Chapter 8: Conflict of Laws

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Conflict of Laws

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§8.1. State wrongful death statute: Full faith and credit. The United States Court of Appeals for the Second Circuit, in Pearson v. Northeast Airlines, Inc., has held that, given nexus with the forum of significant elements of the fact matrix, neither the full faith and credit clause nor the due process clause of the United States Constitution forbids the forum: (1) to premise a cause of action on the wrongful death statute of the foreign lex loci delicti, then (2) to apply on public policy rationale its own rules as to quantum and measure of damages (3) in disregard of the quantum limitation on damages embedded in the foreign statute as an integral qualification on the right thereby created, and further (4) in disregard of the express foreign statutory theory of damage measure, and finally (5) to revert to the lex loci for the rule of measure of interest.

Pearson, a New Yorker, was killed in August, 1958, at Nantucket, Massachusetts, while traveling as a passenger of the defendant airline, having purchased his ticket at the defendant's New York office and boarded its fatal flight at La Guardia Airport, New York City. The defendant airline was a Massachusetts corporation. Pearson's administratrix, also of New York, invoking diversity jurisdiction, brought action against the defendant in the United States District Court for the Southern District of New York, seeking damages on the basis of the Massachusetts wrongful death statute.

The Massachusetts statute as of the date of the death limited the amount recoverable for wrongful death to a "sum of not less than $2,000 or more than $15,000 to be assessed with reference to the degree of culpability of the defendant. . . ." The plaintiff asked damages of $600,000. The jury awarded $134,000, to which the court added $26,000 interest, applying the New York internal rule that interest is part of damages and runs from date of death, as opposed to the

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§8.1. 1 309 F.2d 553 (2d Cir. 1962).
2 U.S. Const., Art. IV, §1.
3 Id., Amend. XIV.
4 G.L., c. 229, §2.
5 Precisely, $134,043.77 from the jury and $26,160.88 of interest under the New York rule.
Massachusetts statute providing interest from the date of the writ.\(^6\)

As will appear, the district court was first reversed as to both damages and interest by a panel of the Court of Appeals of the Second Circuit and then sustained as to damages, but reversed as to interest by the same appellate court on rehearing en banc.

The opinion of the district court does not confront or even imply any constitutional issue.\(^7\) The district court approached the case as a simple matter of applying *Erie R. Co. v. Tompkins*\(^8\) as developed by *Guaranty Trust Co. of New York v. York*\(^9\) and *Klaxon Co. v. Sten­tor Electric Mfg. Co.*,\(^10\) to the effect that in such a diversity case, the federal district court “sits as another state court of New York and must apply New York’s conflicts law as announced by its highest court.”\(^11\) Just previously in *Kilberg v. Northeast Airlines*,\(^12\) the New York Court of Appeals had announced the pertinent New York conflicts rule in brief dictum. Accordingly, the federal district judge summarized and rested his decision on *Kilberg* as follows:

In *Kilberg v. Northeast Airlines*, a case arising out of the same crash involved here, the New York Court of Appeals in a con­sidered dictum expressed by the Chief Judge and concurred in by three Associate Judges said: “For our courts to be limited by [Massachusetts’] damage ceiling (at least as to our own domicili­aries) is so completely contrary to our public policy that we should refuse to [enforce it].” It was further said that if Kilberg’s claim, like this, was filed under the Massachusetts statute, were amended to seek more than $15,000, it could “be enforced, if the proof so justifies, without regard to the $15,000 limit.” That dictum, so far as appears, has not been repudiated or modi­fied. I believe, therefore, that it states the law which, if this suit were pending in a New York court, that court would apply. Ac­cordingly, since I believe I am required to apply it here, I hold that the amount recoverable by this plaintiff is not limited to $15,000.\(^13\)

The district court then extended *Kilberg* beyond the express but within the implied scope of the *Kilberg* dictum, holding that the New York theory of measure of damages, namely the degree of the plaintiff’s pecuniary injury, was applicable, rather than the Massachu­setts statutory theory, namely the degree of the defendant’s culpabil­ity.\(^14\) The trial judge later added interest computed pursuant to New

