COMMENTS

CONFLICT OF LAWS: CONTRACTS AND OTHER OBLIGATIONS

In ordering relations between parties to a contract, the courts have developed standards for choosing between conflicting laws of two or more jurisdictions in at least four areas of contract law: capacity of the parties to contract, availability and nature of the remedy, formal validity, and substantive validity. Of the fascicle of conflicts rules applicable to such a problem, those providing the substantive law to determine the validity of the alleged contract have been dealt

1. Louisiana jurisprudence peculiarly splits these considerations of conflicts problems sounding in contract into separate categories. Capacity: The law of the domicile of the parties in question controls the capacity to contract. See Pilcher v. Paulk, 228 So. 2d 663 (La. App. 3d Cir. 1969) (minors); Sun Oil Co. v. Guidry, 99 So. 2d 424 (La. App. 1st Cir. 1957) (minors). Louisiana courts have regularly held that the law of the domicile of the parties governs the capacity of a party to contract with his or her spouse for a regime other than the community of gains, or for a settlement or division of property owned in common. Marriages contracted by Louisiana domiciliaries in foreign places are generally held valid in Louisiana if valid at the place of contracting, unless contracted in fraud of our laws. In addition, Louisiana courts have usually held valid property settlements and contracts between husband and wife contracted in good faith in another state before the parties moved to Louisiana. These cases have been variously treated as application of the law of the domicile rule or as the rule of lex loci contractus. For applications of the law of the domicile rule, see Lorio v. Gladney, 147 La. 930, 86 So. 365 (1920); Freret v. Taylor, 119 La. 307, 44 So. 26 (1907); Marks v. Germany Savings Bank, 110 La. 659, 34 So. 725 (1903); Succession of Hernandez, 46 La. Ann. 962, 15 So. 461 (1894); Hyman, Lichtenstein & Co. v. Schlenker, 44 La. Ann. 108, 10 So. 623 (1892). For application of the rule of lex loci contractus see Marks v. Loewenberg, 143 La. 196, 78 So. 444 (1918); Bank of Lumberton v. Hinton, 123 La. 1018, 49 So. 692 (1909); Heine v. Mechanics & Traders Ins. Co., 45 La. Ann. 770, 13 So. 1 (1893); Succession of Caballero v. The Executor, 24 La. Ann. 573 (1872); Succession of Wilder, 22 La. Ann. 219 (1870); Succession of Packwood, 9 Rob. 38 (La. 1845); Pritchard v. Citizen’s Bank, 8 La. 130 (1835); Murphy’s Heirs v. Murphy, 5 Mart. (O.S.) 83 (La. 1817); Le Breton v. Nouchet, 3 Mart. (O.S.) 60 (La. 1813). There are apparently no cases involving conflicts problems dealing with the capacity of the insane. Remedy: The law of the forum (lex fori) where the remedy is sought determines both the availability and the nature of the remedy when available. See, e.g., Tyree v. Sands, 24 La. Ann. 363 (1872); Jackson v. Tiernan, 15 La. 485 (1840); Morris v. Éves, 11 Mart. (O.S.) 730 (La. 1822); Bologna Bros. v. Morrissey, 154 So. 2d 455 (La. App. 2d Cir. 1963). Formal Validity: The formal validity of a contract is determined by the lex loci contractus. La. Civ. Code art. 10. Note that the exception in paragraph 2 is limited to effect and does not include form. Cf. Gaites v. Gaither, 46 La. Ann. 286, 15 So. 50 (1894); Vidal v. Thompson, 11 Mart. (O.S.) 23 (La. 1822); The Uniform Wills Act, La. R.S. 9:2401 (1950); Uniform Probate Law, La. R.S. 9:2421-25 (1950). Validity: The determination of the applicable law governing the validity of a contract is the subject of the balance of this paper.
with most frequently by the courts. Three principal rules have been stated in the cases considering substantive validity: *lex loci contractus*, *lex loci solutionis*, and the party-autonomy rule. That these rules are opposed to one another when mechanically applied has not always been recognized by Louisiana courts. "No area in the entire law of conflicts of law has been more confused from the beginning than that concerning the general validity of contracts." The following analysis of Louisiana legislation in comparison to the *Restatement (Second) Conflict of Laws* and selected Louisiana jurisprudence reveals, however, a perceivable methodology in the courts' approaches to conflicts problems in contract.

