Variations on a Theme in Conflict of Laws

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The spelling out of a variety of thoughts on a particular topic may be the fruit of painstaking perseverance or the description of an inspired idea; in this instance, the observations and comments here noted have been stimulated by a judicial decision. It is refreshing to find a Louisiana conflict of laws case in which there is a good threshing out of several conflicts problems, dealt with in a forthright manner.

I

In Universal C.I.T. Credit Corp. v. Hulett, suit was brought for a deficiency after the sale of a repossessed automobile failed to bring enough to pay the balance due on the purchase price. The conditional sale of the car had been made by a contract executed in Indiana, and presumably delivery of the car was made in Indiana. With the knowledge and consent of the vendor, the car was taken to Louisiana, where it was later repossessed upon vendee's default in payments. The car was taken back to Indiana, where it was resold, and then the present suit for the deficiency was brought in Louisiana. Although the creditor complied with the requirements of Indiana procedure for the preservation of a right to claim the deficiency, there had been no appraisement as required by the Louisiana Deficiency Judgment Act. Holding that the right to claim a deficiency must be determined by Louisiana law, the court of appeal affirmed the trial court's dismissal of plaintiff's suit.

In a very careful and considered opinion, Judge Tate concluded that the whole affair had enough significant connecting elements with Louisiana to justify application of the Louisiana

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1. 151 So. 2d 705 (La. App. 3d Cir. 1963).
law, without the need to specify a single decisive one. These included the factors that: (1) the car was sold to a Louisiana resident for use in Louisiana, (2) the repossession took place in Louisiana, and (3) Louisiana had a valid governmental interest in enforcing its public policy of barring deficiency claims when repossessed objects are sold without appraisement.

As between an outside creditor and a local debtor, a state always has an interest in protecting its citizens against any unfair dealings or entrapments, but no state purports to shield its citizens from their just debts. Likewise, a state has a legitimate governmental interest in the application of its laws to transactions which occur or to things which are located within its territory; but there must be a sound basis for the application of its laws to people and events located elsewhere.

So long as the car in the present case was in Louisiana, there could be no question about the appropriateness of applying Louisiana law in deciding whether to recognize the reserved interest of a conditional vendor (or chattel mortgagee) and in what kinds of situations. However, the legal question in issue was the creditor's right to claim a deficiency after a resale in Indiana without appraisement. The repossession in Louisiana and removal to Indiana were made in accordance with the terms of the original contract and with the consent of the debtor. In connection with the resale, the creditor observed all the Indiana requirements to protect his claim for a deficiency.

It is hard to say that the Indiana creditor was not justified in considering the original sale and the resale to be Indiana transactions governed by Indiana law. Undoubtedly, an Indiana court could be expected so to hold. Due to the creditor's knowledge that the car was to be located and used in Louisiana, it would not be unreasonable for a Louisiana court to treat the original sale as a straight sale and disregard the reservation of title (or chattel mortgage), but it is quite another matter to say that in connection with a perfectly valid resale transaction in Indiana, the creditor must also observe the Louisiana procedures in order to protect his claim for a deficiency. The requirement of prior appraisement is perforce applicable to all sales made in Louisiana; but the statute makes no mention of out-of-state sales. It is doubtful that the legislature could have intended its application to sales outside of Louisiana. Of course, Louisiana must be deemed to be as much interested in protect-
ing its citizens in their transactions wherever these occur, but in conflicts cases, Louisiana courts do make appropriate determinations in accordance with the proper foreign law pursuant to the Louisiana rules of conflict of laws.

Apparently, there has not been any previously enunciated Louisiana rule of conflict of laws concerning the creditor's right to claim a deficiency after a repossession resale. In the absence of legislative direction, it is up to the court to decide the case in accordance with general principles of conflicts law, and this is what the court purported to do.

The court's conclusion is clear and specific: the lack of appraisement prior to the resale, according to Louisiana law, forfeited the creditor's claim for a deficiency. However, the analysis of the decision and its significance are somewhat in doubt. Where several different bases for decision are grouped together, this is inevitable. At one point, the opinion appears to accept the once-traditional theory of comity as the foundation of conflict of laws; in some parts, there is use of the now-traditional approach through the forum's rules for choice of law; finally, there appears an espousal of the neo-realism theory of governmental interests.

II

The decision enumerates four possible alternative bases for the conclusion reached, but also describes a number of other bases which could be used for supporting the application of Louisiana law.