\(^6\) G.L., c. 229, §11.
\(^8\) 304 U.S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188 (1938).
\(^12\) 9 N.Y.2d 34, 39, 172 N.E.2d 526, 529 (1961).
\(^14\) Ibid.
York law, and denied the defendant's motion to strike such interest. The appeal to the Court of Appeals of the Second Circuit was first heard by a three-judge panel of that court. By a two-to-one decision, the panel reversed the district court, holding that the refusal of the trial court to apply the $15,000 limitation of the Massachusetts statute violated the full faith and credit clause of the United States Constitution.15 The panel unanimously reversed the trial judge on his application of New York interest, holding that the Massachusetts rule should control.16

The plaintiff then petitioned for rehearing of the appeal en bane. Rehearing was granted and the Court of Appeals of the Second Circuit sitting en bane, by a six-to-three decision, reversed its three-judge panel, sustaining the holding of the trial court that the Massachusetts $15,000 limit did not bind a federal court sitting as a New York court and that the proper theory of damages was the New York measure of the plaintiff's pecuniary injury and not the Massachusetts statutory measure of the defendant's culpability.17 On the interest issue the court en bane agreed with the panel that the Massachusetts rule should prevail.

It is understood at this writing that preparation by the defendant of petition for certiorari to the United States Supreme Court is in process.

In assessing Pearson, it is essential to bear in mind three important areas in which the majority and minority of the Court of Appeals are explicitly or implicitly in agreement. First, both sides basically concur that attempts to label the matter as "substantive" or "procedural" are of no use, and in fact that the damage limitation is in some real sense clearly "substantive" and "built into" the statute as an integral part of the defined liability.

Second, on the minority side, it is conceded to the majority that New York had sufficient nexus with the underlying event to permit, free of constitutional bar, forthright application of internal New York law without reference to Massachusetts. This the minority concedes but contends simply that New York, having chosen to apply its own conflict rule referring over to the lex loci to find the existence of liability and having there found a statutory liability and explicitly premised the existence of New York liability solely upon the ground of the Massachusetts liability, is required to recognize the whole substance of the Massachusetts definition of the liability including the damage ceiling. The significant New York contact with the elemental facts is also essential to understanding what the majority does not hold. For one thing, it does not hold that the full faith and credit clause leaves the forum free to choose its own law, the lex loci, or any permu-

15 307 F.2d 131 (2d Cir. 1962).
17 309 F.2d 553 (2d Cir. 1962).
Third, the minority does not dispute the rejection by the majority of the passé “vested rights” doctrine of territorial sovereignty nor the corollary majority assertion of the modern view that the forum can apply no other law but its own including its own conflict rules and that application of such conflict rules results in “absorption” of the foreign substantive law into the corpus of domestic law. But the key point is that in making and having made such absorption, the forum applies its own law and does not give recognition to “vested rights” created under a foreign law. The majority accuses the minority of atavistic “vested rights” conceptualism in conceding on the one hand that New York need not apply any of the Massachusetts statute while insisting on the other hand that if New York chooses to adopt by reference some part of the Massachusetts statute, then it cannot stop but must go all the way or at least to the point of applying the whole of the substantive content of the Massachusetts statute.

Perhaps at the root of the conceptual difficulty is the fact that the full faith and credit clause is “vested rights” in tenor and intent, reflecting dominant eighteenth-century legal philosophy.

The majority and dissenting opinions of the three-judge panel, together with the majority and dissenting opinions of the court en banc, ultimately reduce to a differential in the relative order of values which the majority and minority factions of the Court of Appeals would, respectively, assign (1) to the freedom of the forum state within the bounds of federalism and the ambit of its proper governmental concern to accord its public policy paramountcy over its own ordinary conflict rule when such conflict rule would otherwise entail enforcement of the conflicting policy with respect to measure and quantum of tort liability embodied in the relevant statute of the foreign locus delicti, as balanced against (2) the policy thrust of the federal full faith and credit clause toward regularization and uniformity of legal status and consequence on the principle of “maximum enforcement in each state of the obligations created or recognized by the statutes of sister states.”

The majority seems to think that the reach of the public policy of the forum ought not to be circumscribed short of the quantum and measure of damages elements of the Pearson situation. The majority is fearful that evolution of the full faith and credit clause to bar the reach of New York public policy short of these elements would freeze into the Federal Constitution conflict of laws doctrines in themselves notably underdeveloped and transitional.

