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Chapter 21: Conflict of Laws

Monroe Inker

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CHAPTER 21

Conflict of Laws

MONROE INKER

§21.1. Uniform Reciprocal Enforcement of Support Act. Keene v. Toth is the first case in which the Supreme Judicial Court has discussed the Uniform Reciprocal Enforcement of Support Act. This act, the purpose of which is "to provide an effective procedure to compel performance by a person who is under a duty to support dependents in another state," has been adopted by all of the forty-eight states.

In this case the petitioner sought contribution towards the support of their two children domiciled with her in Virginia, from respondent, their father domiciled in Massachusetts. The petition and evidence were properly certified to the District Court of Northern Norfolk by the initiating court in Virginia. The District Court made a support order. On appeal, the Appellate Division order dismissing petitioner's report was affirmed.

The decision in Keene v. Toth is significant because of the choice of law made by the Court in determining the respondent's duty of support. The Court said, "In the present case Virginia is the initiating State, and this Commonwealth is the responding State. For our purposes we need consider only the law of this Commonwealth." The Court's only too brief discussion of its choice of law is regrettable; however, the choice made by the Court is eminently sound. Under the prior conflict of law rules in support cases, the enforceable duties were those imposed by the state of residence of the one owing the duty of support.

MONROE INKER is an Instructor in Law at Boston College Law School. He formerly taught at Harvard University and at Northeastern University School of Law. He is a partner in the firm of Crane, Inker and Aronson, Boston.

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§21.1. 1 335 Mass. 591, 141 N.E.2d 509 (1957). For further comment on this case, see §19.7 supra.
2 G.L., c. 273A.
The Uniform Act provides: "Duties of Support enforceable under this chapter are those imposed under the laws of any state in which the alleged obligor was present during the period for which support is sought or in which the obligee was present when the failure to support commenced." The author of a law review note, after discussing the history and meaning of this section, has stated: "Thus the question of which law should be applied when the obligor has been present in more than one state during the period for which support is sought remains open. This would seem to suggest that in such cases the determination of which law should govern is to be left to the courts of the responding state." In the Keene case the Court selected Massachusetts law as determining respondent's duty of support. This would seem to be in accordance with the intent of the draftsman of the act.

In this case the Court was careful to point out that the question before it "is that of the power of the District Court to make a valid order prospective in operation based upon a duty of support owed by the respondent to his children, who are in Virginia." 8

§21.2. Valid foreign contracts: Enforcement in Massachusetts. In Prahl v. Prahl 1 the wife filed a petition for separate support in the Probate Court together with a petition to enforce a separation agreement which she and her husband had entered into in Connecticut where both were then domiciled. Under the law of Connecticut 9 such an agreement is valid and legally enforceable at the instance of the wife. The Probate Court's dismissal of the petition of the wife to enforce the Connecticut agreement was affirmed by the Supreme Judicial Court. Although it was conceded that the contract was valid in Connecticut and therefore valid in Massachusetts, the Court held that there is no equity jurisdiction in the Probate Courts to enforce a concededly valid contract between husband and wife.

Although the Court follows the rule that the validity of a foreign agreement is to be determined by the law of the place of making, 9 it will not always enforce a valid foreign contract. As the Court stated

8 Note, 67 Harv. L. Rev. 1435, 1436 (1954).
9 Note, 29 N.Y.U.L. Rev. 1480, 1482 (1954). See State of New York Joint Legislative Committee on Interstate Cooperation, Summary of Conference on Social Welfare and Non-Support 3, item 11 (July, 1953), where it was said: "One of the most extensively discussed questions was that of the applicable support duty... Professor Brockelbank has explained that the [1952] Uniform Act contemplates presence of the obligor as the controlling factor. In other words, if the obligor is present in the responding state and a prospective support order is sought, then the support duties set forth in the responding state shall control. On the other hand if the obligor was present in the initiating state in the past, and an order for arrearages is sought, then the initiating state's support requirements would control." 10


3 Milliken v. Pratt, 125 Mass. 374 (1878).
in *Emery v. Burbank*, "a contract valid where it is made is valid everywhere, but it is not necessarily enforceable everywhere." 4 Enforcement has been refused on policy grounds 5 and, as in the present case, for lack of jurisdiction to enforce the agreement.

