1-1-1956

Chapter 10: Conflict of Laws

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CHAPTER 10

Conflict of Laws

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§10.1. Governmental interests in workmen's compensation: Full faith and credit. Lavoie's Case\(^1\) is a significant case, not only locally but nationally, in the field of conflict of laws and workmen's compensation.

Lucien Lavoie suffered injuries on his job in Massachusetts. He was a Rhode Island resident, his employer was a Rhode Island corporation, and the employment contract had been entered into in Rhode Island. In a suit brought by the employee, a Rhode Island court awarded him compensation under its Workmen's Compensation Act. Thereafter, Lavoie sought compensation for the same injury in Massachusetts under the Workmen's Compensation Act of Massachusetts. Lavoie did not seek double compensation. He conceded that any sums received under the Rhode Island award should be credited to any Massachusetts award. A single member of the Massachusetts board, and the reviewing board affirming his decision, held that the board had no jurisdiction to award compensation since the contract of hire was entered into in Rhode Island. The Superior Court entered a decree reciting that the Massachusetts board lacked jurisdiction to award additional compensation and that an award was barred by the full faith and credit clause of the United States Constitution.

The Supreme Judicial Court reversed and remanded the case to the board, holding that (1) An employee, as here, who suffers injury in this Commonwealth arising out of and in the course of his employment while performing work under a contract of hire made in another state where he was principally employed, can recover under the Massachusetts act. (2) The Rhode Island award did not, under the full faith and credit clause of the United States Constitution, bar an award under the Massachusetts act.

It is well settled today that the state of injury may without violating the due process clause of the United States Constitution apply its own

\(^1\) Inker: Chapter 10: Conflict of Laws

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workmen’s compensation act even though the contract of hire was made in another state. In *Pacific Employer’s Insurance Co. v. Industrial Accident Commission* the Supreme Court, in upholding an application of the California Workmen’s Compensation Act to a California injury, said, “Few matters could be deemed more appropriately the concern of the state in which the injury occurs or more completely within its power.” However, the Supreme Court has also held in *Home Insurance Co. v. Dick* that the application of a Texas statute to a foreign contract where the only interest of Texas was qua forum was a violation of the due process clause.

In deciding that the Massachusetts Workmen’s Compensation Act could be applied in the *Lavoie* case, the Court had first to answer a question of internal Massachusetts law, that is, whether the terms of the act would permit recovery of an award where the injured employee was hired under a Rhode Island contract. The act does not explicitly deal with this situation and the question had never before been presented to the Supreme Judicial Court. However, in *Bagnel v. Springfield*, the Court of Appeals for the First Circuit decided as did the Supreme Judicial Court in the present case that the Massachusetts Workmen’s Compensation Act could be applied where an injury occurred in Massachusetts under a foreign contract of hire. Although the Court cited dictum from *Gould’s Case*, as precedent, the decision in *Lavoie’s Case* is predicated upon a recognition of what has been called the “governmental interest” of Massachusetts in applying its Workmen’s Compensation Act.

When an employee is injured here, Massachusetts has a substantial interest in the transaction, since the burden of his care and support is most likely to fall upon private persons and public agencies operating here. Moreover, many times an injured employee, if he is to maintain suit in the state of injury under a foreign act, as distinct from the act of the state of injury, will be left without a remedy. Most workmen’s

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3 306 U.S. 493, 59 Sup. Ct. 629, 83 L. Ed. 940 (1939). The full faith and credit clause was the only question raised in the Pacific Employers Insurance Co. case, but the Court approved the application of the California act as within the due process clause. The same issue was involved in a recent case: “Arkansas therefore has a legitimate interest in opening her courts to suits of this nature, even though in this case Carroll’s injury may have cast no burden on her or on her institutions.” *Carroll v. Lanza*, 349 U.S. 408, 413, 75 Sup. Ct. 804, 807, 99 L. Ed. 1183, 1189 (1955).
4 306 U.S. at 503, 59 Sup. Ct. at 633, 83 L. Ed. at 945.
6 144 F.2d 65 (1st Cir. 1944).
7 215 Mass. 480, 102 N.E. 693 (1913).
9 The instant case is probably the weakest kind of case to reflect the governmental interests of Massachusetts. Lavoie’s only connection with this state was that he was working here on a temporary basis. He was removed to Rhode Island immediately after his injury.