A. Treating the matter as a problem in contract and regarding "the significant factor as being that the vehicle was sold to Louisiana residents for use in Louisiana," the court considered that the question of the creditor's right to a deficiency should be decided by Louisiana law because "the law of the place where the contract is to have effect determines the rights and obligations of the parties." This is asserted as applying to all issues arising as the consequences of an original contract, all of which are to be treated in the same way as incidents of one

2. Id. at 711.
3. Id. at 707, citing several Louisiana cases. Cf. La. Civil Code art. 10: "The form and effect of public and private written instruments are governed by the laws and usages of the places where they are passed or executed.

"But the effect of acts passed in one country to have effect in another country, is regulated by the laws of the country where such acts are to have effect..."
transaction. This has not been the doctrine nor the practice; actually, the development of conflicts law on contracts has been in the opposite direction toward a greater diversification of specific choice-of-law rules for different kinds of potential issues (capacity, form, performance, breach, damages, limitations or liberative prescription, and so forth; also distinguishing between movables and immovables, sales and mortgages, and so forth).\(^4\) In jurisdictions where contrary movements have set in to reduce this diversity, the conflicts rule has shifted from a single determinative factor to a reference of a more general nature (e.g., center of gravity).\(^5\) In any event, it does seem to be stretching a long way to consider the problem of a creditor's claim for deficiency after resale as an incident of the original contract. Furthermore, if the original sale had been for use in Mississippi by a Mississippian who later moved to Louisiana, it is hardly likely that this Louisiana court would decide the creditor's right to claim a deficiency after resale in accordance with Mississippi law.

B. The court does get closer to the specific issue when it focuses on "the significant factor ... that the repossession took place thereafter in Louisiana."\(^6\) However, the place of repossession could quite easily have been anywhere else, and if it had occurred in a third state without any other contacts, it is hardly conceivable that this Louisiana court would have decided the question in accordance with the law of that state.

C. Another possibility of a single-decisive-contact rule is indicated as the law of the situs of mortgaged property for determining the right to recover a deficiency.\(^7\) However, in the present case there was no mortgage; and furthermore this situs rule is appropriate where there is involved some title interest in the property, which is not the question here.

D. As a more general kind of a choice-of-law approach, the court stated that "a combination of all these factors [including the governmental interest in enforcing its public policy, to be considered below] indicates that it is more appropriate for the Louisiana law to be applied by a Louisiana court in deciding this

\(^6\) 151 So. 2d at 711.
\(^7\) Id. at 708.
matter, than that of another forum which has less significant factual connections with the matter in litigation." This approach is supposedly an objective one, sometimes called the "center of gravity" conflicts rule, or the law of the place which has the most significant grouping of contacts. In view of Indiana's contacts as the place of the original sale, delivery of the car, removal after repossession within contemplation of the original contract, and especially as the place of resale, it is doubtful whether a really objective evaluation of contacts would place the center of gravity in Louisiana. An Indiana court would presumably think otherwise; a court in a third state would more likely agree with Indiana.

E. Perhaps the most significant basis of decision is in the very modernistic vein of "governmental interests" (as distinguished from local public policy discussed below). Of course, Louisiana has a governmental interest in its people, in transactions and property within the state, in the proper application of its laws, and so forth. By the same token, so does Indiana. The interests of one are as legitimate as the other, and on the basis of an objective comparison it can hardly be said that the interests of Indiana should be subordinated to those of Louisiana. Reference is made to the California decision in *Bernkrant v. Fowler,* written by Judge Roger Traynor, who is the most, and perhaps the only, prominent American judge "frankly utilizing the approach of balancing the interests of the forum against those of the foreign jurisdiction as a guide to deciding choice-of-law problems." However, it is particularly interesting to note that, in the cited case, Judge Traynor concluded that Nevada had greater interests than California and decided the case according to Nevada law.

F. A more arbitrary, subjective approach on the basis of governmental interests is to start with the premise that, if there is any governmental interest in the application of the local rule, the court should use this law of the forum unless there are overpowering reasons to use the rule of another state. This extreme interpretation of the governmental interest theory has not yet

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8. Id. at 711.
9. Supra note 5.
11. 151 So. 2d 705, 711 (La. App. 3d Cir. 1963).
received many adherents; neither in the expressions of current writers nor in the published opinions of the judges. When, in the *Hulett* case, Judge Tate made the statement: "We see no reason why the Louisiana law relating to deficiency judgments should not be applied under these circumstances," this reflected a strong subjective approach toward the use of local law. A concomitant aspect of the extreme governmental interest approach is the rejection completely of all choice-of-laws rules as such. In the light of the whole opinion, it does not seem that the court or the writer of the opinion is prepared to go that far.