All of the cases discussed above and all relied on by the Court and cited by the parties in the *Prahl* case were decided before *Hughes v. Fetter*. 6 In the *Hughes* case the plaintiff brought suit in Wisconsin to enforce a claim under an Illinois wrongful death statute. A Wisconsin statute forbade the enforcement of foreign death claims. Relying on the Wisconsin statute, the Wisconsin court dismissed the action. The United States Supreme Court reversed the Wisconsin decision and held that Wisconsin's refusal to enforce a claim under an Illinois wrongful death statute violated the full faith and credit clause of the Constitution. The Supreme Court said:

> It is also settled that Wisconsin cannot escape this constitutional obligation to enforce the rights and duties validly created under the laws of other states by the simple device of removing jurisdiction from courts otherwise competent. We have recognized, however, that full faith and credit does not automatically compel a forum state to subordinate its own statutory policy to a conflicting public act of another state; rather, it is for this Court to choose in each case between the competing public policies involved. 7

While *Prahl v. Prahl* may be distinguished from *Hughes v. Fetter*, the Court should, in the light of the *Hughes* case, re-examine its policies underlying refusal to enforce foreign causes of action.

§21.3. Security transactions: Choice of law. In *Budget Plan, Inc. v. Sterling A. Orr, Inc.* 1 the plaintiff automobile agency, O'Meara Motors, and its assignee, Budget Plan, brought an action of replevin to recover an automobile in the possession of the defendant. Under an agreement of conditional sale executed in Connecticut the plaintiff agency sold an automobile then in Connecticut to Smith, a resident of Massachusetts. Smith removed the automobile to Massachusetts where it was eventually bought by the defendant who in the words of the Court was an "innocent purchaser." 2 In order to prevail, the plaintiffs had to prove that the conditional sales agreement was valid. The trial judge found that the law of Connecticut determined the validity of the conditional sales agreement and that the conditional vendor had not satisfied Connecticut law concerning acknowledgment of conditional sales agreements. 8 He also found that the plaintiffs' failure to

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5 Greengood v. Curtis, 6 Mass. 358 (1810).
7 341 U.S. at 611, 71 Sup. Ct. at 982, 95 L. Ed. at 1216.

§21.3. 1 334 Mass. 599, 137 N.E.2d 918 (1956). For further discussion of this case, see §18.4 supra.
2 334 Mass. at 600, 137 N.E.2d at 919.
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acknowledge made the conditional sales agreement invalid. His decision for the defendant was affirmed on appeal.

The significance of the decision in this case lies not in the Court's examination of the law of Connecticut but in the Court's brief discussion of the law governing the validity of a conditional sales agreement. The great use of conditional sales agreements in the sale of many chattels, particularly automobiles, has given rise to many choices of law problems.

The problem which is presented with the greatest frequency concerns the ability of a seller, who has reserved title under a conditional sale or has taken a mortgage, to enforce his claims with respect to the chattel against a third person, such as a purchaser or an attaching or execution creditor, who has dealt with the property as that of the buyer after its removal to another state. But security transactions create legal relations between the intermediate parties, and questions can also arise as to the proper law to control in this respect.

Prior to its decision in the Budget Plan case the Court has, as in Thomas G. Jewett, Jr., Inc. v. Keystone Driller Co., stated its rule as follows: "The rule is that the nature, validity, and interpretation of a contract are to be governed by the law of the place where it is made." The decision in the Jewett case and the use of the place-of-making theory in cases involving conditional sales agreements and chattel securities had been criticized. In the main, the criticism of the place-of-making rule has centered on its failure to take into account the law of situs of the chattel which is the subject of the conditional sales agreement or chattel mortgage.

