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## Jurisdiction Over Interstate Homicides

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*Illegal Transactions*

An illegal transaction is one that contravenes some positive law, statute or charter, or is against public policy.<sup>29</sup> "The courts sometimes fail to note the difference between ultra vires and illegal contracts, and apply the rules relating to the effect of ultra vires contracts to contracts either expressly prohibited or against public policy, without in any way noticing the distinction."<sup>30</sup> While it may be said that all illegal acts are ultra vires<sup>31</sup> the converse is certainly not true.

It would appear to be axiomatic that an illegal transaction entered into by the board of directors cannot be ratified by a majority of the shareholders<sup>32</sup> so as to prevent a minority shareholder from obtaining relief.<sup>33</sup> Indeed, there can be no ratification of an illegal transaction that will render it enforceable.<sup>34</sup>

No Louisiana cases have been found which have application to the above situations. It seems likely that the Louisiana courts will treat an ultra vires transaction as one legal in its inception and beyond the *authority* of the corporation rather than one in which the corporation has no *power* to perform, in view of Section 12, I, of the Louisiana Business Corporation Act.<sup>35</sup> With regard to voidable and illegal transactions, presumably the Louisiana courts will follow the majority decisions of the various common law state courts, that is, that voidable transactions may be ratified by a majority of the shareholders and that illegal transactions cannot be ratified at all.

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## JURISDICTION OVER INTERSTATE HOMICIDES

As a general proposition it is true that the criminal law of a state has no extraterritorial operation.<sup>1</sup> In view of the compli-

29. *Staacke v. Routledge*, 111 Tex. 489, 241 S.W. 994 (1922).

30. 7 *Fletcher, Cyc. Corp.* (perm. ed. 1931) § 3582.

31. *Eckhart v. Heier*, 38 S.D. 524, 162 N.W. 150 (1917).

32. *Von Arnim v. American Tube Works*, 188 Mass. 515, 74 N.E. 680 (1905); *Commonwealth v. Richmond, Fredericksburg & Potomac R.R.*, 111 Va. 611, 69 S.E. 1070 (1911).

33. *Forrester v. B. & M. Consol. Copper & Silver Min. Co.*, 21 Mont. 544, 55 Pac. 229 (1898).

34. *Cartwright v. Albuquerque Hotel Co.*, 36 N.M. 189, 11 P.(2d) 261 (1932); *Runcie v. Corn Exchange Bank Trust Co.*, 6 N.Y.S.(2d) 616 (1938); *Baird v. McDaniel Printing Co.*, 25 Tenn. App. 144, 148, 153 S.W.(2d) 135, 138 (1941), in which the court pointed out that "Corporate transactions which are illegal because prohibited by statute are void, and cannot support an action nor become enforceable by performance, ratification, or estoppel."

35. La. Act 250 of 1928, § 12, I [Dart's Stats. (1939) § 1092, I].

1. See *Marshall v. Nebraska*, 6 Neb. 120, 29 Am. Rep. 363 (1877).

*State v. Chapin*, 17 Ark. 561 (1856); *Beattie v. State*, 73 Ark. 428, 84 S.W.

cated nature of some of the jurisdictional problems that may arise, it would be unwise to give unconditional acceptance to this rule of law. Criminals have respect for political boundaries only insofar as those boundaries are an aid in effecting their criminal purposes.<sup>2</sup>

A nice jurisdictional problem is presented when A, standing in Louisiana, fires a shot at B in Texas; B is badly wounded and is taken to a hospital in Arkansas, where he expires. Which state or states have jurisdiction over the crime? To constitute murder there must be an intent to kill, an act pursuant to that intent, an injury inflicted, and the resulting death.<sup>3</sup> A brief analysis of the hypothetical facts shows that in no one state are all of these constituent elements present. The intent and the defendant's physical act, the pulling of the trigger, occurs in Louisiana, the injury is inflicted in Texas and the resulting death occurs in Arkansas.

It is fundamental that jurisdiction in criminal matters rests solely in the courts of the state or country in which the crime is committed,<sup>4</sup> but the laws of each state or country exclusively determine whether given conduct is or is not criminal.<sup>5</sup> The nationality or citizenship of the offender is immaterial. He is subject in all respects to the law of the country or state within which the crime was committed.<sup>6</sup>

When only the defendant's act and criminal intent appear in

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477 (1904); *Simpson v. State*, 92 Ga. 41, 17 S.E. 984 (1893); *Johns v. State*, 19 Ind. 421 (1862); *State v. Wyckoff*, 31 N.J. Law 65 (1864); *Ex parte McNeely*, 36 W.Va. 84, 14 S.E. 436, 15 L.R.A. 226 (1892).