**Three Conflicts Rules**

The law of the place where the contract is made is often used to determine its validity (*lex loci contractus*). The rationale of this rule is that parties are presumed to have contracted with reference to or in contemplation of the place where they entered the contract. If two parties were in the same state at the time of making and intended performance there, but subsequently litigate their contractual rights in another forum, the rule merely states that the forum state will apply the law that would have governed their rights had they stayed at home. However, if the parties at the time of contracting contemplated that their contract would have effects in another state this rule would arbitrarily cut off consideration of other issues relevant to the choice of substantive law.

---


Professor Leflar notes that Massachusetts is the only state that has consistently adhered to this rule.

7. One exception which cuts across all rules of conflicts but is most frequently encountered in connection with *lex loci contractus* is that if the foreign law otherwise applicable is contrary to the public policy of the forum, application of the indicative rule will be suspended. Cf. Griffin v. McCoach, 31 U.S. 498 (1941); Le Breton v. Nouchet, 3 Mart. (O.S.) 60 (La. 1813); *Leflar* §§ 50, 149.

8. Contracts formed by correspondence or negotiated in one state and concluded in another raise the difficulty of determining where the contract was made. In Anglo-American jurisdictions and Louisiana the rule is that the contract is made at the time and place when final assent is given, the last act necessary to completion of the contract is done or the contract first creates a legal obligation. Whiston v. Stodder, 8 Mart. (O.S.) 95 (La. 1820). Cf. *Leflar* § 144; 1 S. Williston, *Contracts* § 97 (3d ed. 1957) [hereinafter cited as *Williston*]. The "final assent" may be stipulated by the
The law of the place where the contract is to be performed may also be offered as controlling the validity of the contract (lex loci solutionis).

In Louisiana, although only one case has been found that voices this rule, several important cases advert to the seemingly related concept that the parties' intent to be governed by the law of a certain place may be inferred from their intent that performance be in that place. When this intent is inferred from the terms of the contract, the case is said to be taken out of the general rule of lex loci contractus because the actual intent of the parties governs. In many cases, the place where performance is to take place has more relevance to the relationship of the parties than the place where they established that relationship. However, contracts which distribute performance over more than one state attenuate that relevance considerably.

The third and most liberal conflicts rule is that the express or implied intent of the parties to be governed by the law of a particular place determines the choice of substantive law. This concept, styled
the party-autonomy rule, has found much popularity in American courts. Although early Louisiana cases seldom applied it as a declared rule of decision, it was implicit in the application of the other two rules. Moreover, this rule seems to be a basis of article 10 of the Civil Code, and has been so recognized sporadically since the turn of the century.

The Restatements

The first Restatement of Conflicts of Laws, based on a minority doctrine which prevailed neither in Louisiana nor in American courts, took the position that contract validity was governed by the *lex loci contractus* while issues of performance were to be determined by the *lex loci solutionis.* The Restatement (Second), on the other hand, adopts the party-autonomy rule coupled with the "center of

---

17. RESTATEMENT OF CONFLICT OF LAWS § 358 (1934); see also RESTATEMENT (SECOND) CONFLICT OF LAWS, Introductory Note to Chapter 8 (1969). The position of the first Restatement is equivalent to the interpretation of article 10 found in *Depau v. Humphreys*, 8 Mart. (N.S.) 1 (La. 1829).

Beal's territorialist theory of vested rights, in light of which the first Restatement was drafted, was that the location of some single most significant factor in a transaction (situs of land, place where contract was made, place of impact of a tort) should identify the place (state) whose law should govern the transaction. Rights and obligations were said to have vested at the vital time and place at which that factor occurred in accordance with the law of that state. The court at any subsequently selected forum had only to determine (characterize) the nature of the issue before them (land, title, contract, tort, procedure), refer to the choice-of-law rule conceptually appropriate to that type of case (place of contracting, place of harm) and apply the rule to the facts.
gravity” or “substantial contacts” test to be applied in the absence of effective party choice.  

