

2-1-1953

## **MARITAL PROPERTY IN CONFLICT OF LAWS. By Harold Marsh, Jr. Seattle, Washington: University of Washington Press, 1952.**

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### **Recommended Citation**

David S. Stern, *MARITAL PROPERTY IN CONFLICT OF LAWS. By Harold Marsh, Jr. Seattle, Washington: University of Washington Press, 1952.*, 7 U. Miami L. Rev. 287 (1953)  
Available at: <https://repository.law.miami.edu/umlr/vol7/iss2/29>

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MARITAL PROPERTY IN CONFLICT OF LAWS. By Harold Marsh, Jr. Seattle, Washington: University of Washington Press, 1952. Pp. xi, 263. \$4.50.

The varied experience of Dr. Marsh is evident throughout this volume. One finds that each activity, as graduate student, law teacher and practitioner, has left its impress. The conscious reasons for his selecting this particular topic are explained in the preface and introductory chapter.

Marital property raises, beyond any question of a doubt, the basic problems involved in choice of law with special vividness and with great frequency. This is particularly true in those states where some institution akin to the civil law "community" exists. The author has succeeded in making his book something more than a mere digest or critical analysis of all the reported American decisions bearing on the major problems discussed herein, which he states with some humility, that he has attempted to cite.

The book appears to have originated while the author was a teacher at the University of Washington and to have continued under the stimulus of that delightful instructor in the mysteries of the conflict of laws, Professor Elliott Cheatham. In general, it is a thorough, albeit perhaps too painstaking, outline of the problems that arise in this field. The ordinary reader will probably be left with a feeling that this is a doctoral dissertation—polished, mature and sophisticated—but still a dissertation. Its existence, however, will be of considerable value to the ever-increasing number of practitioners having problems arising that touch on marital property.

After a very brief introduction in which he explains his plan of operation, the author makes an analysis of marital property laws in the United States. There is no question that an exact definition and understanding of the concept "marital property" is needed for him to be able to expose certain of the fallacies present in the choice-of-law rules dealing with it. His listing of the various statutory provisions, both as to form and content, is too bulky and complex for a volume having this purpose. When he reaches the heart of his material, however, Dr. Marsh is more selective but still sufficiently thorough. His method of handling the material, while unrelieved by dramatic flashes and generally dry as to tone, leaves nothing to be desired. In Chapter Three he surveys the basic aspects of the choice-of-law problem with an introductory section for each one of his remaining principal chapters—that is, Section One deals with the problem of characterization, and Chapter Four disposes of the details of that problem; Section Two with the problem of selection, and Chapter Five takes care of the various subdivisions of this material; and Section Three deals, as does Chapter Six, with the problem of application.

The author considers the problem in the field of the application of the norms once selected to be fairly simple. The only thing that he finds to be really important herein is the matter of the conflict of the choice-of-law

rules. This conflict is subdivided into the patent and the latent, and the latter is, of course, the more difficult of the two to dispose of. It is here that he considers the matter of *renvoi*, and asserts, as I believe correctly, that he makes "an attempt to state the practical (not logical) fallacy in each of these three lines of reasoning." The three lines of reasoning are, of course, the acceptance of *renvoi*, the rejection of *renvoi*, and the compromise proposal. The fallacy "is the inarticulate assumption of the writers on the subject . . . that a jurisdiction must 'accept' *renvoi* or 'reject' *renvoi in toto* in all past, present or future cases regardless of pragmatic considerations which vary from one type of case to another." (p. 114) He suggests as some of the pragmatic considerations the following, all of which have to do with policy feelings of the forum: (1) the contrast in the relative strength of policy behind the local and the foreign choice of law rulings; (2) the strength of the policy behind the local substantive provision which is competing for recognition with the provision of the foreign law; and (3) the strength of the policy of uniformity of decision in the particular type case before the court. These three considerations which might vary a mechanistic solution in this field, although they are made at the point of considering the conflict in the choice of law rulings, are really basic to Dr. Marsh's thinking in the entire field. He rebuffs a suggestion by Professor Cavers that the court should simply select from among the alternative substantive rulings that one which it likes best or decide on a result which is just "and makes sense" and then find a choice of law rule which will lead it to the predetermined result. The author points out that the suggestion is "probably not entitled to be regarded as a serious one" since Professor Cavers never reveals how one is to determine what result is just or sensible. Still, it seems to me that the above-mentioned underlying policy limitations really lead the author to the same final conclusion. To support this view, without entering into any of the detailed analysis that he makes, I would like to quote a short selection immediately following that which I just referred to:

This criticism of Professor Cavers' suggestion is not intended as an assertion that rules of law mechanically produce results with apodictic certainty, as some of the extreme Rationalists seem to believe. It may freely be admitted that the rules of law are no more than a check upon the trained intuition of the judge—a function which all of the Realists, in their responsible moments, apparently concede. But this proper and necessary function will not be fulfilled if the rules are stated in terms of the judge's intuition.

In his main chapters dealing with the analysis of the problems of characterization and selection, Dr. Marsh brings together almost all of the materials in a very excellent fashion. As to characterization, he considers the distribution of property on death, divorce, rights of creditors, transfer of property, the rights of spouses inter se, income and the acqui-

tion of tort claims. I noted with particular interest his discussion of *Hutchinson v. Ross* (p. 167-9), wherein he finds the decision difficult to justify and feels, as does this reviewer, that it is perhaps satisfactory if limited to its precise facts, but that basically this problem is one that should be governed by the law of the domicile of husband and wife at the time of the transfer.

It would be pleasant to be able to assume that this volume will be widely read. The detailed analysis is of very high quality, completely lucid and most valuable for expert, general practitioner and teacher. It is deserving of most careful study by all those who work in the field of estate problems involving any type of marital or familial unit. As the author's survey of laws of this country would indicate, the categories in which a Florida attorney must be interested are so numerous that any recommendation for the use of this volume becomes even more imperative for any attorney in this jurisdiction. The increasing frequency of the conflict of laws type litigation and the expansion and popularity of this course in the law schools should help to secure for this volume the popularity which it deserves.

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CASES AND MATERIALS ON MODERN PROCEDURE AND JUDICIAL ADMINISTRATION. By Arthur T. Vanderbilt. New York: Washington Square Publishing Corp., 1952. Pp. xx, 1390. \$8.50.

This new casebook by Chief Justice Vanderbilt gives excellent coverage to "procedure" as well as "judicial administration."

The cases on procedure for the first time cover the decisions under the Federal Rules of Civil and Criminal Procedure. This commendable endeavor has been long awaited particularly since both sets of rules follow a common pattern. With rare exception the selected cases are decisions construing and applying the new 86 Federal Rules relating to civil procedure and the 60 Federal Rules relating to criminal procedure—which rules the author terms "the most effective and at the same time the simplest system of procedure thus far developed in our law."

The author deals only in a limited way with historical features, the most conspicuous being excerpts from Langdell's *A Summary of Equity Pleading* and Maitland's *The Forms of Action at Common Law*, and also an address to the American Bar Association in 1906 entitled "The Causes of Popular Dissatisfaction with the Administration of Justice," concerning which the author states that: "If I had my way I would make it prescribed reading once a year for every judge, practicing lawyer, and law professor and law student. . . ."