in order that the reader may benefit from the writer's discussion of the various principles enunciated in numerous leading decisions. While this is a minor omission, it is a convenience which will be sorely missed by military counsel and judges.

In sum, however, the faults to be found with *Military Evidence* are greatly outweighed by its sound exposition of the principles unique to military practice and those generally applied in all common law courts. It is to be commended to military lawyers everywhere, and I daresay that the armed services would benefit greatly if they required its perusal during the various special training courses which their attorneys are required to attend.

CABELL F. COBBS*

THE LAW OF CONFLICT OF LAWS. By Robert A. Leflar. Indianapolis: The Bobbs-Merrill Company, Inc., 1959. Pp. lxxii, 467. $13.50.

This book is the outgrowth of a project started by the author some twenty-five years ago. The origin was an undertaking to prepare and Arkansas annotation to the Restatement of Conflict of Laws. Professor Leflar soon discovered, as did so many other state annotators, that except in the most unsatisfactory way, this was an impossible task. Case after case just could not be lined up as "in accord" or "contra" the Restatement blackletter. They would fit only vaguely or tangentially into the neat moulds of Professor Beale's conceptualism. To be sure, cases were decided for one or the other side in the litigation, but opinions were often muddled, illogical and confused. Professor Leflar was unhappy with his project and had the good sense to throw it up. Instead, he wrote a small book in the nature of a treatise on the Arkansas law of Conflict of Laws in an attempt to give a more accurate description of the law in his state. He then discovered, to use his own words that "on a subject like Conflict of Laws . . . no one state's law is complete within itself; the law is made up of a national mass of cases and writings including locally binding precedents, the latter being in general locally distinguishable on their facts from almost any later case that may arise."[1]

Within the limitations of space which Professor Leflar has imposed upon himself, it seems to this reviewer that he has handled subtle and difficult problems with extraordinary skill and lucidity. As an example, his treatment of the problem of equitable conversion in the Conflict of Laws may be cited.[2] He points out that some of the few cases on the matter have taken the position that the doctrine of equitable conversion is a rule of internal property or other law designed to attain certain local results which have nothing to do with choice of law problems, as for instance to carry out the intention and desire of a testator.[3] Where it is a question of its conver-

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1 Preface, p. v.

2 Sec. 141.

3 Toledo Society for Crippled Children v. Hickok, 152 Tex. 578, 261 S.W. (2) 692, 43 A.L.R. (2d) 553 (1953).

sion into personality, unless the court applies the law of the *situs* of the land, unfortunate results may be brought about. If it is a question of title to the land that is involved, any other rule might be self-defeating since the *situs* has the last word. If it is a question of inheritance taxation, two states may exact a tax as where the vendor's interests in a contract for the sale of land in another state is treated as personal property and taxed at the domicile of the decedent but treated as realty at the situs and taxed there.[4]

The author's treatment of the general problem of characterization in the Conflict of Laws is erudite and sophisticated. He favors the rule that the forum applies its own qualifications and classifications in characterizing a legal problem. He points out the difficulty and circuity in attempting to apply to the characterization problem the law of the state governing the substantive rights of the parties. Frequently that law cannot be determined until the process of characterization has been completed. In any event, when a state adopts a choice of law rule, presumably it does so for some reason either of administrative convenience or of policy. This reason is ignored, and the policy subverted if the law of some other jurisdiction characterizes the terms in which the rule is cast. Thus, if Connecticut, as the forum, has the rule that the place of the alleged wrong governs tort liability but the "proper" law is applied to contract problems—say the place of the most important contacts—it loses control if the law of Arkansas, California or New York, as the case may be, determines whether the issue involved is one of tort or contract.

In a work of this scope, one can always find something about which to complain. For example, I do not always see eye to eye with the author on his interpretation of particular cases. This is not because I think he has read them inaccurately, but because he will place a different emphasis on the rationale or select different parts of the opinion as the "key". Thus, he cites the New York case of *Herzog v. Stern*[5] for the proposition that the problem of enforcement of the survival statute of the place of tort was characterized by the New York court as "one of the distribution of the deceased tortfeasor's estate" and therefore governed by the law of the domicile.[6] He then explains a California case[7] as holding that the survival statute is "procedural and not substantive" so that the forum's statute will govern.

But in Judge Lehman's somewhat fuzzy opinion in *Herzog*, he repeatedly declared, presumably as the basis of his decision, that the court was "without jurisdiction" because neither the common law nor any statute of New York provided for an action for personal injury against the personal representative of a deceased tortfeasor.[8] This is not a situation where the court decides the case by applying its own substantive law. It merely decides not to decide it because it has no jurisdiction. Certainly this is not *res judicata* of the merits. If the plaintiff can find an administrator of the decedent's estate in a jurisdiction which has a survival statute or where the tort was committed, it is hard to believe that the New York decision would be a bar.

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[4] In re Plasterer's Estate, 49 Wash. (2d) 339, 301 P. (2d) 539 (1956).
[5] 264 N.Y. 379, 191 N.E. 23 (1934).
[6] Sec. 114, p. 221.

In the California case, Justice Traynor's opinion also was not altogether clear. The decision applied the California survival statute to an Arizona accident between two California parties. It is true that at one point the opinion appears to adopt a procedural characterization. But a more plausible explanation appears in the following language: "When, as in the present case, all the parties were resident of this state, and the estate of the deceased tortfeasor is being administered in this state, plaintiff's right to prosecute their cause of action is governed by the laws of this state relating to administration of estates."[9] Again the court said, "the problem here is whether the causes of action that these plaintiffs had against Pullen [the deceased] before his death survive as liabilities of his estate."[10]

But these points are niceties on which disagreement is not surprising. Whatever major criticims that could be made of the author's work are mostly those of inadequacy, e.g., his neglect of the "proper law" for determining tort liability and his two pages on *Erie v. Tompkins*. But it is hardly fair to criticize an author for not writing a book he never intended to write. The author here set himself the task of preparing a short treatise outlining the major principles, rules and policies of the Conflict of Laws—not an exhaustive and comprehensive treatment of the subject.

Occasionally Professor Leflar says something which I do not understand, but I attribute this to my own limitations rather than to his. He also raises questions which I cannot answer with any degree of confidence. But here again, my students do that each year, and although it is sometimes discouraging it seems to happen more frequently as the years go by. I like to think that it is not because the students are brighter, but that I learn more and more what I do not know.

It is frequently said by teachers of Conflicts of Laws that there is more confusion here than in other branches of the law. There is some plausibility to the proposition. Those who deal with this subject do have confusion in two dimensions—that of the substantive law involved and that in the area of Conflicts. It is close to the department of utter confusion. There is not only the problem of jurisdiction (judicial, legislative and executive and/or administrative) but those of choice of law, compounded by the *renvoi* and characterization. Straight thinking in all these areas places an extraordinary strain upon legal scholarship. In so far as this is true, the author of this book stands up admirably under the strain.

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[7] Grant v. McAuliffe, 41 Cal. (2d) 859, 264 P. (2d) 944, 42 A.L.R. 1161 (1953).
[8] 264 N.Y. 379, 383, 384.
[9] 41 Cal. (2d) 859, 867.
[10] 41 Cal. (2d) 859, 866.

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