Louisiana Legislation

Article 10 of the Revised Civil Code of 1870 provides in part:

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.

Although the English version of the 1825 Code is almost identical, the French version of that Code provides in the second paragraph that “the effects of acts passed to be executed in another country are regulated by the laws of the country where they are to be executed.” The language of both the French and English versions is susceptible of the construction that the law of the place of contracting governs the validity of the obligation, whereas the law of the place of performance regulates the incidents of performance. A prima facie reading of both versions of the article might also lead to the conclusion that it is a statement of the lex loci solutionis rule. However, the supreme court rejected the latter construction shortly after the promulgation of the 1825 Code, and has also indicated that the basis of the lex loci contractus is the presumed intent of the parties. Thus, a more reasonable construction of article 10 is that it embodies the principle that parties are free, within limits, to determine which law will govern their contract.

Furthermore, a careful analysis of the wording of article 10 supports the proposition that it is the expression of the party-autonomy rule rather than lex loci solutionis. Article 10 provides that the contract is governed by the law of the place where it is to have effect. In order to reasonably construe this article, the effect of a contract must

19. The Civil Code of 1825 contained a comma after the words “one country.”
be distinguished from its *performance*. Suppose that Aramis and Bathos both reside in Louisiana at the time of contracting. Aramis agrees to pay Bathos $5 in return for Bathos' performance of some service for him while vacationing in California. Clearly, Bathos' performance under the contract is to take place in California. If he fails to perform and Aramis seeks recovery in Louisiana, a court applying the *lex loci solutionis* rule would hold that California law governs the validity of the contract. On the other hand, if the court applies the rule that the contract is governed by the law of the place where it is to have effect, it would appear that the contract, having created its obligations between the parties in Louisiana, has its effect in that state. It is reasonable to infer that the parties, being residents of Louisiana and having entered the contract while in that state, intended their obligations to subsist under Louisiana law. Likewise, even if the same contract was made by the same Louisiana residents during a temporary sojourn in Mississippi, it would seem reasonable to infer that the parties intended the contract to have effect in Louisiana rather than in Mississippi.\(^3\)

Thus, the words "to have effect" in article 10 may be construed as a short-hand expression of the concept that the intent of the parties governs the choice of substantive law.\(^4\) In the absence of an

---

\(^3\) To take another example, suppose that in Texas, Dealer sells Buyer an automobile under a contract stipulating that if Buyer defaults on the payment of the price, the ownership of the automobile will revert automatically to Dealer. Dealer knows, however, that Buyer is a resident of Maringouin, La. and that he plans to return to his home immediately after completing the sale. Since the parties contemplate that the object of the sale will be kept in Louisiana, and since the outstanding performance, viz., payment of the price in installments is contemplated to be performed by one residing in Louisiana, and, especially, since the parties know that Dealer must seek Buyer and the automobile in Louisiana in order to enforce his rights, it is reasonable to infer that the parties intended the contract to have effect in Louisiana. On the other hand, it may be said that since Dealer's performance under the contract took place in Texas and the price was due in Texas, Buyer's performance was to take place in Texas. Thus, the performance rule would indicate the application of Texas law, whereas the party-autonomy rule as expressed in article 10 indicates the application of Louisiana law.