See A.L.L., *Restatement and Commentaries on Conflict of Laws* (1931) 465-469.

2. This fact was recognized long before the turn of the century. Francis Wharton wrote: "The great discoveries of recent days, by which the obstacles of space are surmounted, call for a reconsideration of our old conceptions of criminal jurisdiction. . . . Now, however, there is scarcely a business transaction which is not more or less affected by information conveyed instantaneously from a foreign land; information as to which fraud is always possible, and concerned in the concoction or transmission of which there may be always persons, resident in other countries, who may do acts violating the penal laws of the country in which the information is to operate." Wharton, *Conflict of Criminal Laws* (1880) 1 Cr. L. Mag. 689.

3. At common law a concurrence of the place of the death and the place of the stroke was necessary in order to confer jurisdiction upon the court. *State v. McCoy*, 8 Rob. 545 (La. 1844).

4. *Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224, 36 L.Ed. 1123 (1892); *Brown v. United States*, 35 App. Cas. 548, 22 Ann. Cas. 1912A 388 (D.C. 1910); *Stewart v. Jessup*, 51 Ind. 413, 19 Am. Rep. 739 (1875); *State v. Kelly*, 76 Me. 331, 49 Am. Rep. 620 (1884); *People v. Devine*, 185 Mich. 50, 151 N.W. 646 (1915); *State v. Kief*, 12 Mont. 92, 29 Pac. 654 (1892); *State v. Cutshall*, 110 N.C. 538, 15 S.E. 261 (1892); *State v. Hall*, 114 N.C. 909, 19 S.E. 602 (1894); *Ex parte McNeely*, 36 W.Va. 84, 14 S.E. 436 (1892).

5. *Huntington v. Attrill*, 146 U.S. 657, 13 S.Ct. 224, 36 L.Ed. 1123 (1892).

6. *State v. Chapin*, 17 Ark. 561, 65 Am. Dec. 452 (1856); *Reg. v. Anderson*, L.R., 1 C.C. 161, 8 Eng. Rul. Cas. 1 (1868).

this state the Louisiana courts are confronted with a jurisdictional problem which is not specifically covered by the Louisiana Code of Criminal Procedure. In the absence of statutory authority, Louisiana courts are justified in looking to the common law for a guide to determine the rule of law to be applied.<sup>7</sup> In the leading case of *State v. Hall*,<sup>8</sup> the North Carolina court refused to exercise jurisdiction over a person who fired a shot from that state killing a person in Tennessee. The court held, that in the absence of a pertinent statute, the state in which the blow was received had exclusive jurisdiction over the offender. The Louisiana court has also held that the place where the fatal blow was received has jurisdiction over the offender.<sup>9</sup> In cases relating to venue the Louisiana court has taken a contrary view with regards to libel published through a newspaper<sup>10</sup> and to a threatening message transmitted over a telephone.<sup>11</sup> In these cases the Louisiana Supreme Court held, without citing any common law authority, that the crime is completed where the act is initiated and not where it is consummated. This may show a tendency of Louisiana courts to focus more attention upon the offender than upon the completed act. Since these cases relate solely to venue<sup>12</sup> it is questionable whether or not their application will be extended to interstate crime. Louisiana law on this subject is unsettled, and a statute may be necessary to enable Louisiana to exercise jurisdiction over the offender.

Courts frequently stress what they call the *gist* of the offense, that is, those elements of a given crime without which the existence of that crime cannot be demonstrated. In reaching a conclusion the courts constantly refer back to the English territorial doctrine which stressed the *situs* of the stroke.<sup>13</sup> This doctrine

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7. See Comment (1931) 6 Tulane L. Rev. 135.

8. 114 N.C. 909, 19 S.E. 602, 28 L.R.A. 59 (1894).

9. *State v. McCoy*, 8 Rob. 545 (La. 1844).

10. *State v. Moore*, 140 La. 281, 72 So. 965 (1916), held that the place where the paper was published and sent out was the proper place for trial, not where the paper was read, and the damage done.

