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## BOOK REVIEW

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CONFLICT OF LAWS: A NORTHWEST PERSPECTIVE. By James A. R. Nafziger.\* Butterworth Legal Publishers, Redmond, Washington, 1985. pp. xiv, 292. \$50.00.

Professor James A. R. Nafziger sets out in his recently published work, *Conflict of Laws: A Northwest Perspective*,<sup>1</sup> to demystify the oft-shrouded subject known as conflict of laws. The author of this essentially introductory work states in his opening remarks, "Contrary to the common wisdom, [c]onflicts law is not mysterious nor based on mysteries, save for the false or manufactured mysteries that characterize law generally."<sup>2</sup> Professor Nafziger succeeds in his mission to demystify by combining discussion of the law with sound theoretical explanation.

But Professor Nafziger had another purpose in setting this work afloat. As he states it, the purpose of the short and readable book was to provide "a sufficient introductory background and focused analytic treatment of the law of Oregon, Washington, and Alaska to enable the practitioners to solve their own problems as they arise."<sup>3</sup> In this endeavor Nafziger is not quite so successful — at least insofar as the Alaska practitioner is concerned.

The book's scope is at once the source of its success and its shortcoming. Professor Nafziger warns at the outset that the book is not a comprehensive treatise on conflicts law.<sup>4</sup> It is not. And as such, it is substantially more accessible to the neophyte practitioner than most treatises on the subject. Nafziger does not warn the reader, however, that the book is uneven in its coverage of the three states surveyed. He does not advert to the fact that his work is particularly concerned with the law of Oregon and Washington and consequently sometimes short-changes the Alaska reader.

This is not to say that the book's coverage of Alaska law, albeit limited, is poor. On the contrary, the book provides a good outline of

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1. J. NAFZIGER, *CONFLICT OF LAWS: A NORTHWEST PERSPECTIVE* (1985) [hereinafter cited as *CONFLICT OF LAWS*].

2. *Id.* at 1 (citing Leflar, *The Nature of Conflicts Law*, 81 COLUM. L. REV. 1080, 1094 (1981)).

3. *CONFLICT OF LAWS*, *supra* note 1, at 2.

4. *Id.*

the contours of Alaska's conflicts law. It is only to point out that the Alaska practitioner may be disappointed in the author's apparent decision to limit his discussion of Alaska law in favor of enlarging the scope of his book to cover such topics as international conflict of laws,<sup>5</sup> constitutional limitations on the competence of state courts,<sup>6</sup> and American Indian conflict of laws.<sup>7</sup> In fairness to Mr. Nafziger, what appears to the Alaska-oriented reader as comparative neglect may well be the result of what the author implies to be the relative simplicity — at least as compared with Oregon and Washington — of Alaska conflicts law.<sup>8</sup> Thus, Mr. Nafziger may well have been justified in his sometimes cursory attention to Alaska. One fears, however, that something else determined the author's focus — witness the book's prefatory remarks about Mr. Nafziger's decision to write the book, which do not even mention Alaska:

What convinced me to move full steam ahead with plans to write this book was an experience a few years ago at the University of Guadalajara. Professor Willis Reese of Columbia University and I had been invited there to provide some American perspectives at a conference on constitutional aspects of Mexican conflicts law. Over dinner Professor Reese mentioned the peculiar complexity of Oregon's approach to choosing the proper law in conflicts cases, about which I had written, and encouraged me to develop some of my ideas further. On my return to Salem, I sought refuge in comparative study by turning to Washington law, which is of particular interest to a number of my students each year. When I discovered that Washington's choice-of-law process also appeared murky, I confirmed plans to survey the field of conflicts law from a North-west perspective.<sup>9</sup>

The author's relative lack of interest in Alaska law is well illustrated in the focal chapter of *Conflict of Laws*. The chapter on choice of law discusses the law of Oregon and Washington in much greater detail than the law of Alaska<sup>10</sup> — just in terms of pages devoted to the law of each state, Oregon received about forty percent, Washington approximately fifty percent, and Alaska only about ten percent.<sup>11</sup> Moreover, the author found it useful to compare the choice-of-law processes of Oregon and Washington because of their similarity to one another,<sup>12</sup> but did not see fit to compare Oregon or Washington law with Alaska law. Furthermore, while the work explicitly advances recommenda-

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5. *Id.* at 65-116.