\(^4\) Interestingly, this precise mode of expression was employed by the supreme court in describing the construction of the Bretton Woods Agreement by federal courts in *Theye y Ajuria v. Pan American Life Ins. Co.*, 245 La. 755, 767, 161 So. 2d 70, 74 (1964). In *Bernard v. Scott*, 12 La. Ann. 489, 490-91 (1857) (concurring opinion), Justice Cole stated: "Article [10] does not speak of the interpretation of Acts as to their *character, form and nature*, but as to their effect . . . . The latter part of this Article shows that the word "effect" has no reference to the form . . . . of the Act, but only to the result and consequence . . . ." Justice Cole indicated that he would have held that an act passed in a foreign place must be taken as a manifestation of the wills of the parties and given effect in Louisiana to the extent that it is not repugnant to our law. For facts of the case see text at note 46 infra.
express or implied indication of intent, the parties' preference of controlling law should be inferred by deciding which state has the most significant contacts with the parties' contractual relationship. The place of contracting, the place of performance, the situs of the object of the contract and the domicile of the parties are some of the contacts which should be considered.

This construction of article 10, as a reflection of the party-autonomy rule, comports with the position taken by the Restatement (Second). Section 188 provides certain factors to be considered in the absence of an effective choice of law by the parties. These factors establish the "most significant relationship" of the parties' transaction to one of the competing states. This test has received little attention from Louisiana courts per se, but the factors listed in § 188(2) including, inter alia, the place of contracting, the place of performance, and the place of the negotiation of the contract have been used by Louisiana courts. It would seem that Louisiana courts have, in reality, applied the party-autonomy rule, and that expressions in the jurisprudence indicating adherence to lex loci contractus and lex loci solutionis should be viewed merely as judicial determinations of effective party choice or that in the absence of effective party choice, the place of contracting or the place of performance, as the case may be, bore the most significant relationship to the contract.

26. Restatement (Second) Conflict of Laws §§ 186-88 (1969) deal with particular contracts and issues, the elements of which are beyond the scope of this comment.
27. Id. § 188: "Law Governing in Absence of Effective Choice by the Parties (1) the rights and duties of the parties with respect to an issue in contract are determined by the local law of the state which, with respect to that issue, has most significant relationship to the transaction and the parties . . . . (2) In the absence of an effective choice of law by the parties . . . the contacts to be taken into account . . . include:

(a) the place of contracting,
(b) the place of negotiation of the contract,
(c) the place of performance,
(d) the location of the subject matter of the contract, and
(e) the domicile, residence, nationality, place of incorporation and place of business of the parties.

These contacts are to be evaluated according to their relative importance with respect to a particular issue.

(3) If the place of negotiating the contract and the place of performance are in the same state, the local law of this state will usually be applied . . . ."

29. The party-autonomy rule is further limited by an exception made in Morris v. Eves, 11 Mart. (O.S.) 730 (La. 1822). The court reasoned that as no state was bound
Louisiana Jurisprudence

An examination of the Louisiana jurisprudence supports the construction of article 10 as enunciating the party-autonomy rule. In *Le Breton v. Nouchet*, the first case in which the Louisiana supreme court resolved a conflicts question arising in contract, the court gave expression to a choice of law approach which continued to appear in both the jurisprudence and applicable legislation throughout the century. Defendant, a Louisiana resident, sought to avoid the operation of Louisiana law by fleeing to Natchez to marry his thirteen-year-old bride. The court enunciated a general rule that parties contract with reference to the laws of the place where they enter the legal relationship, in this case, Mississippi. However, for that rule to take effect, “it must first be ascertained that the parties really intended to be governed by those laws, and had not some other country in contemplation at the time of the contract.” Thus, the basis of the *lex loci contractus* rule was defined by the court to be the presumed intent of the parties to contract with reference to local law. However, the court felt that the mere fact of contracting in another state was insufficient indication of the minor’s intent to renounce the protection she had under Louisiana’s law. Because the actual intent of the parties could be inferred from the exceptional circumstances, that intent was held to be controlling and the court applied Louisiana law.

The idea that parties elect to be governed by the law of the place of contracting was reiterated frequently during the nineteenth century, but often without the acknowledgment found in *Le Breton* that the actual intent of the parties could alter the effects of the rule. In *Depau v. Humphreys*, the court characterized the *lex loci contractus* doctrine as a rigid rule of decision and ignored the party-autonomy basis the court had recognized in earlier cases. However, erosion of

to accept the laws of a foreign sovereign, a foreign rule of decision would not be accepted to the prejudice of a Louisiana citizen or in fraud of Louisiana law. For a discussion of problems in applying this rule, see Note, 33 La. L. Rev. 481 (1973).

