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Private Law: Conflict of Laws

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the company to sustain a defense on the basis of false answers of a material nature.[33]

On the other hand, another court rejected, on the ground of good faith, an insured's defense based on false and material answers resulting in non-disclosure of a heart attack suffered nine or ten months before the application.[34] Some further delineation of the proper application of R.S. 22:619B would appear to be in order.

MISCELLANEOUS CASES OF INTEREST

Miscellaneous cases included problems such as when money is being "conveyed" by a messenger,[35] what constitutes a "blowout" of an oil well,[36] a "collapse" of a building,[37] and a "mysterious disappearance."[38] Likewise, a downspout from a gutter was held part of a plumbing system;[39] and a suspected criminal who was accidentally killed by a police officer when the officer fired at his leg to ward off an attack was held an aggressor, which relieved the company of responsibility.[40]

CONFLICT OF LAWS

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Stability is a resistance to change, and consistency with an earlier decision provides certainty; but where the prior case was outmoded when rendered, and was so characterized, the

33. Radosta v. Prudential Ins. Co. of America, 163 So. 2d 177 (La. App. 4th Cir. 1964).

34. LaFleur v. All Am. Ins. Co., 157 So. 2d 254 (La. App. 3d Cir. 1963).

35. Sansone v. Am. Ins. Co., 245 La. 674, 160 So. 2d 575 (1964). The messenger stopped to play dice in a social club.

36. Creole Explorations v. Underwriters at Lloyds, 245 La. 927, 161 So. 2d 768 (1964).

37. Wischan v. Brockhaus, 163 So. 2d 572 (La. App. 2d Cir. 1964), *cert. granted.*

38. Midlo v. Indiana Lumbermen's Mut. Ins. Co., 160 So. 2d 314 (La. App. 4th Cir. 1964). See Note, *Proof of Mysterious Disappearance Under Theft Policies*, 24 LA. L. REV. 930 (1964).

39. Schumacher v. Lumbermen's Mut. Cas. Co., 154 So. 2d 637 (La. App. 4th Cir. 1963).

40. Johnson v. Combined Ins. Co., 158 So. 2d 63 (La. App. 1st Cir. 1963); *cf.* Brooks v. Continental Cas Co., 128 So. 183 (La. App. 1st Cir. 1930) (where the suspect was accidentally killed by the officer when engaged in flight); Griffin v. First Nat'l Life Ins. Co., 155 So. 2d 74 (La. App. 1st Cir. 1963).

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resistance to change is retrogressive. Eighteen years ago, in the case of *Burke v. Massachusetts Bonding & Ins. Co.*,[1] a Louisiana couple had a car accident in Mississippi due to the husband's negligence. The wife sued in Louisiana under the direct action statute, and her suit was dismissed because the Louisiana conflicts rule *lex loci delicti* required the application of Mississippi law, under which a wife cannot sue her husband in tort. In the faculty symposium article for that year, this case evoked the following constructive criticism:

> "Generally speaking, the rule of *lex loci delicti* has operated very well for the adjudication of tort cases in conflict of laws. There always were, and there still are, strong reasons why many questions of tort liability should be determined in accordance with the law of the place where the damage was sustained. However, a case like the present one brings up the question of whether the time is not approaching when broader consideration should be given to such cases on a more comprehensive evaluation of all the factors involved, especially the policy consideration of the state which has the greatest or only interest in the matter. If both husband and wife have an undisputed domicile in one state and all their reciprocal rights and obligations with regard to both personal and property matters are determined in relation to the law of their domicile, and if an accident happened when their car crossed a state boundary line — whether it be a matter of inches and minutes, or miles and days — it hardly fits in with the total pattern of regulating the relations between the spouses to subject this one situation to the different law of a state with which there is nothing but a casual and accidental association. In such cases, it may still be possible to reach a result more in keeping with the general concepts of law, without discarding the general applicability of the conflicts rule of *lex loci delicti.* In effect, there are really two distinct substantive questions, each of which can be considered separately. The first question, whether the behavior or acts involved create any general tort liability, can still be determined in accordance with the law of the place where the act took place (or the injury inflicted). In this connection, it is necessary to separate the general rule of liability for certain acts from the special

1. 209 La. 495, 24 So. 2d 875 (1946).

rule regarding liability or suability between certain persons for these same acts; reference to the former need not necessarily include the latter. The second question, concerning the acquisition of rights and claims (or the regulation of personal and property relations) as between husband and wife, can then be determined in accordance with the law of their domicile. (The holding in the principal case is not without support in other jurisdictions [e.g., Buckeye v. Buckeye, 203 Wis. 248, 234 N. W. 342 (1931)]; but the proposed analysis is also tenable [cf. converse situation in Mertz v. Mertz, 271 N. Y. 466, 3 N. E. (2d) 597 (1936)] and represents a more progressive and functional attitude, placing emphasis on the policy considerations of the state which has the greatest and in fact the only interest in the matter.)"[2]

The same can now be said about the 1963 decision in *Nicholson v. Atlas Assur. Corp.*,[3] where the earlier case was cited and quoted for a repetition of the same fact situation. The same result might have been reached for other reasons, but the *ratio decidendi* was the mechanical application of the *lex loci delicti* conflicts rule without a discriminating analysis of its propriety.