11. Defendant, while in New Orleans, telephoned the prosecuting witness who was in St. Bernard Parish, threatening to murder him. Court held the proper venue to be the place where the defendant was standing at the time he made the call. *State v. Gallicio*, 170 La. 954, 129 So. 541 (1930).

12. Art. 13, La. Code of Crim. Proc. of 1928: "All trials shall take place in the parish in which the offense shall have been committed, unless the venue be changed; provided that where the several acts constituting a crime shall have been committed in more than one parish, the offender may be tried in any parish where a substantial element of the crime has been committed."

It will be noted that venue refers merely to the place within a state where a trial is to be held, whereas jurisdiction refers to the inherent power of a court to try a particular case. Art. 10, La. Code of Crim. Proc. of 1928.

13. *State v. Hall*, 114 N.C. 909, 917, 19 S.E. 602, 604 (1894). The court

originated at a time when the means of bringing about death were not as numerous or as far reaching as the methods existent today.

The crime of murder may be committed through the medium of an innocent agent such as a bullet,<sup>14</sup> the United States mail,<sup>15</sup> or a person.<sup>16</sup> Where such an object is set in motion outside of a state the courts within the state have usually employed the fiction that the offender is constructively present in the offended state.<sup>17</sup> To adopt the principle of constructive presence means that the offender, his acts, and their consequences must be brought into the territory by means of a judicial fiction. This fiction has been most frequently used in cases where poisons or explosives<sup>18</sup> were sent through the mails, where money was obtained through false pretenses,<sup>19</sup> and where there has been libel through the publication of a newspaper or other periodical.<sup>20</sup> The majority of the

said, ". . . it can not be doubted that the place of the assault or stroke in the present case was in Tennessee; and it is also clear that the offense of murder at common law was committed within the jurisdiction of that state." In *Simpson v. State*, 92 Ga. 41, 17 S.E. 984 (1893), the court localized the crime at the place where the bullet struck, by bringing the defendant into the state on the theory of constructive presence.

14. *Simpson v. State*, 92 Ga. 41, 17 S.E. 984 (1893); *State v. Hall*, 114 N.C. 909, 19 S.E. 602 (1894).

15. Poisoned candy was sent by the defendant in California to the victim in Delaware. Having statutory authority, the California court took jurisdiction over the offense. *People v. Botkin*, 132 Calif. 231, 64 Pac. 286 (1901).

16. *People v. Adams*, 3 Denio (N.Y.) 190, 45 Am. Dec. 468 (1846), where it was held that the courts of New York had jurisdiction of the offense of obtaining money by false pretense, committed within the state by a non-resident, through an innocent agent, although the guilty party was not at the time of the offense within the state.

In *Commissioner v. White*, 123 Mass. 430, 25 Am. Rep. 116 (1877), it was held that although a thief had acted through the person of an innocent agent, and had not himself been present in the state of the theft, he could nevertheless be punished by the courts of that state. See also *Johns v. State*, 19 Ind. 421, 81 Am. Dec. 408 (1862).

17. This line of reasoning was used in *Simpson v. State*, 92 Ga. 41, 43, 17 S.E. 984, 985 (1893), where the court used the following language: "Of course, the presence of the accused within this state is essential to make his act one which is done in this state, but the presence need not be actual. It may be constructive. . . . the act of the accused did take effect in this state. He started across the river with his leaden messenger, and was operating it up to the moment when it ceased to move and was therefore, in a legal sense, after the ball crossed the state line, up to the moment it stopped, in Georgia."

See also *State v. Chapin*, 17 Ark. 561, 65 Am. Dec. 452 (1856); *Johns v. State*, 19 Ind. 421, 81 Am. Dec. 408 (1862); *People v. Adams*, 3 Denio (N.Y.) 190, 45 Am. Dec. 468 (1846); *State v. Hall*, 114 N.C. 909, 19 S.E. 602 (1894); *Ex parte Rogers*, 10 Tex. Ct. App. 655, 38 Am. Rep. 654 (1881); *State v. Piver*, 74 Wash. 96, 132 Pac. 858 (1913).

18. *People v. Botkin*, 132 Calif. 231, 64 Pac. 286 (1901).

19. *People v. Adams*, 3 Denio (N.Y.) 190, 45 Am. Dec. 468 (1846).

20. *State v. Piver*, 74 Wash. 96, 132 Pac. 858 (1913).

common law courts have held that the crime is completed where the act is consummated and not necessarily where it is initiated.<sup>21</sup>

Thus, in our hypothetical situation, in the absence of a specific statutory provision,<sup>22</sup> the actor may be punished in Texas where the bullet struck the victim's body, but it is questionable whether or not he may be punished in Louisiana where the bullet was set in motion unless specific legislation be enacted to cover this situation.