30. 3 Mart. (O.S.) 60 (La. 1813).
31. Id. at 66 (Emphasis added).
33. 8 Mart. (N.S.) 1 (La. 1829). Although the “vested rights” doctrine was earlier rejected in *Saul v. His Creditors*, 5 Mart. (N.S.) 569 (La. 1827), its product, the *lex loci contractus* as a mechanical rule of decision, was preserved in *Depau*.
34. See, e.g., Chartres v. Cairnes, 4 Mart. (N.S.) 1 (La. 1825); Olivier v. Townes,
lex loci contractus as an inflexible rule began in 1841 in Bierne v. Patton,\textsuperscript{35} though there the competing doctrine was not the party-autonomy rule. In Bierne the court gratuitously injected into its opinion, “It is a well settled rule that where a contract is either expressly or tacitly to be performed in another place than that where it is made, its validity is to be governed by the law of the place of performance.”\textsuperscript{36} A careful reading of the facts of this case indicates that the court was merely applying the corollary of lex loci contractus that the incidents of performance are governed by the place of intended performance.\textsuperscript{37} However, the broad language in Bierne was cited in later cases as the rule of decision and as authority for the lex loci solutionis standard.\textsuperscript{38}

A second indication of the weakening of the rule of lex loci contractus is found in the interesting opinion of Bent v. Lauve.\textsuperscript{39} Though the court could have disposed of the case solely on the basis of the law of the place of contracting, it chose to rely on Depau for the proposition that it was “in accordance with well settled authority to consider the parties as contemplating, and consequently bound by, the laws of the place where supplies are furnished . . . .”\textsuperscript{40} It is significant that Justice Slidell cited Depau for this proposition, for that case applied the lex loci contractus rule on the basis that the law of the place of the contract was mandated by the rights of the parties which vested when the parties entered the contract within the jurisdiction of the place. Perhaps the court was indicating that the apparent conflict in the two courts’ rationales was not to be regarded as anomalous.

\begin{footnotes}
\item[35] 35. 17 La. 589 (1841).
\item[36] 36. Id. at 592 (emphasis added).
\item[37] 37. See Vidal v. Thompson, 11 Mart. (O.S.) 23, 24 (La. 1822). Although Vidal clearly spoke only of the modes and incidents of performance, it has been cited for the proposition that the law of the place of performance governs the validity and the effect of the contract. Bohn v. Cleaver, 25 La. Ann. 419 (1873); Duncan v. Helm, 22 La. Ann. 418 (1870); Bent v. Lauve, 3 La. Ann. 88 (1848). See also Comment, 6 Tul. L. Rev. 454, 466 (1932).
\item[38] 38. See, e.g., Lachman v. Block, 47 La. Ann. 505, 17 So. 153 (1895); McIlvain v. Legare, 36 La. Ann. 359 (1884); Duncan v. Helm, 22 La. Ann. 418 (1870). In the same year, however, the court said in reaffirming the rule lex loci contractus that contracts valid at the place of making are “valid everywhere by the tacit or implied consent of the parties.” Buckner v. Watt, 19 La. 216, 217 (1841) (Emphasis added).
\item[40] 40. Id. at 89 (Emphasis added).
\end{footnotes}
A third indication that the court was beginning to doubt the usefulness of the old rule was its sudden recognition of the existence of Civil Code article 10. Nearly twenty years after its promulgation, article 10 in its present form was judicially recognized in *United States v. Bank of the United States.* In that case, although appearing to apply the old rule, the court turned to the Code as authority instead of relying exclusively on older cases which mechanically asserted the *lex loci contractus* rule. After several years of uncertainty during which the judiciary vacillated between application of article 10 and a strict reliance on the jurisprudential doctrine of *lex loci contractus,* the supreme court returned to the more rational analysis of *LeBreton* and construed article 10 as an expression of the party-autonomy rule. In *Spears v. Shropshire* the court considering a wife’s claim for property under a marriage settlement made in Mississippi stated:

The contract in question was executed in Mississippi, where all the parties resided, and was *intended* to have effect there. Its effect must, therefore, be governed by the law of Mississippi. C.C. Art. 10.

