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Conflict of Laws--Place of Wrong Rule in Wrongful Death Actions

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CASE COMMENTS

Conflict of Laws—Place of Wrong Rule in Wrongful Death Actions

A, a resident of Pennsylvania, boarded an airliner in Philadelphia for a trip to Arizona. The plane crashed in Colorado, and A was killed instantly. P, executor of A's estate, brought suit in Pennsylvania under their wrongful death statute. The reason P brought the action in Pennsylvania rather than in Colorado was that the Pennsylvania wrongful death statute was more liberal and a higher judgment could be obtained in that state. There was no jurisdictional problem because jurisdiction over D, the airline, could have been had in either state. D demurred on the ground that Colorado law must apply because Colorado was the place of the wrong. The demurrer was sustained. P appealed. *Held*, reversed. The prior general rule in tort actions was that the law of the state where the wrong occurred was the controlling law. However, this rule no longer adequately serves the interest of justice, and is unsuited to modern experience. Pennsylvania now adopts a more flexible rule under which the interest underlying the particular

issues must be looked to and an analysis of the policies of each case made to determine which state laws should be applied. Because Pennsylvania has a greater interest in the plaintiff than does Colorado, the laws of Pennsylvania should be applied. *Griffith v. United Air Lines, Inc.*, 416 Pa. 1, 203 A.2d 796 (1964).

The decision in the principal case is interesting in light of the action the Pennsylvania court took in another fairly recent case presenting a very similar factual situation. A Pennsylvania resident was a passenger in a plane owned by a Pennsylvania firm, and flown by a Pennsylvania resident. The plane crashed in West Virginia, killing the passenger. The court ruled that the law where the wrong took place was controlling. *Rennenkamp v. Blair*, 375 Pa. 620, 101 A.2d 669 (1954). The principal case represents an about face of prior Pennsylvania case law.

With the principal case, Pennsylvania joined a small, but growing number of states which have abandoned the previously well established rule that in tort actions the law of the state where the tort was committed governs the substantive rights of the parties. Pennsylvania's departure from the majority view illustrates the increasing discontent among some members of the American bench and bar with a rule which in earlier times seemingly served very well. Many jurists and writers now feel this rule is rendered inadequate by the changing circumstances of our modern world. The court in the principal case cited the speed of modern transportation, and the increasing frequency of interstate and international travel, as factors militating against the rigid rule followed in earlier cases.

The discontent which prompted the court's decision in the principal case is reflected by the changed position of the American Law Institute. The first Restatement of Conflicts adopted the "place of wrong" rule for tort actions, a doctrine still followed in most states. *RESTATEMENT, CONFLICT OF LAWS* § 377 (1934). The "place of wrong" was described as "the state where the last event necessary to make an actor liable for an alleged tort takes place." The "last event" test was made applicable to all torts. The new Restatement takes a totally different view and one that was adopted by Pennsylvania in the principal case. The new view is that torts are to be governed by the law of the state which has the most significant relationship with the occurrence and the parties. It also establishes separate rules for different kinds of torts. Thus the identity of the

state of most significant relationship in a given case is made to depend upon the kind of tort involved and upon a number of other factors. RESTATEMENT (SECOND), CONFLICT OF LAWS, ch. 9 (Tent. Draft No. 9, 1964, approved May 21, 1964). While it is true that the Restatement is only secondary legal authority, the court in the principal case found it very persuasive, and relied upon it heavily to help justify its defection from the "established" rule. In an area of the law such as this, where rapid changes are occurring, and where there is not yet a body of case law sufficient to provide definite guidelines for the solution of many specific problems, it is to be expected that the courts will often turn to the Restatements, and will accord them much weight.

To further justify its decision, the court in the principal case pointed to the mounting chorus of criticism coming from several contemporary legal writers, suggesting a review of the old rule. See, Morris, *The Proper Law of a Tort*, 64 HARV. L. REV. 881 (1951); Traynor, *Is This Conflict Really Necessary?* 37 TEXAS L. REV. 657 (1959). The court stated that the basic theme running throughout most of the current literature on the subject is that a few pleasingly simple rules "cannot solve the complex problems which arise in modern litigation."

While many legal scholars question the adequacy of the old rule, there is an obvious lack of accord as to what rule or rules should be substituted. Many scholars are as critical of the new Restatement as they are of the first. Ehrenzweig, *The "Most Significant Relationship" in the Conflicts Law of Torts*, 28 LAW AND CONTEMP. PROB. 700 (1963). Professor Ehrenzweig contends that any attempt to restate the law of conflicts is premature and ill advised. He emphasizes that the law is in too much of a state of flux at the present time, and that there is insufficient case law to support the American Law Institute's "restatement" of the law of conflicts. He feels that the Institute is doing a disservice to American Law in attempting to reduce a difficult, complex and changing area of law into a few "black letter" rules. What Professor Ehrenzweig seems to fear most is that the courts will blindly follow the rather abstract rules laid down in the Restatement in deference to a sound analysis of the primary law and policy of the forum.

The court in the principal case acknowledged that the legal scholars are in disagreement as to a proper substitute for the old

rule. The court also seemed well aware of the problems which it could be inviting through abandonment of the "place of wrong" rule. But the court stated that the fact that a new rule tended to increase litigation, or made the law more difficult to apply or more unpredictable, was not in itself sufficient reason to retain a rule which is unsound, unjust or inadequate.

Whatever may be the difficulties that lie ahead, a trend away from the "place of wrong" rule has been established. This does not necessarily mean that all American courts are quickly going to discard the old rule for the sake of something new. The law is slow to change even where there is urgent need for reform. There is not unanimity of opinion in the profession that a change is necessary, or even desirable. Sparks, *Babcock v. Johnson—a Practicing Attorney's Reflection upon the Opinion and Its Implications*, 31 INS. COUNSEL J. 428 (1964). It may very well be that experience will force some of the more venturesome courts to return to the sanctuary of the old rule. Certainly there are formidable problems ahead for those courts which choose this new approach to the choice of law. Some very anomalous results are sure to follow. It is a safe speculation that there will be much trial and error before a workable body of law evolves. Regardless of the outcome, the next few years are certain to be decisive ones in this field of conflict of laws.

Charles Edward Barnett

Constitutional Law—The Scope of the Escobedo Rule

D was taken to police headquarters where he was interrogated by officers who suspected he was in possession of obscene film. Approximately five hours after *D*'s original detention and at a time when he had not yet been advised that he was under arrest, *D* confessed. During this period *D* did not request counsel. The confession was subsequently used against *D* and he was found guilty of knowingly possessing obscene motion picture films for purpose of loan. *Held*, reversed and remanded. The chief judge, with whom one other judge agreed, held in his majority opinion that when a defendant is interrogated in an accusatory investigation while in the custody of police, he must be advised of his right to assistance of counsel as well as of his right to remain silent. The majority also justified the result on the basis of arrest without probable cause