It is submitted that both these states have sufficient connection with the homicide to assume jurisdiction, and might, by statute, provide for the apprehension and punishment of the offender. To provide for this exceptional situation, many states have enacted statutes conferring jurisdiction upon their courts when the offender and the victim are in different jurisdictions. These statutes may be divided into three types: First, those based on the so-called "subjective principle," that is, when a person is in one state and sets an object in motion which takes effect in a second state,<sup>23</sup> the courts of the first state (Louisiana in our hypothetical case), are given jurisdiction over the offender.<sup>24</sup> The second type of statute adopts the "objective principle," providing that where a force is set in motion outside the state and is consummated within the state, the courts of the state where the crime was consummated (Texas in our hypothetical case) have jurisdiction.<sup>25</sup> The third is more sweeping, making punishable

21. *Simpson v. State*, 92 Ga. 41, 17 S.E. 984 (1893); *State v. Hall*, 114 N.C. 909, 19 S.E. 602 (1894).

22. In *State v. Brown*, 172 La. 49, 50, 133 So. 358, 359 (1931), it was said: "As a Code of Criminal Procedure, it does not embody all the rules of pleading, practice and procedure that are applicable to the trial of criminal cases. Many of these rules are not embraced in the code and will be found in the Revised Statutes, in the Acts of the Legislature, in the common law and the jurisprudence."

23. Statutes covering this situation may be found in Alabama: Ala. Code (1940) tit. 15, § 93; Arizona: Ariz. Code Ann. (1939) § 44-1101; Florida: Fla. Stat. Ann. (1944) § 932.07; Indiana: Ind. Stat. (Burns, 1933) § 9-216; Mississippi: Miss. Code Ann. (1942) tit. 11, § 2428; North Carolina: N.C. Gen. Stat. (1943) c. 15, § 132 [passed in 1895 as a result of the decision in *State v. Hall*, 114 N.C. 909, 19 S.E. 602 (1894)]; Ohio: Ohio Code Ann. (Page, 1939) § 13426-5; South Carolina: S.C. Code of Laws (1942) § 1018 (This section covers the case where either the object was set in motion inside the state and took effect outside the state, or where it was set in motion outside, and took effect within the state.); Tennessee: Tenn. Code Ann. (Williams, 1934) § 11474; Texas: Texas Ann. Code Crim. Proc. (Vernon, 1925) art. 192.

24. *People v. Botkin*, 132 Calif. 231, 64 Pac. 286 (1901).

25. Similar statutes may be found in Alabama: Ala. Code (1940) tit. 15, § 92; Arizona: Ariz. Code Ann. (1939) § 44-1102; California: Calif. Penal Code (Deering, 1931) § 778; Idaho: Idaho Code (1947) § 19-302; Illinois: Ill. Ann. Stat. (Smith-Hurd, 1935) § 38-709; Indiana: Ind. Ann. Stat. (Burns, 1933) § 9-203; Iowa: Iowa Code (1946) § 753-3; Mississippi: Miss. Code Ann. (1942) tit. 11, c. 2, § 2427; Montana: Mont. Rev. Codes Ann. (1935) c. 64, § 11704; North Dakota: N.D. Rev. Code (1943) c. 29-03, § 0301; Ohio: Ohio

any person who commits within a state any crime in whole or in part.<sup>26</sup> In effect, this latter type of statute declares that if any of the substantial constituent elements of an offense occur within the state jurisdiction over the whole offense exists. Such a statute would serve as the basis for the assumption by either Louisiana or Texas of jurisdiction over the murderer. California has adopted this type of statute, and its constitutionality has been upheld.<sup>27</sup>

The next question is whether the offender could be tried and convicted in Arkansas where the victim died. It would appear at first glance that the courts of the state where the death occurred have jurisdiction since the very essence of murder is death. The courts which have been confronted with this problem have been disturbed by the fact that no part of the defendant's act occurs at the place of the death; and in the absence of specific statutory provisions, they have refused to take jurisdiction in a case of this kind.<sup>28</sup>

Several states have enacted statutes providing that when the fatal blow is inflicted in one state and the victim dies in another, the offender may be punished in the state in which the death occurs.<sup>29</sup> It has been argued that these statutes contravene the defendant's constitutional right to be tried at the place where the crime is committed.<sup>30</sup> A person may be wounded in one state and wander across the nation before he finally dies of the wound.