G. Finally, there is also mentioned the "public policy barring deficiency judgments when chattels of Louisiana debtors are repossessed in Louisiana and subsequently sold without appraisement." In conflicts cases, the public policy bar is a purely negative factor in that it operates exclusively as a corrective to prevent what would be the logical conclusion of the forum's own conflicts rule in a particular case. Thus, if the present case is disposed of by the public policy bar, Judge Tate's reasoning must, by necessary inference, be that the appropriate Louisiana conflicts rule is one whose reference (as a single decisive one or as a grouping) would direct the court to the law of Indiana; but that the result produced by Indiana law would be so obnoxious and repugnant to the fundamental mores of our society that it must be barred on the grounds of local public policy, leaving the outcome of the case to be decided by the law of the forum.

There is no question that the Louisiana legislature expressed itself very strongly on the public policy underlying the Deficiency Judgment Act, and the courts have so interpreted it. However, in the first place, the statute does not expressly apply to sales outside of Louisiana, and there is no substantial or adequate basis to conclude that the legislature had any such intention. Secondly, there is more than ample room for the contrary opinion that the Indiana rule on this point, while different from the Louisiana law, is not so obnoxious as to be repugnant and unacceptable. The Indiana law requires the observance of certain prerequisites (but not prior appraisement) in connection with a resale transaction if the creditor wants to protect his

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13. 151 So. 2d at 711.
claim for a deficiency; failure to do so defeats the claim.\textsuperscript{16} Under Louisiana law, to preserve the creditor's claim for a deficiency, there must be an appraisement.\textsuperscript{17} Thus, both laws deal with the same problem, and both have provided certain procedures to protect the debtor's interest in connection with the creditor's claim for a deficiency where the sale proceeds are insufficient to satisfy the entire indebtedness. Since the basic policy is the same, can it be said objectively that the Indiana law falls so far below the standard of the Louisiana law that the result is so repugnant to the good morals and basic legal concepts of Louisiana as to violate public policy, in the conflict-of-laws sense? If the answer is in the affirmative, then regardless of the place (or places) of original sale, delivery, use and maintenance, repossession, and resale without appraisement, any suit for a deficiency in a Louisiana court would have to be dismissed, on the single contact of the court's personal jurisdiction over the defendant.\textsuperscript{18}

### III

At this point, it is in order to ask why we have this choice-of-law operation altogether; why go in for such frustrating legal gymnastics? In reply to this question, a number of reasons have been given. Without going into their explanatory historical backgrounds, the following are some of the more frequently encountered ones.

A. In certain stages of legal history, law was considered personal, and an individual was to be judged by his personal law. This idea still persists in the many rules which determine legal issues according to the law of a person's domicile (or nationality), as the place to which he belongs and to whose jurisdiction he is subject.

B. The doctrine of "comity" or courtesy between sovereigns is still sometimes given as the reason why one will apply the law

\textsuperscript{16} 151 So. 2d at 707.
\textsuperscript{18} Although not mentioned in the decision of the Hulett case, the additional argument might be made that the Louisiana Deficiency Judgment Act establishes the resale procedure (including appraisement) which must be complied with in order to preserve a creditor's potential claim for a deficiency, and since matters of procedure are always decided in accordance with the law of the forum, it was proper to apply the Louisiana law. Without going into the basic question of whether the appraisement or the creditor's claim for deficiency are matters of substance or procedure, the argument misses the target because under no circumstances would a court of one state (Indiana) be expected to observe the procedures of another state (Louisiana), when the latter differs from its own.
of another in appropriate situations. This has been done as a sort of cooperation, sometimes on a basis of reciprocity (with an eye to the future as well as the past), but always as a matter of discretion.

C. With greater mobility among people, especially between the American states, and increased activity in the international sphere, one purpose of the choice-of-law and conflicts rules is to make for some degree of uniformity in result regardless of where litigation may occur. This also discourages the undesirable practice of "forum-shopping" where a defendant is amenable to the jurisdiction of several states or countries.

D. By developing some standardized pattern of conflicts rules, there is provided an increasing measure of stability and reliability for both private and commercial transactions as well as for questions of status, property, successions, and so forth.

E. When people act in good faith relying for the determination of their rights and responsibilities upon the law of the place where their transactions occur or where their property is located, their justified expectations should be protected by the conflicts rules which look to the law of the place where documents were drawn up, where contracts were entered into, where property is situated, and so forth.

F. Sometimes it is said that the purpose of conflicts rules for choice of law is to assure fairness in balancing the interests of all the parties concerned, in contrast to the absence of conflicts rules which would mean the application of the law of the forum in all cases regardless of the number and nature of factors connected with other jurisdictions.

G. Most recently, conflicts rules are also supported as the means of balancing governmental interests so as to give effect to the law of the state which has the greatest interest in the parties, the property, the transaction, or the application of its law in the particular case.