Last year, it was very encouraging when a more enlightened and progressive approach to a conflicts problem was taken in the Louisiana case of *Universal C.I.T. Credit Corp. v. Hulett*,[4] even though there were differences of opinion concerning the actual result.[5]

In the *Nicholson* case, a quotation from the earlier *Burke* case places great reliance on the torts rule of the 1934 Restatement on Conflict of Laws, a rule which has not only been discredited by nearly all the writers in the field but which is also pretty much discarded by the American Law Institute itself in its current work on Restatement of the Law Second for Conflict of Laws. On the point here in issue, the latter work now proposes: "Whether one member of a family is immune from tort

2. *The Work of the Louisiana Supreme Court for the 1945-1946 Term — Conflict of Laws*, 7 LA. L. REV. 317, 319-20 (1947).
3. 156 So. 2d 245 (La. App. 4th Cir. 1963).
4. 151 So. 2d 705 (La. App. 3d Cir. 1963).
5. See Dainow, *Variations on a Theme in Conflict of Laws*, 24 LA. L. REV. 157 (1963); Note, 38 TUL. L. REV. 169 (1933).

liability to another member of the family is determined by the local law of their domicile."[6]

In its approach to various recent developments and works in the field of conflict of laws, the American Law Institute is relatively conservative; yet they have discarded the old general rule of *lex loci delicti* for torts problems in order to reflect better what is actually being done and to provide a more realistic functional approach, in the following proposed conflicts rule:

"§ 379. General Principle.

"(1) The local law of the state which has the most significant relationship with the occurrence and with the parties determines their rights and liabilities in tort."[7]

By the most conservative standards, the *lex loci delicti* conflicts rule, which looks mechanically to the law of the place of the injury, is no longer an adequate approach for the solution of all problems in connection with tort liability in conflicts cases; and our courts must take cognizance of this change as part of present-day growth and development in this field of law.

The case of *Bologna Bros. v. Morrissey*[8] arose out of the Louisiana sale of whiskey to a Mississippi purchaser who took delivery with his own truck in Louisiana. Suit for payment was brought in Louisiana by means of attachment, and the defense was based on a Mississippi prohibition statute which provides that if any person gives credit to another for intoxicating liquor, he loses his debt.[9] The affirmance of the lower court's judgment for the plaintiff brings out four significant points:

(1) The Mississippi statute is procedural because it does not destroy the obligation and only renders it unenforceable in Mississippi courts. This might be questioned, but the issue is not important here.

(2) The full faith and credit clause of the United States Constitution does not require a Louisiana court to substitute the Mississippi statute for its own laws which are within Louisiana's legislative competence and properly applicable.

6. RESTATEMENT (SECOND), CONFLICT OF LAWS § 390g, p. 146 (Tent. Draft No. 8, "Wrongs," April 15, 1963).

7. *Id.* at 3.

8. 154 So. 2d 455 (La. App. 2d Cir. 1963).

9. MISS. CODE § 2612 (1942).

(3) The validity of a contract is determined in accordance with the *lex loci contractus*, the law of the place where it was made, and in the present case the sale was completely consummated in Louisiana. There were negotiable instruments made in Mississippi, and certain payments were to have been made in Mississippi, but there can be no disputing the classification of the contract as a Louisiana sale.

(4) Perhaps less bluntly stated but nonetheless determinative is the affirmative policy of sustaining and enforcing a contract made in Louisiana by a Louisiana vendor in compliance with Louisiana law. It cannot be gainsaid that Mississippi also had a legitimate interest in this transaction (to prevent or undercut it), and a Mississippi court would certainly apply its own law. However, in a Louisiana court there are more than enough Louisiana interests to warrant and support the application of Louisiana law. There are obvious advantages to a system of conflict of laws which would make for uniformity of result regardless of the forum, but while this objective may still be valid it cannot cause the subordination of all other considerations and must sometimes yield.

In *Tooley (Pennison) v. Pennison*,[10] there were a number of problems concerning child support and the separation of community property after a divorce so that the one point of conflict of laws may have been relatively unimportant, but its treatment was unduly summary. During the marriage, the husband purchased a property in Mississippi in his own name but paid the price with community funds. The court stated that since the common law prevails in Mississippi and the Louisiana community laws do not apply there, this property belongs to the husband's separate estate — with the community as creditor for the money used as purchase price.