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compensation acts provide for a special administrative remedy, and enforcement in a foreign state is often impossible.\textsuperscript{10}

The Court's second holding, that the Rhode Island award did not, under the full faith and credit clause, constitute a bar to an award of compensation in Massachusetts, is in accord with the principles set down by the Supreme Court of the United States.

In \textit{Magnolia Petroleum Co. v. Hunt},\textsuperscript{11} Hunt, domiciled in Louisiana, was hired in that state by the Magnolia Petroleum Company and, in the scope of his employment, was injured in Texas. He received compensation pursuant to the Texas workmen's compensation laws under an award which in due time became final. Thereafter he sued in Louisiana to recover compensation under the Louisiana compensation laws statute, and the defendant pleaded the Texas award as res judicata. The Louisiana court gave payment for Hunt with proper deductions for the Texas payments, but on certiorari the Supreme Court, with Chief Justice Stone speaking for the majority, reversed this determination as a violation of full faith and credit. The Court held that if recovery were allowed under one state's workmen's compensation act, the res judicata effect of the judgment had to be accepted by all sister states. Four years later in \textit{Industrial Commission v. McCartin}\textsuperscript{12} the United States Supreme Court severely cut down the scope of the decision in the \textit{Magnolia} case.

In \textit{McCartin} the employee initiated compensation proceedings before the proper agencies in both Wisconsin, the state of injury, and Illinois, the state of the employment contract. Pending the adjudication of the Wisconsin claim, the Illinois Commission entered an award based upon a settlement contract, which provided that the settlement was not to affect any rights of the employee under Wisconsin law, and this award was paid. The Wisconsin proceedings in \textit{McCartin}, unlike those in \textit{Hunt}, did not involve a court-instituted suit against the employer; and the reservation in the Illinois award could be regarded only as a disclaimer of any intent on the part of Illinois that its "exclusive remedy" clause should be operative beyond its own borders. Acting under the supposed strength of the decision in \textit{Hunt}, however, the Wisconsin court reversed its Commission's award in favor of the employee, under which the carrier had been credited with the sum awarded and paid under the Illinois award. This action was reversed by the decision of the Supreme Court which held that \textit{Hunt} was distinguishable and, therefore, not controlling.

An able commentator has said of the \textit{McCartin} case: "\textit{McCartin} did not expressly overrule \textit{Hunt}; but it so severely limited \textit{Hunt} as to give rise to the inference that it had no continued vitality apart from the exact case then before the Court."\textsuperscript{13}

\begin{footnotes}
\item[10] See Note, 6 Vand. L. Rev. 744 (1953).
\end{footnotes}


§10.2 CONFLICT OF LAWS

Whatever vitality was left in *Hunt* has been greatly lessened by the recent case of *Carroll v. Lanza*,14 in which the Supreme Court rejected a claim that Arkansas had to give full faith and credit to a Missouri workmen's compensation award granted under a statute which purported to grant an exclusive remedy.

Neither the Rhode Island workmen's compensation law15 nor the cases thereunder purport to make an award of the Rhode Island compensation board exclusive and final, and therefore the Massachusetts Court in relying on the *McCartin* case was correct in finding that the Rhode Island award was not a bar to an award here.

An important effect of *Lavoie's Case* will be to align Massachusetts with those states which characterize problems involving conflict of laws in workmen's compensation cases as problems in the category of employer-employee status.16 Thus Massachusetts has, through the years, characterized such problems first as tort problems,17 then as contract problems,18 and now as employer-employee status problems.

One further comment regarding the decision in *Lavoie's Case* should be made. "Allowing any forum having a minimum of formal contact with the injured employee to apply its own remedy would seem helpful in increasing certainty in an area of the law in which simplicity and stability are important considerations." 19

§10.2. Status of "recognized" children and their right to inherit.

