

The Law Market

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Erin A. O'Hara, Larry E. Ribstein : The Law Market before purchasing it in order to gage whether or not it would be worth my time, and all praised The Law Market:

3 of 3 people found the following review helpful. Good but sometimes tedious
By Peter McCluskey
This book describes why it has become easier for parties to a contract to choose which legal system will be applied to their contract, both in terms of the political forces that enabled choice and why it's good that choice is possible. The political forces include the ability of some parties to physically leave a jurisdiction if they have inadequate choices about what law will be applied to them. Often enough those parties are employers that legislators want to remain in their

jurisdiction. The benefits include simple things like predictability of contract interpretation when the contract covers things that involve physical locations associated with multiple jurisdictions where there otherwise would be no reliable way to predict which court would assert jurisdiction over disputes. They also include less direct effects of providing incentives for legal systems to improve so as to attract more customers. The book mostly deals with contracts between corporations, and is much more tentative about advocating choice of law for individuals. The book provides examples showing that as with most markets, competition for law produces better law. But it also mentions more questionable results, such as competition for most effective tax shelters or the easiest terms for divorce (for divorce, the book suggests those who want divorce to be hard should try to arrange contracts that allocate assets in a way that discourages divorce; it would be harder for easy-divorce states to justify ignoring those contracts). There's also a risk that the competition will sometimes benefit lawyers rather than their clients, as clients often rely on lawyers to decide which legal system to use without having a practical way to check who benefits from some of those choices. The book is often dull reading because it often describes case law to explain quirks of current law that will be of interest to few non-lawyers. One part that disappointed me was the assumption that the choice of jurisdiction should dictate the physical location in which plaintiffs must argue their case (the travel costs can make some lawsuits unpractical to a consumer suing a company if the company decides the location at which a suit is argued). Why are we trapped in a set of rules that requires travel to a possibly distant court when we have technology that provides reasonable remote communications?

Today, a California resident can incorporate her shipping business in Delaware, register her ships in Panama, hire her employees from Hong Kong, place her earnings in an asset-protection trust formed in the Cayman Islands, and enter into a same-sex marriage in Massachusetts or Canada--all the while enjoying the California sunshine and potentially avoiding many facets of the state's laws. In this book, Erin O'Hara and Larry E. Ribstein explore a new perspective on law, viewing it as a product for which people and firms can shop, regardless of geographic borders. The authors consider the structure and operation of the market this creates, the economic, legal, and political forces influencing it, and the arguments for and against a robust market for law. Through jurisdictional competition, law markets promise to improve our laws and, by establishing certainty, streamline the operation of the legal system. But the law market also limits governments' ability to enforce regulations and protect citizens from harmful activities. Given this tradeoff, O'Hara and Ribstein argue that simple contractual choice-of-law rules can help maximize the benefits of the law market while tempering its social costs. They extend their insights to a wide variety of legal problems, including corporate governance, securities, franchise, trust, property, marriage, living will, surrogacy, and general contract regulations. *The Law Market* is a wide-ranging and novel analysis for all lawyers, policymakers, legislators, and businesses who need to understand the changing role of law in an increasingly mobile world.

"The Law Market promises to add some much-needed clarity and common sense to a 'largely ignored field of law.'"--Harvard Law "One of the most important metrics for evaluating the success of an academic work is the degree to which it sparks further questions...Evaluated along this dimension, *The Law Market* must be deemed a smashing success."--Engage: The Journal of the Federalist Society's Practice Groups "O'Hara and Ribstein's book is a breakthrough in legal scholarship. Recognizing that the unprecedented mobility of today's society gives economic actors substantial choice over the law that will govern their affairs, the authors analyze law as a product that is produced by states and marketed to consumers. The authors thereby identify a fundamental feature of contemporary business law that has until now been overlooked or only imperfectly understood. The book is chock-full of original insights into the operation of this 'market for law', and offers a valuable analysis of the pros and cons of this development from the standpoint of public policy." --Geoffrey P. Miller, New York University Law School "O'Hara and Ribstein are the first to expose how the ability of private persons to choose the law that shall govern them - in business and in their personal lives - is transforming our legal system. Drawing on public policy and economics in an approachable, commonsense way, they sketch the implications of the law market for our world today, and show how its emergence calls for a careful balance between individual freedom and regulation to advance the public good. This book is a must-read, not only for lawyers with real-world clients but also for every corporate general counsel and legislative staff member grappling with our globalized law market." --Richard A. Nagareda, Vanderbilt University Law School "This is a pathbreaking book - theoretically sophisticated and carefully applied. O'Hara and Ribstein's concept of the 'law market' captures an essential truth about the conflicts revolution, and their thesis carries profound implications for wide swaths of the law, ranging from international investment disputes to same-sex marriage." --Peter B. Rutledge, University of Georgia Law School "The Law Market significantly enriches the discussion about jurisdictional competition and enhances our understanding of the underlying forces."--American Journal of Comparative Law About the Author Erin A. O'Hara is Professor of Law, and Director of the Law Human Behavior Program at Vanderbilt University. She is the author of *The Economics of Conflict of Laws*. Larry E. Ribstein is Mildred Van Voorhis Jones Chair in Law, and co-Director of the Program on Business Law Policy at the University of

Illinois. He is the co-author of *Business Associations and The Economics of Federalism*.