Conflict of Laws, by Stephen G.A. Pitel and Nicholas S. Rafferty (Toronto, Irwin Law, Essentials of Canadian Law, 2010, xxii and 517 pp., $70)

It is a rare pleasure to have the opportunity to review a new Canadian text on the conflict of laws. Written by two well-known specialists in the field, Professors Stephen G.A. Pitel and Nicholas Rafferty, of the Faculties of Law of the University of Western Ontario and the University of Calgary respectively, *Conflict of Laws* is a welcome addition to the literature and to the Irwin Essentials series. It fills an important need for a clear and concise discussion of the subject that is highly readable and thoughtful, and it admirably fulfils the mandate of the Irwin Essentials series to "offer serious but succinct treatments of the subjects that make up today's legal environment."

The treatment of each topic is ample, yet manageable in size, for a concise work, and the authors encourage and facilitate further consideration and research throughout. For example, in the chapter on Domicile, the authors include a section on "future directions"[1] that raises the question of possible legislative developments; a brief sketch of the question of the residence of corporations[2] that may well be developed more in future editions; and, as with the other chapters, a list of "Further Readings"[3] for those who wish to probe the issues more extensively.

To describe the roughly 500-page work as concise is in no way to minimize the achievement it represents. Drafting a comprehensive original narrative of any subject in law is a daunting task — and it is particularly so in a subject that is not so widely understood that its contours and precepts are common knowledge. In the case of the conflict of laws, the challenge goes beyond writing "what was oft thought but ne'er so well expressed" to setting out in an accessible way what has not often been thought and, even then, may rarely have been well expressed.

1. Pitel and Rafferty, at p. 26.
2. *Ibid.*, at pp. 26-27.
3. *Ibid.*, at pp. 27-28.

In this regard, the benefits of the authors' experiences as law professors is plain: the narrative is directed at the sharp and inquiring minds of members of the legal community — students, scholars, and practitioners — who may lack familiarity with the subject but are interested in understanding its logic and capable of questioning traditional doctrine. The authors go beyond rehearsing the established rules to providing their own explanations for basic principles — just as they, no doubt, seek to do in their lectures.

From the outset, Professors Pitel and Rafferty make their mark on the subject with a structure for the work of their own devising. Having identified the "three central questions" (jurisdiction, applicable law, judgments), they go on to note that three particular topics (domicile/residence, exclusion of foreign law, foreign currency obligations) "are relevant, in differing ways, to each question"[4] and so should be treated first. Later on, in moving directly from the question of jurisdiction to that of judgments, they observe that since these topics "have more in common with each other than either does with the second central question, choice of law[,] . . . it makes sense to examine these topics in this order."[5]

Despite these and other innovations, in many respects, the work is a clear and accessible narrative of the main principles and doctrines largely as they are traditionally understood. And no apology need be made for that. On the contrary, it is a credit to the authors that they curbed the enthusiasm that the writers of new texts might have to stake their claim in the literature by departing from the mainstream, the way some writers might do in discreet articles in the periodical literature. If the subject were overwritten then this might be desirable — but as it is, the natural tendency for two specialists to recount in their own ways the main tenets of the subject is sufficient to foster discussion of the central questions and debate of the views of leading authors without creating the impression that the field is in a state of chaos.

This is not to say that they offer no new views on traditional issues. On the contrary, in various parts of the work Professors Pitel and Rafferty make quite plain the distinctiveness of the perspective they offer. In some places, this takes the form of a novel view of the rationale for a well-established doctrine. For

4. *Ibid.*, at p. 9.
5. *Ibid.*, at p. 157.

example, the bases on which foreign penal and revenue laws are excluded is described "[i]n one sense, . . . as subsets of the broader notion of public policy. . . [but] more specifically concerned with protecting the forum's territorial sovereignty than is public policy."[6] And the traditional topics of renvoi, the incidental question and the time element are cast as examples of "Ambiguities in Applying the Choice of Law Rule."[7]

In other places, this takes the form of a distinctive view of a particular aspect of a rule. For example, the authors opine that "a motion for a stay can be brought even after the defendant has taken steps which in law constitute acceptance of the court's jurisdiction, such as defending on the merits."[8] And, in still others, it takes the form of responding directly to other specialists in the field, such as the author who suggested that the effect of the Marriage (Prohibited Degrees) Act[9] was to eliminate the application of foreign law, despite the possibility, noted by Professors Pitel and Rafferty, of a court upholding a marriage that contravened the Act if the marriage were valid by the parties' antenuptial domicile.[10] All of this contributes to the lively discussion that naturally arises from the emergence of new voices in the field.

Indeed, one of the great benefits of the publication of a concise text such as this is its scope for re-adjusting the balance to focus more on issues of current concern. As a result, there is a detailed treatment of the post-*Morguard* developments in the area of jurisdiction simpliciter and of leading cases across the range of topics addressed. And the authors are able to incorporate analysis of a number of current developments abroad that might influence the law in Canada. While this emphasis on current issues could prompt the need for more frequent updating, that, too, presents a prospect likely to be enjoyed by readers.

All in all, they strike a good balance between traditional and topical concerns, between a comprehensive narrative and a focus on issues of particular significance, and between current developments in Canada and abroad; and they do so with considerably fluidity. The authors are to be congratulated for making what has often been thought to be a difficult subject

6. *Ibid.*, at p. 33.
7. *Ibid.*, at p. 217.
8. *Ibid.*, at p. 115.
9. S.C. 1990, c. 46.
10. Pitel and Rafferty, at p. 387.

seem easy. And for a subject that they rightly note, "takes on greater importance with each passing year," this is an especially welcome achievement.

Janet Walker*

* Professor, Osgoode Hall Law School.