On the other hand, the final position of the minority as reflected in its en banc dissent would seem to stem from an intuition that the majority result seriously vitiates the policy of the full faith and credit clause. In the view of the minority, the majority countenances the development by the forum of a doctrine of eclecticism in the guise of

so-called "conflict rules" permitting the forum explicitly to premise liability by selective reference to statutory law of the locus delicti, while at the same time, through invocation of public policy, excising such foreign prescribed elements as inherent damage limitation and theory of measure of damages and substituting the wholly different damage quantum and measure rules of the forum.\textsuperscript{19} To the minority the result fabricated by the forum ought not be masked under "conflict doctrine." The law still needs due respect for category and concept.

\section*{8.2 ANNULMENT OF MARRIAGE: FULL FAITH AND CREDIT}

In \textit{Robbins v. Robbins},\textsuperscript{5} the Massachusetts Supreme Judicial Court gave full faith and credit\textsuperscript{2} to the decree of a Missouri court of competent jurisdiction annulling a Massachusetts marriage, even though Missouri erred by failing to apply its own choice of law rule requiring reference to the place of marriage, Massachusetts, for the controlling substantive law of annulment.\textsuperscript{8}

Ronni Robbins and Saul Robbins were married in Massachusetts in 1953. Their Massachusetts divorce became absolute in 1958. Saul was ordered to pay weekly alimony. Thereafter, in 1959, Ronni married Goodman in Massachusetts. Goodman was a resident of Missouri. He and Ronni went to Missouri where they lived together for only two days. In 1960 Ronni obtained in a Missouri court a decree annulling her marriage to Goodman. The Missouri court seems to have applied the Missouri substantive law of annulment, which apparently differed crucially from that of Massachusetts.

After the Missouri annulment decree, Saul petitioned the Massachusetts Probate Court for a modification of the 1958 alimony decree under G.L., c. 208, §37, which authorizes the court to modify an alimony decree. A "substantial change in circumstances" is requisite to such a modification, and subsequent marriage is such a substantial change.\textsuperscript{4} Saul asserted that the Goodman marriage constituted the requisite subsequent marriage, and hence a substantial change in circumstances entitling him to modification of his alimony obligation.

The Probate Court decreed suspension of Saul's alimony obligation. On appeal, with report of the evidence and findings of material fact, the Supreme Judicial Court reversed the Probate Court as "plainly wrong," and restored Saul's alimony burden.

The appellate Court reached this result in two steps, first by sustaining the Missouri annulment, and second by finding on the evidence that the annulled marriage did not amount to a significant

\textsuperscript{19} Not to mention the spectacle of reversion to the lex loci for the interest computation rule.
change of circumstances. The jurisdiction of the Missouri court was not in question on appeal, being a finding of the trial court accepted as such by the appellate Court.⁶

The primary authority for according full faith and credit to the Missouri annulment decree is Sutton v. Leib,⁶ in which the United States Supreme Court held that the federal full faith and credit clause compelled Illinois to recognize a New York decree annulling a Nevada marriage, the New York decree being based upon competent jurisdiction. Sutton v. Leib, however, did not present any issue as to mistake of law or fact, procedural error, deficiency or inadequacy of any kind whatever in the New York annulment decree which Illinois was compelled to credit. The Supreme Judicial Court in Robbins consequently went, pro arguendo, one step beyond Sutton v. Leib. It decided the depth of the recognition which must be given the jurisdictionally sound annulment decree of a sister state, granted that the sister state made a mistake of law consisting of erroneous application of its own conflict rule. The Court held as follows:

It is settled law that a foreign judgment cannot be denied recognition solely because of error of law or fact which does not affect the jurisdiction of the court rendering the judgment. Fauntleroy v. Lum, 210 U.S. 230; American Exp. Co. v. Mullins, 212 U.S. 311; Roche v. McDonald, 275 U.S. 449; Titus v. Wallick, 306 U.S. 282. Restatement: Conflict of Laws, §431. The "full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based." Milliken v. Meyer, 311 U.S. 457, 462. In the light of these principles we must deal with the case on the footing that there has been a valid annulment of the respondent's marriage to Goodman.⁷