---

41. 8 Rob. 262 (La. 1844). The court also cited La. Code of Practice art. 13 (1825): "[C]ontracts are to be governed by the law of the place where they were entered into," but did not attempt to reconcile it with Civil Code art. 10. Id. at 406.

42. A further indication of a more liberal approach in this case is the court’s lengthy discussion of the effects of applying foreign law versus Louisiana law. The more usual judicial process of the time would have been a search for “the rule” and a discussion of the relative merits of different rules with little attention to the legislation. See, e.g., Oliver v. Lake, 3 La. Ann. 78 (1848); Colt v. O’Callaghan, 2 La. Ann. 984 (1847); Cole v. Lucas, 2 La. Ann. 946 (1847); Lee v. His Creditors, 2 La. Ann. 599 (1847).

43. See *Trabue v. Short,* 18 La. Ann. 257 (1866); *Fell v. Darden,* 17 La. Ann. 236 (1865); *Dord v. Bonnaffee,* 6 La. Ann. 563 (1851). In *Fell,* the court purported to apply article 10 but cited two cases decided five years before the 1825 Code to support its decision. In *Trabue* the court neutralized a grudging acknowledgment that article 10 permitted the parties to select the law governing their relationship by requiring the selection to be express. The struggle has continued well into this century. For examples of mechanical applications of *lex loci contractus* see *Fox v. Corry,* 149 La. 445, 89 So. 410 (1920); *Bologna Bros. v. Morrissey,* 154 So. 2d 455 (La. App. 2d Cir. 1963); *Delta Equip. v. Cook,* 142 So. 2d 427 (La. App. 1st Cir. 1962); *Lewis v. Columbia Mut. Life Ins. Co.,* 197 So. 619 (La. App. 2d Cir. 1940). Although *Moore v. Burdine,* 174 So. 279 (La. App. Orl. Cir. 1937) cites *Restatement of Conflict of Laws § 343* (1934), party-autonomy is probably the basis of the decision.

44. 11 La. Ann. 559 (1856).

Likewise, in *Bernard v. Scott*, involving an instrument in the form of a common-law mortgage given in Mississippi on land both there and in Louisiana, the majority adverted to neither *lex loci contractus* nor any other mechanistic conflicts rule, but applied Mississippi law, based on the intent of the parties to give the instrument a single character rather than a dual one.

The years between the 1870 revision of the Civil Code and the end of the century close the period in which *lex loci contractus* was cited by Louisiana courts as a general conflicts rule. Although the courts did not altogether abandon the mechanical approach, article 10 was at least given limited scope as a tool for solving conflicts problems in contract, as evidenced by the accurate application of the article in *Duncan v. Helm* decided a year after the Code was revised. However, in *Harris v. Nasits* the court categorically stated “The *lex loci contractus* governs . . . this case and not the provisions of our code.” The *Harris* court arrived at the correct result through the process of evaluating the parties’ relationship in context, but failed to express the result in terms of article 10. The defendant, a New Orleans tobacco merchant, purchased a quantity of tobacco while in New York, giving the plaintiff-seller a draft payable at a New Orleans bank. When sued upon the draft the merchant defended with the allegation that the tobacco was “funky, moldy and unsound.” The court held that the customs of the New York tobacco trade controlled the rights of the parties to the sale and therefore the merchant was bound by the quality of a sample he had inspected in New York. The court probably refused to apply article 10 upon the mistaken notion that it would have required application of Louisiana law, the place where performance was to be given, *viz.*, where the draft was to be paid and the tobacco delivered. However, had the court construed article 10 in the manner herein suggested, it would have applied New York law since the parties contracted with reference to the usages of the New York tobacco trade and thereby indicated that they entered into (vice, “performed”) would cause confusion later. See *Fox v. Corry*, 149 La. 445, 89 So. 410 (1920); *Lachman v. Block*, 47 La. Ann. 524, 17 So. 163 (1894); *Delta Equip. v. Cook*, 142 So. 2d 427 (La. App. 1st Cir. 1962).