6. *Id.* at 45-63.

7. *Id.* at 253-70.

8. *See, e.g., id.* at 189.

9. *Id.* at xii.

10. *See id.* at 135-219.

11. *See id.*

12. *Id.* at 160-61.

tions for the improvement of Oregon's and Washington's choice-of-law rules,<sup>13</sup> no such recommendations were made for the Alaska rules.<sup>14</sup> Mr. Nafziger was apparently content to point out the ambiguities and uncertainties in Alaska law and thus to merely imply where further development is needed.

A related disturbing aspect of the book from the viewpoint of the Alaska practitioner is the limited extent to which Professor Nafziger applies his theoretical and historical discussions to his treatment of Alaska law. Although the author stresses, "[I]n the field of conflicts law, an in-depth understanding of a particular jurisdiction's theoretical framework and judicial proclivities is indispensable,"<sup>15</sup> little is said, for example, about the present inclinations of the members of the Supreme Court of Alaska.

Nevertheless, Professor Nafziger's artful description of the recent trends in the conflicts field, and his explanation of the theoretical underpinnings of the trends, is useful and interesting. Trends and underpinnings in the law are particularly pertinent in the conflicts field because, as the author puts it, "the jurisprudence of conflicts has experienced growth, atrophy, stabilization, metastasis, and remission in recent years."<sup>16</sup> Consequently, an appreciation of the recent metamorphosis of conflicts law is especially instructive.

Particularly enlightening is Professor Nafziger's account and explanation of the trends in the past twenty years in the choice of law area. As summarized by the author:

Largely in response to . . . defects in the territorialist rules, the new learning in the United States began to shift the focus, primarily of American courts, from the selection of the appropriate *jurisdiction*, whose law would then be applied, to the selection of the appropriate *law*, as determined by an analysis of its intended scope, function(s), salience to the governing authority, and relative value.<sup>17</sup>

According to Nafziger the "new learning" has not, however, proved altogether satisfactory:

The new learning is complex, often confusing, or highly discretionary, subject (rightly or wrongly) to value judgment (even though most of the methods purport to be value-free), highly divergent among jurisdictions, and difficult to articulate in clear, precedent-setting, reasoned opinions. Also, the new learning typically results in a preference for forum law and often blurs the legislative/judicial dichotomy of governmental functions.<sup>18</sup>

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13. *Id.* at 148-50, 186-87.

14. *See id.* at 189-93.

15. *Id.* at xi.

16. *Id.* at xiii.

17. *Id.* at 15 (citation omitted).

18. *Id.* at 16.

Consequently, the author explains:

[a] counter-reformation has led to the adoption of judge-made rules derived from judicial experience with the new approaches and to a new, but more enlightened territorialism and preference for the forum (*lex fori*), if enough contacts between issues and the forum exist.<sup>19</sup>

All in all, the changes of the past two decades have dramatically altered the choice of law landscape in Alaska as well as the lower forty-eight:

Although the territorialist approach continues to prevail in a minority of jurisdictions and continues to dominate analysis in contexts other than torts or contracts in all jurisdictions, it is of receding importance.<sup>20</sup>

Sensible organization is another virtue of *Conflict of Laws*. The work may be read easily by readers with different interests. Each chapter is an independent unit so that it may be read and understood separately from the other chapters. Thus, a reader interested in conflicts law only as it relates to family law need read only the one relevant chapter.<sup>21</sup> On the other hand, the book is also designed to be read from cover to cover, much like a text. For the cover-to-cover reader, the introductory chapter has a particularly useful feature: eleven unsolved hypotheticals that demonstrate circumstances within which conflicts law is applied. The hypotheticals supplement and enhance the later theoretical discussion by demonstrating its application.

Professor Nafziger has produced a useful and interesting volume by intertwining discussion of law and theory, and by combining a general treatment of national trends with a specific focus on the application of the law in the Northwest. He has shown why conflict of laws is often viewed as "a kind of rogue elephant that threatens the serene landscape of established rules."<sup>22</sup> More importantly, Nafziger has demonstrated that the courts have "helped tame the elephant."<sup>23</sup> In so doing, he has himself aided in the endeavor. One only wishes that he had devoted greater energy to reining in the Alaska beast.

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19. *Id.* (citations omitted).

20. *Id.* at 135.

21. *Id.* at 221-52.

22. *Id.* at 1.

23. *Id.*