In *Lopes v. Downey*1 the intestate died domiciled in Massachusetts leaving no widow, issue, father, or mother. The five petitioners who claimed decedent's estate as next of kin and heirs were all children of a common father with the intestate but of different mothers. The petitioners and the decedent were properly acknowledged by the father in his lifetime on the birth records in the Public Registry of the Cape Verde Islands in accordance with Portuguese law, the governing law of the Cape Verde Islands. The estate in question consisted solely of an account in a Massachusetts bank which the claimants would be entitled to inherit under the law of the Cape Verde Islands where all were born.

Status is generally determined by the law of the domicile of the parties involved. Stumberg, in discussing the meaning of the word "status," says:

There are a number of legal, domestic or family relations which are frequently designated under the general title "status." It is impossible to give an entirely satisfactory definition of the term, but in the Restatement, in which an entire chapter is devoted to

15 R.I., G.L., c. 300 (1938).


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status, it is described as a legal personal relationship, not temporary in its nature nor terminated at the mere will of the parties with which third persons and the state are concerned. The more important relationships which it includes are marriage, the status of parent and child, adoptions, custody and guardianship of the person.\textsuperscript{2}

The extent to which the domiciliary status will be given effect as regards the right to inherit depends upon the law which governs the distribution of the decedent's property.\textsuperscript{3} The distribution of realty is governed by the law of the situs;\textsuperscript{4} personalty, by the law of the decedent's domicile.\textsuperscript{5} Thus in the \textit{Lopes} case, the law of the Cape Verde Islands would determine the status of the parties, but the law of Massachusetts would determine the effects of that status on the right to inherit, since only personalty was involved.

Petitioners conceded\textsuperscript{6} that the status of the decedent and themselves was that of illegitimate children of a common father. This clearly brought the facts within G.L., c. 190, \textsection 6, which provides: "If an illegitimate child dies intestate and without issue who may lawfully inherit his estate, such estate shall descend to his mother, or, if she is not living, to persons who would have been entitled thereto by inheritance through his mother if he had been a legitimate child."\textsuperscript{7} The petitioners were not related to the decedent's mother and the Court therefore affirmed the dismissal of the petition.

While the Court was not bound to go behind the concession of illegitimacy, there is a real question raised as to status after a civil law recognition of this kind. Petitioners argued that since their status under the foreign law gave them the right to inherit, Massachusetts should recognize that right. But the authorities are uniform that while the personal law of a child's domicile may give him a status which will be given comity elsewhere, the right to inherit incidental to this status has no extraterritorial effect.\textsuperscript{8}

Here, however, the status of the claimant is that of a recognized child. This status, created by the civil law, is distinct from the status of legitimate, illegitimate, or legitimated.\textsuperscript{9} It does not reach the status of legitimated where both laws would require the intermarriage of the parents, but it gives the "recognized" child the right to use the family name, to be supported by them, to inherit from their ascendants

\textsuperscript{2} Stumberg, \textit{Conflict of Laws} 280 (2d ed. 1951).


\textsuperscript{4} Clarke \textit{v.} Clarke, 178 U.S. 186, 20 Sup. Ct. 873, 44 L. Ed. 1028 (1900).

\textsuperscript{5} Bullen \textit{v.} Wisconsin, 240 U.S. 625, 60 L. Ed. 830 (1916).


\textsuperscript{7} First construed in Parkman \textit{v.} McCarthy, 149 Mass. 502, 21 N.E. 760 (1889).

\textsuperscript{8} Pfeifer \textit{v.} Wright, 41 F.2d 464, 73 A.L.R. 932 (10th Cir. 1930), noted in 73 A.L.R. 941 (1931), 16 A.L.R.2d 626 (1951); Ross \textit{v.} Ross, 129 Mass. 243, 37 Am. Rep. 321 (1880).

\textsuperscript{9} The Roman law treated the status of "recognized" children as \textit{legitimated.}

\textit{Brightley's notes, 5 Wheat. 262, 266, 7 C.J. 94 (U.S. 1820).}
subject to one qualification and from their brothers and sisters, and they are subject to paternal control and guardianship in the same manner as legitimate children. On the other hand, illegitimates who are not recognized have the right to support only where paternity is judicially proved and in all else are legally and entirely foreign to their parents and the parents' families.