Although the court did not spell out the conflicts rule or submit it to analysis, the decision is necessarily predicated upon the *lex rei sitae* for the determination of title interests in land. The land was in Mississippi and the court applied the presumed Mississippi law vesting title in the husband. However, in so doing there was not a sufficient inquiry into the law of the state in which the land was situated. While, in the instant case,

10. 157 So. 2d 628 (La. App. 4th Cir. 1963), *writ refused*, 245 La. 586, 159 So. 2d 290 (1964).

it may not have made any difference, in the ultimate legal or practical result, the problem calls for a more complete analysis which may lead to different results where there has been a significant change in the value of the property (for example, by the discovery of oil).

An actual illustration of what is meant by further inquiry into the *lex rei sitae* is found in the Missouri case of *Depas v. Mayo*.[11] After accumulating their wealth in Louisiana, the husband and wife moved to Missouri, where the husband used some of these community funds to purchase land, taking title in his own name. Later, they were divorced, and the wife sued in Missouri for *a half-interest* in this land. Applying the Missouri *lex rei sitae*, the court there found that a person who purchases land with the money of another takes legal title in trust. Since the purchase money had been community funds, the court declared a resulting trust in one-half of the land in favor of the wife and recognized her half interest in the property.

Instead of applying the *lex rei sitae* purely and simply, where land is purchased in a separate property state with funds identified as community property in another, or *vice versa*, there may also be a characterization of the "property interest" in accordance with the identification of the funds used as purchase price, as distinguished from a credit for this amount of money.[12]

In the case of *Levert v. Levert*,[13] the Louisiana court recognized a husband's Nevada divorce in which the wife's general appearance had been entered by attorneys purporting to represent her. In this, the court conformed to the existing law on *res judicata* and full faith and credit. However, the court went on by way of dictum to indicate that if the authorization to her attorneys were limited to waiving service of process, she would retain the right to question the husband's domicile and the Nevada court's jurisdiction; and the court suggested also that even if the divorce proceedings terminated the marital relationship, the wife would still preserve her alimony rights. These

11. 11 Mo. 314, 49 Am. Dec. 88 (1848).

12. See MARSH, MARITAL PROPERTY IN CONFLICT OF LAWS 189, 212, 239 (1952); GOODRICH, HANDBOOK OF THE CONFLICT OF LAWS 246 (4th ed. by Scoles 1964); STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 315 and authorities cited in n.24 (3d ed. 1963).

13. 156 So. 2d 284 (La. App. 4th Cir. 1963), *cert. granted*, 245 La. 48, 157 So. 2d 236 (1963), but dismissed upon private settlement between the parties, 245 La. 1003, 162 So. 2d 341 (1964).

statements are dicta, but it would become serious if the lower court, to which the case was remanded, followed the erroneous direction indicated by them. Waiving service of process is generally taken as equivalent to accepting service of process, and in either event there is a voluntary submission to the jurisdiction of the court. Despite its reliance on the Louisiana case of *Eaton v. Eaton*,[14] the court does not bring out the distinctive facts of that case, which has been discussed in a prior issue of this *Review*.[15] All three of the cited decisions of the United States Supreme Court involved *ex parte* proceedings in the divorce-granting court.[16] By the court's own statement, the Nevada proceedings in the record indicate they were not *ex parte*. The only possibility of a subsequent jurisdictional challenge to the husband's domicile, or of preserving alimony rights, is when the original proceedings have been *ex parte*. If the wife could have shown that she did not authorize any appearance at all, either by a so-called waiver of service or by a general appearance, then the original suit would in effect have been *ex parte*, and the rights reserved to her in such a case would have been available. There is also the possibility of a forum whose law provides for alimony as a sort of pension based on a prior husband-wife relationship, as distinguished from alimony incident to a divorce, but this is another matter not within the scope of the present case.

In the case of *Walker v. Walker*,[17] the court gave full faith and credit to the husband's Arkansas divorce where the evidence fully established that his domicile was there at that time. The more difficult alimony problem has been discussed elsewhere in this *Review*.[18]

In *Folds v. Folds*,[19] suit was brought in Louisiana on the basis of two Arkansas judgments for alimony. Both rendered in the same contested suit, these judgments had resulted in a divorce and alimony decree. Although the Arkansas court still retained authority to make further alimony orders as need might arise, the judgments were "final" with respect to the past due

14. 227 La. 992, 81 So. 2d 371 (1955), *cert. denied*, 350 U.S. 873.

15. *The Work of the Louisiana Supreme Court for the 1954-1955 Term — Conflict of Laws*, 16 LA. L. REV. 255, 257 (1956).

16. Estin v. Estin, 334 U.S. 541 (1948); Vanderbilt v. Vanderbilt, 354 U.S. 416 (1957); Armstrong v. Armstrong, 350 U.S. 568 (1956).

17. 157 So. 2d 476 (La. App. 3d Cir. 1963).

18. See discussion p. 294 *supra*.

19. 160 So. 2d 251 (La. App. 2d Cir. 1964).

and unpaid amounts fixed therein and to that extent are entitled to full faith and credit under the jurisprudence of the United States Supreme Court.[20]

20. Sistare v. Sistare, 218 U.S. 1 (1910).