In the Budget Plan case the Court recognized this criticism of the Jewett case and in what is pure dictum destroyed much of the force of that case. The Court said: "In the Jewett case... the contract of conditional sale was made in Massachusetts, and the property delivered in New Hampshire. It was held by a divided court that the rights of the parties in the property were governed by the law of Massachusetts. This, it seems, is contrary to the prevailing view." The Court, however, pointed out that the Budget Plan case is distinguishable from the Jewett case since here both the conditional sales agreement and delivery of the auto were made in Connecticut. Thus,

7 334 Mass. 599, 601n, 137 N.E.2d 918, 920n (1956). The Court cited the Restatement of Conflict of Laws §272; Goodrich, Conflict of Laws §157 (3d ed. 1949); and the cases cited in the dissenting opinion of the Jewett case, 282 Mass. 469, 479, 185 N.E. 369, 372-373 (1933). The Court then further stated: "Whether if the automobile in the case at bar had been in Massachusetts when the sale was made, we would hold that the parties' rights would, nevertheless, be governed by the law of Connecticut, in accordance with the rule of the Jewett case, need not be decided."
"...the question whether the sale was effective to enable the vendor to retain title is to be determined by the law of that State." §8

Since the Court said that it was still undecided about the problem posed in the Jewett case, the effect of the decision in the Budget Plan case is difficult to determine. The Court, however, by its consideration of the situs of the chattel at the time of the making of the conditional sales agreement, is receding from an application of the strict place-of-making rule. This is a welcome change. Professor Stumberg has stated:

... a criticism which could be made of an inflexible rule which would require that the law of the place of making control the legal relations of the immediate parties to a security transaction is that controlling effect might be given the law of a particular state merely because of the accidental consummation of the contract there when the purposes of the transaction have only a remote connection with that state. §

But Stumberg's criticism of the choice of law made by the Court in the Budget Plan case should also be noted:

The same objection could be made to a rule which would arbitrarily call for the application of the law in force at the situs of the chattel at the time of the consummation of the transaction. The most reasonable solution would seem to be to give effect to the law of the state where the chattel is to be habitually used, whenever both parties contemplate its use in some particular state, since that is the place with which the security transaction and the obligations which it may create have the most substantial connection. 10

§21.4. Divisible divorce: Effect on duty to support. In Vanderbilt v. Vanderbilt 1 a Nevada ex parte decree of divorce was imposed as a bar to a wife's action for separation and alimony under the New York Civil Practice Act. 2 The husband obtained the divorce in June, 1953, and the wife initiated the separation and alimony action one year after moving to New York in February, 1953. The Nevada divorce was held to bar the suit for separation but to have no effect on the wife's alimony claim under New York law, 3 the United States Supreme Court holding

10 Id. at 536. See Beggs v. Bartels, 73 Conn. 132, 46 Atl. 874, 84 Am. St. Rep. 152 (1900), which indicates that if the Budget Plan case had been brought in Connecticut, that court would have applied Massachusetts law.

2 N.Y. Civil Practice Act §§1165-a(8), 1171-a.
3 Id. §1170-b, which provides: "In an action for... separation... where the court refuses to grant such relief by reason of a finding by the court that a divorce... had previously been granted to a 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."
that the “divisible divorce” concept enunciated in *Estin v. Estin* ⁴ was effectual to preserve a statutory “property right” not yet reduced to judgment despite the existence of a valid ex parte divorce.

The *Vanderbilt* case is of but academic interest to the Massachusetts practitioner, for it is settled Massachusetts law that even pre-existing obligations to support lose their prospective effect upon the termination of the marital relation in a valid out-of-state proceeding.⁵ Massachusetts also does not have a statute similar to the one in New York which conferred the alimony right in the *Vanderbilt* case.⁶ The decision may have importance in Massachusetts, however, since the General Court, if it wishes, may constitutionally enact legislation which will protect a resident from the poverty that often results from an out-of-state ex parte divorce in which the resident receives no alimony or financial settlement.

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⁴ 334 U.S. 541, 68 Sup. Ct. 1213, 92 L. Ed. 1561 (1948); see Note, 61 Harv. L. Rev. 1454 (1948).


⁶ See note 3 *supra.*