Since the law which determines the status has not denominated it as illegitimate but has treated it as sui generis, should not the lex situs assign to that foreign-created status a classification most closely analogous to one created by its own law? The Portuguese Code consistently refers to the status of a recognized child as one of adoption and the parallels between the two are evident. A Massachusetts case has held that a natural parent may adopt her own child and that a foreign adoption law may differ considerably from the local law and still the status will be given effect here. Granted that once the status is classified the lex situs will apply its own law in determining the effects of that status on the right to inherit, the proposition here is that the rights and incidents which the foreign law has attached to that status should be considered in classifying it.

Under G.L., c. 210, §7, an adopted child may inherit from other adopted children of the same parent. Thus in the Lopes case, while petitioners attempted to raise the issue in their brief, the Court was able to avoid it in light of their concession and the applicable statute. Although the result may be difficult to disagree with on this ground, a substantial question was raised and left open.

§10.3. Recognition of foreign ex parte divorce. Under the doctrine of Sherrer v. Sherrer and Johnson v. Muelberger, a divorce predicated on a hearing in which both parties have appeared, whether

10 The relevant portions of the Portuguese Civil Code are Article 119, and, as set forth in the Supplement to Petitioner's Brief, Articles 129 (1st), (2d), (3d), 2000, 166, 275, in that order. The qualification on inheritance is that the "legitima" of adopted children is one third less than that of legitimate children, Art. 1785, where there are legitimate children, and further they may inherit from brothers and sisters where there are no legitimate brothers and sisters, Arts. 2000, 2002.

11 Id., Art. 135.

12 See the dissenting opinion of McDermott, J., in Pfeifer v. Wright, 41 F.2d 464, 467 (10th Cir. 1930): "If the law confers upon a recognized illegitimate all the rights of legitimacy it can be properly said to have the 'status' of a legitimate child."


16 See the opinion of Hand, J., in Wood & Selick v. Compagnie Générale Transatlantique, 43 F.2d 941 (2d Cir. 1930), where the question was whether the French statute of limitations was procedural or substantive, and the Court went behind a statement of the French Code that the right was "extinguished" and looked at the effects of the statute and was able to classify it as merely procedural.

17 In Rodrigues v. Rodrigues, 286 Mass. 77, 190 N.E. 20 (1934), the Portuguese Code was in issue, but the case is distinguishable in that a decree of a Portuguese court had "labeled" the child in question illegitimate.

§10.3. 1 334 U.S. 343, 68 Sup. Ct. 1087, 92 L. Ed. 1429 (1948).

appearance is in person or by attorney, is entitled to full faith and credit. The question of jurisdiction may not be reopened in a foreign court. However, when the divorce proceeding is ex parte, the forum in which the validity of a foreign divorce is questioned may re-examine the jurisdiction of the court granting the divorce. This means that the issue of domicile may be reopened.4

The Supreme Court of the United States has never made clear what criteria the re-examining court must apply in resolving this question of domicile nor has it indicated what weight must be given by the re-examining court to the finding of domicile by the court granting the divorce.

The Massachusetts Court appears to treat the finding of domicile by the foreign court as of no relevance and disposes of the issue solely on the facts found by it. The case of Witzgall v. Witzgall,5 decided during the 1956 Survey year, typifies this approach. This case was a petition brought by Edna against her husband Roland and his alleged second wife, Marie, for a binding declaration as to the marital status of petitioner and Roland. From a decree that petitioner and Roland were still husband and wife, Roland appealed. The full bench affirmed the decree of the Probate Court.

