text and neither is it comprehensive enough. However, it can certainly serve as a useful tutorial text to back up a more thorough treatment of the subject in lectures and the study of cases.

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