47. 22 La. Ann. 418 (1870).
49. *Id.* at 458.
50. *Id.*

51. Civil Code art. 10 includes “the laws and usages” of the place of contracting. *(Emphasis added.)*
tended the contract to “have effect” in New York. Since the court did examine the facts with a view to determining the parties' motives, perhaps it can be said that the seed of the more modern approach which had survived to reappear in Duncan was yet visible behind the lex loci contractus of Harris. However, the rule lex loci contractus, although today for the most part a forceless anachronism, has yet to pass completely from our law. Vestiges remain in cases dealing with negotiable instruments, and the rule still appears in our insurance law.

An indication of what might be expected in the area of contracts and related obligations can be seen in a recent Third Circuit case, Universal CIT Credit Corp. v. Hulett. This was a suit by an assignee of an Indiana conditional sales contract to recover a deficiency due after the repossession in Louisiana and sale in Indiana of an automobile. If the plaintiff's rights were determined by Louisiana law, the deficiency judgment would have been barred because of his failure to have the automobile appraised prior to the sale. Such appraisement, however, was not required to obtain a deficiency judgment under Indiana law. The court held that Louisiana law was applicable be-

52. For example, in Bohn v. Cleaver, 25 La. Ann. 419 (1873), the dissent of Justice Talliaferro, author of the Harris opinion, cited article 10 and pointed to the intention of the parties in insisting that the commercial or maritime law should govern the contract in question. Id. at 422. If such a seed was sown, the plant flowered in Gates v. Gaither, 46 La. Ann. 286, 15 So. 50 (1894). Space does not permit a description of Justice Watkins' handling of the complex fact situation presented, but his rational approach to a conceptual morass should serve as a model to modern applications of conflicts principles that have existed in Louisiana jurisprudence since Le Breton v. Nouchet, 3 Mart (O.S.) 60 (La. 1813).


56. 151 So. 2d 705 (La. App. 3d Cir. 1963).
cause the automobile had been taken to Louisiana by the conditional buyer as intended by the parties. Summarizing this modern approach to conflicts law in general, Justice Tate noted:

To decide a case by the application of formal . . . principles is often not so much a matter of logic . . . as it is the selection by the court of the forum from among the competing intra-state and extra-state factors those which that court regards to be significant and which justify application of the particular conflict-of-law principle or principles which afford weight to the . . . factors found to be significant . . . . We reach this result whether we regard the significant factor as being that the vehicle was sold to Louisiana residents for use in Louisiana, that the repossession actually took place thereafter in Louisiana, that Louisiana has a valid governmental interest in enforcing its public policy barring deficiency judgments . . . or whether, as is actually the case, a combination of all these factors indicates that it is more appropriate for the Louisiana law to be applied by a Louisiana court in deciding this matter, than that of another forum which has less significant factual connections with the matter in litigation.

Although Hulet deals with issues pertaining to property interests and security devices as well as contractual obligations, it reflects the importance attached to the intention of the parties and the method by which Louisiana courts infer that intent, an approach which does not materially differ from the application of the party-autonomy rules of the Restatement (Second).

Conclusion

Just as it may be said that the first Restatement did not in fact restate the process of solving conflict of laws problems in American courts, the statements of early Louisiana courts were not always indicative of the process they purported to describe. Rather, the general scheme of judicial process that emerges from an examination of Louisiana jurisprudence is remarkably similar to that recommended by the Restatement (Second) and does not differ materially from the approach followed in the majority of American jurisdictions.

F. Michael Adkins

57. "In Louisiana, the rule has been generally stated to be that the law of the place where the contract is to have effect determines the rights and obligations of the parties." Id. at 707 (Emphasis added).