This result represents an almost inescapable implication of the full faith and credit clause, taken together with the authorities cited by the Court, and surely accords with the full faith and credit intent to promote interstate uniformity and stability in the legal status of persons. However, the point of novelty is that in each of Fauntleroy, American Express Co., Roche, Titus and Milliken, the precedents cited by the Court, the party opposing recognition of the foreign judgment was a party to that judgment having had his day in court in the foreign forum. Here, the husband, Saul, the objector to the

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Missouri judgment, was not a party to that judgment and presumably would have had no standing whatever before the Missouri court in the annulment proceeding. The Supreme Judicial Court has at least in part responded to the question left open in Sutton v. Leib as to whether full faith and credit unassailability of an annulment decree of a court of competent jurisdiction is limited to the parties, or extends to strangers on parity with a divorce decree under the doctrine of Johnson v. Muelberger.18

§8.3. Property in motor vehicle: Power to alter property rights. In Commercial Credit Corp. v. Stan Cross Buick, Inc.,1 the Massachusetts forum stated by dictum that the law of Maine controlled the property rights in a motor vehicle, including not only the power of a bailee to transmit title, but also the application of principles of apparent authority and estoppel, when up to and including the act of bailment, the vehicle and all property transactions therein had locus in Maine.2 The Massachusetts action arose out of the attempted sale of the vehicle in Massachusetts by the Maine bailee who brought it into Massachusetts for purposes of disposition. Although this decision represents predictable application of well-developed choice of law doctrine, it is reviewed herein in greater depth than academically warranted, simply because it entails an omnipresent concern of the automobile age.

Lloyd, an automobile dealer in Maine, sold a car to Power under a conditional sales contract which Lloyd assigned to the plaintiff, Commercial. Power defaulted. Commercial repossessed the vehicle and received Power’s permission to sell the car at a private sale rather than by public auction as provided in the conditional sales contract. The agreement between Lloyd and its assignee, Commercial, contained a “Reserve Agreement” that if Commercial repossessed a vehicle under an instrument assigned to it by Lloyd, Lloyd would repurchase the vehicle for cash, and that pending such repurchase, Commercial could store the vehicle on Lloyd’s premises without charge. Pursuant to this agreement, the vehicle was turned over to Lloyd. Lloyd took the car from Maine to Concord Auto Auction, Inc., in Acton, Massachusetts. Lloyd paid Concord to “cry” the vehicle, and defendant, Stan Cross Buick, there purchased the vehicle, paying the purchase price to Lloyd. Stan Cross resold the car the next day. Lloyd made one part payment on account of the vehicle to Commercial after the Massachusetts events.

All prior agreements and acts involving the vehicle took place in 1840 U.S. 581, 71 Sup. Ct. 474, 95 L. Ed. 552 (1951), holding against attack in New York surrogate proceedings by a child and legatee of a decedent divorced in Florida, that “[w]hen a divorce cannot be attacked for lack of jurisdiction by parties actually before the court or strangers in the rendering state, it cannot be attacked by them anywhere in the Union.”

2 Restatement of Conflict of Laws §§49, 102, 343; cf. Beale, Jurisdiction over Title of Absent Owner in a Chattel, 40 Harv. L. Rev. 805 (1927); Restatement of Conflict of Laws, Second, Tent. Draft No. 4, §102, and Tent. Draft No. 5, §254a, pp. 78-81.
Maine while the vehicle was located there. Commercial had no knowledge of and gave no consent to its removal to Massachusetts. The parties agreed that Commercial owned the vehicle after the repossession.

In tort for conversion brought in Massachusetts by Commercial against Concord Auto Auction, Inc., and Stan Cross Buick, concededly a bona fide purchaser, the Supreme Judicial Court on bill of exceptions held that the latter was liable for conversion, but that the former, merely a commission solicitor of offers to buy the car, did not exert sufficient dominion and control over the vehicle to constitute it a converter.

The determinations of actual and apparent authority of Lloyd were said to be subject to Maine law. Likewise, the question of any estoppel against Commercial and all "property rights" underlying the action of conversion were determined under Maine law. But, in the absence of assertion that Maine law was different from that of Massachusetts, the Court assumed identity between the two.

A brief summary of several of the supporting cases cited by the Court is helpful.