There have been, and there will be, adherents of the comity theory of conflicts of laws, the theory of vested rights, the local law theory, and the approach of governmental interests. Each purports to explain the nature and the reasons for choice of law and also to predict its future development. There have likewise been powerful critics of each philosophy within a succession of periods of respective predominance.
In each case, an attempt is made to formulate a complete generalization on the basis partly of existing statutes and mainly of judicial decisions without recognizing that legislatures and courts operate a great deal on an ad hoc basis without letting one theory or another impede their specific objectives. The scholars make repeated and noble efforts to construct a consistent philosophy for all this legal activity, but they are only trying to find the formula which explains all the things that have been done, when in fact there has not been and there is not likely to be such complete consistency in what appear as successive series of pragmatic operations.

There are differences among the scholars, and their work is indispensable to the development of the law, but for a long time they have been unanimous on one point. Where a case involves relevant factors associated with two or more jurisdictions, it is in order to consider whether the legal issue should be decided in accordance with one law or another. At the present stage of development, it hardly seems in line to revert to the primitive position of dealing with all cases, the conflicts cases as well as the local cases, within the framework of the internal law of the forum and excluding systematic consideration of some other law. This is about what we would have with the extreme interpretation of the governmental interests theory which would apply the law of forum whenever there is any local interest in doing so.

IV

The Hulett case draws support from several diversified sources as bases of decision, thereby leaving in doubt the extent of its influence in the further development of Louisiana conflicts law. This does not detract from the importance of the opinion in bringing up all these choice-of-law issues and discussing them in a forthright fashion. The method, the approach, and the appreciation of the nature of the problems, reveal a renewed and a healthy inquiry into conflicts problems for what they are.

With all its variations on the choice-of-law theme, the decision in the Hulett case can be placed in several different levels of discourse, as previously indicated.

On the analytical level, the argument based upon public policy is the strongest, although not formulated in the usual manner. However, it is hard to agree that the difference in the
Louisiana and Indiana procedures for resale is so great as to be obnoxious and repugnant to the public morals and social welfare of the forum.

On the pragmatic level, the governmental interest approach is new and appealing. However, there is something undesirably arbitrary in the position that the law of the forum should be applied unless there is very powerful reason not to.

On the pure choice-of-law level, a choice based upon the most significant grouping of contacts often makes very good sense, but there is room for doubt as to where this is in the facts of the *Hulett* case.

Without subscribing to a rigorous mechanical application of conflicts rules or to a super-activity of the imagination in the characterization of legal issues, it is in keeping with the fabric of the rest of the law to see that a number of different issues could have been involved in the sum total of the relationships between the parties in the *Hulett* case. As it happens, there was no issue concerning the validity of the original sale (as to capacity, form, or content). There was no dispute concerning the propriety and legality of the repossession in Louisiana and the removal to Indiana. No question was raised about the validity of the resale or the rights of the purchaser. One and only one issue was in dispute, and that was whether the creditor had done everything he should have done in order to preserve a claim for the deficiency in event the resale proceeds were insufficient to discharge fully the balance of the debt.

This issue is strictly and exclusively an incident of the resale transaction, and the significant Indiana contacts are the place of the resale, the situs of the car (with consent of both parties), and the Indiana governmental interest in the observance of its laws for activities within its territories. The only Louisiana element was the residence of the debtor.

There was no indication that the creditor took any undue or unfair advantage of the debtor; there was no contest concerning the validity of the debtor's original agreement and subsequent consent concerning repossession in Louisiana, removal to Indiana, and resale in Indiana. There was no question raised about the validity of the resale, in conformity with Indiana law. The incidents of this resale transaction, including the creditor's right to claim a deficiency, should likewise be decided in accordance with Indiana law.
On the characterization of the creditor's right to claim a deficiency as an incident of the resale transaction, or on the conflicts rule which looks to the most significant grouping of contacts, the question should have been decided in accordance with Indiana law.

Even on the basis of greater governmental interest, the Louisiana court would have been more in keeping with the general principles of conflict of laws to have dealt with the matter in that way. In view of the facts that (1) a legislature is ordinarily concerned with enacting laws to govern purely local transactions,¹⁹ and (2) there is nothing in the text or elsewhere to show an express or imputed legislative intent that the Louisiana Deficiency Judgment Act should apply to out-of-state sales, it is possible to paraphrase the concluding sentence of Judge Traynor's opinion as follows: "Since there is thus no conflict between the law of California [Louisiana] and the law of Nevada [Indiana], we can give effect to the common policy of both states to enforce lawful contracts [and of providing protective procedures in creditor sales] and sustain Nevada's [Indiana's] interest in protecting its residents and their reasonable expectations growing out of a transaction substantially related to that state without subordinating any legitimate interest of this state."²⁰

²⁰. Id. at 596.