The facts were these: Edna and Roland were married and lived together in Lawrence until May, 1952, when Roland left her. He went to Florida in June, 1953, and made periodic trips between there and Lawrence. Suit for divorce was filed in Florida in November, 1953, Roland alleging that he was then, and had been for more than “ninety (90) days last past and prior to the filing” of the bill, a resident of Florida. Service of process on Edna was by registered mail but she did not appear, either personally or by an attorney. Roland’s periodic visits to Lawrence continued through the time that the hearing on the bill was held in January, 1954. Roland returned to Lawrence early in February, prior to the rendition of the decree on February 27. In March, he and Marie went through a ceremony of marriage in New Hampshire, remaining there until they went to Florida in August.

The probate judge had found on all the evidence that Roland did not have a domicile in Florida either at the time the bill was filed in November or when hearing was held thereon in January. Apart from the periodic nature of the trips between Florida and Massachusetts, these further factors were found: While in Florida, Roland occupied a single room there with a family in Jacksonville. He also did not divest himself of ownership or operation of a business in Lawrence until June, 1954; this latter finding was evidenced by his forwarding from Florida each week checks for the payroll of his employees.

In the matter of foreign ex parte divorce proceedings, at least in

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4 “Under our system of law, judicial power to grant a divorce — jurisdiction, strictly speaking — is founded on domicil.” 325 U.S. at 229, 65 Sup. Ct. at 1095, 89 L. Ed. at 1581.
situations such as *Witzgall v. Witzgall* where the divorce affects a relationship deemed by our Court to be a Massachusetts res, the Supreme Judicial Court apparently feels that the motive in going to another jurisdiction to obtain an ex parte divorce concludes the issue of intent adversely to the Massachusetts resident.\(^6\) To our Court such individuals are deserters, no more, no less.

This emphasis upon motive as determinative of intent appears to be peculiar to cases within the narrow limits of the situation disclosed by *Witzgall v. Witzgall*.\(^7\)

There is no question that a court in any case which involves intent has a great deal of latitude and in the *Witzgall* case the facts found by the Probate Court offer strong support to a finding that Witzgall never intended to establish his domicile in Florida. However, the almost automatic equation of purpose and intent in domicile questions involving foreign and ex parte divorces puts a well-nigh insuperable burden on the party seeking to sustain the foreign decree.

Although many legal scholars have argued that domicile is not a unitary concept, the Supreme Judicial Court has never explicitly accepted this theory. It may be that opinions such as that of the *Witzgall* case are indicative of a tacit acceptance under the stress of concern for the plight of deserted wives.\(^8\) In this jurisdiction a valid foreign divorce terminates a Massachusetts order for support\(^9\) and there is no statute here providing for alimony to the wife after such a valid foreign divorce has been granted to the husband.\(^10\)

\(^6\) See Rubinstein v. Rubinstein, 324 Mass. 340, 84 N.E.2d 454 (1950). The standard test of domicile has been set forth in Goodrich, Conflict of Laws 60 (3d ed. 1949), as follows:

“For an individual to acquire a domicile chosen by himself the authorities agree that two things are necessary:

"1. Physical presence in the place where domicile is alleged to have been acquired.
"2. Intent to make that place the home of the party.”

\(^7\) See Williamson v. Osenton, 232 U.S. 619, 34 Sup. Ct. 442, 58 L. Ed. 758 (1914). In Goodrich, Conflict of Laws 67 (3d ed. 1949), the author says: “The motive or reason prompting a person to make his home in a given place does not affect his acquisition of a domicile there.”

\(^8\) Compare the resolution of the domicile question in Winans v. Winans, 205 Mass. 388, 91 N.E. 394 (1910), with that in the Witzgall case.


\(^10\) See N.Y. Civil Practice Act §1170-b, which reads as follows: “Maintenance of the wife where divorce or annulment previously granted on non-personal jurisdiction. In an action for divorce, separation or annulment, or for a declaration of nullity of a void marriage, where the court refuses to grant such relief by reason of a finding by the court that a divorce, annulment, or judgment declaring the marriage a nullity had previously been granted to the husband in an action in which jurisdiction over the person of the wife was not obtained, the court may, nevertheless, render in the same action such judgment as justice may require for the maintenance of the wife.” And see Vanderbilt v. Vanderbilt, 1 N.Y.2d 342, 153 N.Y.S.2d (1955).