In *Langworthy v. Little*, a personal property mortgage valid in New York, where executed, gave the mortgagee title sufficient to maintain trover against a Massachusetts deputy sheriff attaching the property in Massachusetts, where the mortgagor took it. New York law controlled the title issue, despite failure to comply with the Massachusetts requirement that the mortgage be recorded in the town where the mortgagee principally transacted his business.

In *Edgerly v. Bush*, the plaintiff took a chattel mortgage in New York on a span of horses. The mortgagor took the horses to Canada, where they were sold through a horse trader to one Bremley, a New York resident who purchased in good faith in ignorance of the plaintiff's claim. Bremley sold the horses to the defendant in Canada. Although the defendant, successor to Bremley's title, would have prevailed if Canadian law were applied, the New York court held that New York law governed when the plaintiff mortgagee and the mortgagor from whom the plaintiff got title were citizens of New York at the time of the mortgage, also a New York based transaction. Under New York law, the plaintiff prevailed, the New York rule being that the mortgagee prevails over a later bona fide purchaser from one who has acquired the property by conversion.

*Zendman v. Harry Winston, Inc.*, offers an interesting comparison. The plaintiff bought a diamond ring at public auction in New Jersey. Her auctioneer seller had no actual authority to sell to her, being merely entrusted with the ring to exhibit it with knowledge and
acquiescence of the defendant owner, a New York merchant. The auctioneer had selected the article from the New York merchant in New York and transported it to New Jersey. On application of New Jersey law as controlling, the auctioneer was held clothed with such indicia of title as to preclude the defendant from denying his apparent authority. The case is distinguishable from the principle case on the ground that the diamond ring was taken to New Jersey with the consent of the defendant New York merchant.

§8.4. Negligent operation of motor vehicle: Statutory standard of duty. Goodale v. Morrison1 applies the general conflict rule that the lex loci delicti generates the substance of the related matrix of legal rights, duties and liabilities. Of more interest and depth, the case illustrates the conflict doctrine that the rules governing the trier of fact as to passage by inference from evidence of subsidiary facts to ultimate findings of jurally pregnant facts such as "negligence" are founded in the law of the locus.2 Thus, if the lex loci treats certain classes of statutes prescribing rules of conduct as setting norms of due care, while the lex fori treats such rules as merely defining a kind of sufficient but not conclusive subsidiary evidence, the trier of fact in the forum will be forced to pass from a finding of violation of the norm to a finding of negligence. In short, conclusive evidence in the lex loci remains conclusive in the forum.

The plaintiffs were passengers in a car owned and operated by the defendant's intestate. It is implied but not stated that the plaintiffs and the defendant's intestate were Massachusetts domiciliaries. The car, traveling a New Hampshire highway, crossed over the center line and hit head-on a car coming from the opposite direction. The plaintiffs were injured and the defendant's intestate received injuries from which she died thirteen days later. The jury returned a verdict for the defendant.

The trial judge took judicial notice of the law of New Hampshire.3 In New Hampshire, a gratuitous guest passenger may recover against an operator for injuries caused by ordinary negligence. A New Hampshire statute forbids driving across an unbroken line in a New Hampshire highway "except (1) in an emergency, (2) to permit ingress or egress to side roads or property adjacent to the highway, or (3) in case such operator has an unobstructed view and can see the end of the said unbroken painted line." The judge, consonant with the general Massachusetts rule, instructed the jury in part: "The fact that the statute was violated is evidence of negligence on the part of the person who violated it. It is not conclusive evidence, because inquiry must be made and should be made as to all the attending circumstances."

The Supreme Judicial Court sustained the plaintiffs' exceptions to


3 G.L., c. 253, §70.
the charge and ordered a new trial on the ground that under the law of New Hampshire the statute prescribes a duty, violation of which is "in itself a breach of duty upon which a cause of action may be rested if it causes injury." A challenging exercise in analysis would be comparison and rationalization of the conflict rule of Goodale with the rule of Levy v. Steiger that Massachusetts will apply its own burden of proof of contributory negligence.5

5 See Sampson v. Channell, 110 F.2d 754 (1st Cir. 1940), calling this burden of proof "substance" but binding the federal court on diversity to the state court classification as "procedure."