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Gen. Code Ann. (Page, 1939) § 13426-4; Oklahoma: Okla. Stat. Ann. (1937) tit. 22, § 121; Oregon: Ore. Comp. Laws (1940) § 26-302; South Dakota: S.D. Code (1939) § 34-0801; Tennessee: Tenn. Code Ann. (Williams, 1934) § 11473; Texas: Texas Ann. Code Crim. Proc. (Vernon, 1925) art. 193; Utah: Utah Code Ann. (1943) § 105-8-1.

26. A statute covering this factual situation may be found in California: Calif. Penal Code (Deering, 1931) § 778a.

27. *People v. Botkin*, 132 Calif. 231, 64 Pac. 286 (1901).

28. *State v. Carter*, 27 N.J. Law 499 (1859); *Riley v. State*, 9 Tenn. 438 (1849); *Maine v. Kelly*, 76 Maine 331 (1884); *Ex parte McNeely*, 36 W.Va. 84, 14 S.E. 436 (1892).

During the latter part of the fifteenth century, the English courts carried the idea of circumscribed power of the courts over crime so far as to hold that if a blow was struck in one county and the death ensued in another county from the effects thereof, the criminal could not be punished in either. This necessarily followed from the rule that the grand jury in neither county could take cognizance of facts occurring in the other. Because of this troublesome question of extraterritorial jurisdiction Statutes 2 and 3 of Edward VI were enacted in 1548. These statutes gave jurisdiction to both the county in which the blow was received and the one in which the death ensued.

29. Georgia: Ga. Code Ann. (1935) § 27-1105; Louisiana: Art. 16, La. Code of Crim. Proc. of 1928; Maine: Me. Rev. Stat. (1944) c. 132, § 6; Massachusetts: Mass. Ann. Laws (1933) c. 277, § 61; Minnesota: Minn. Stat. Ann. (1945) § 627.09; New Mexico: N.M. Stat. Ann. (1941) § 42-801; Oregon: Ore. Comp. Laws Ann. (1940) 26-303; West Virginia: W.Va. Code (1943) § 5921.

30. U. S. Const. Art. III; *Commonwealth v. MacLoon*, 101 Mass. 1, 100 Am. Dec. 89 (1869); *Ex parte McNeely*, 36 W.Va. 84, 14 S.E. 436 (1892).

Nevertheless, the state in which the death occurs could try the offender if it has a statute of the type last mentioned. Here the action of the victim rather than that of the defendant determines the jurisdiction. Such arguments against the constitutionality of these statutes have been unavailing, for the state in which the death occurred is deemed to have sufficient connection with the crime to justify its assumption of jurisdiction.<sup>31</sup>

Assuming that each of the states, Louisiana, Texas and Arkansas has a broad jurisdictional statute conferring jurisdiction upon their courts when any basic element of a crime occurs within its boundaries, the question arises as to whether the defendant could successfully plead former jeopardy if he had been tried in one state and was later placed on trial in a state in which another of the basic elements of the crime occurred. Under a statute providing for criminal jurisdiction where any basic element of the homicide occurs, a separate and distinct crime of murder is deemed to have been committed against the law of each state where such an element of the crime is to be found. Therefore a plea of former jeopardy would meet with no success.<sup>32</sup>

The situation embraced here is one that does not occur frequently, but when this problem does arise, Louisiana courts should be armed with legislative authority to bring the offender to justice. To achieve this purpose it is submitted that Article 16 of the Louisiana Code of Criminal Procedure be amended to read as follows:

*Article 16:* A criminal homicide is deemed to have been committed in Louisiana if:

1. The defendant was in this state when he committed the act causing the death; or
2. The defendant's act took effect on the victim in this state, or
3. The victim died in this state.

If any one of these elements occurs in Louisiana, the courts of this state shall have jurisdiction to try and punish the offender, and it shall be immaterial that the other elements of the crime may have occurred in some other state.

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31. *Ibid.*

32. *Marshall v. State of Nebraska*, 6 Neb. 120, 29 Am. Rep. 363 (1877); *Moore v. Illinois*, 55 U.S. 13, 14 L.Ed. 306 (1852); 1 *Bishop, Criminal Law* (1923) § 986; 22 C.J.S. 450.