Chapter 7: Conflict of Laws

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CHAPTER 7

Conflict of Laws

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§7.1. Wrongful death action: Law of state with most significant relationship governs damages. The Northeast Airlines flight from New York City to Nantucket Island, Massachusetts, ended with the crash of the plane at Nantucket on August 15, 1958. This crash resulted in much litigation involving wrongful death actions and choice of laws and led to the well-known decisions Kilberg v. Northeast Airlines, Inc.,1 Pearson v. Northeast Airlines, Inc.,2 and Gore v. Northeast Airlines, Inc.3 These cases were discussed in the 1963 SURVEY.4 During the 1967 SURVEY year, the United States Court of Appeals for the Second Circuit heard the appeal from the district court decision in Gore.5 The reversal of the judgment of the federal district court in Gore justifies another look at some of the key issues in this litigation.

In Gore, the plaintiff, a citizen of Maryland, was executor of the estate of one of the victims. He brought suit under the Massachusetts wrongful death statute6 against the defendant airline for damages of $1,750,000. The action was originally brought in a New York court but was removed to the United States District Court for the Southern District of New York. The decedent had been a domiciliary of New York and the defendant airline was a Massachusetts corporation. The defendant made the affirmative defense that the Massachusetts statute limited recoverable damage to $15,000.7 The plaintiff moved to strike this defense, asserting that since the court's jurisdiction rested upon diversity of citizenship, it had to apply New York conflict of laws doctrine.8 In determining the applicable New York conflict of laws rule, the court looked to the rule set forth in Kilberg.9

In Kilberg, the district court, in rejecting the Massachusetts limit as to the amount of damages, applied a "contacts" approach in order

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6 G.L., c. 229, §2.
7 Id. The statute has since been amended three times to raise the upper limits of recovery to $50,000.
8 373 F.2d at 720.

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to effect New York public policy. The New York policy, as defined in Kilberg, is that such a statutory limitation of damages as the Massachusetts statute sets out is against the interest of decedent's dependents who are New York domiciliaries.\textsuperscript{10} Hence, where the dependents are New York domiciliaries, New York choice of laws will dictate that such statutory limitations not be applied. The status of the next of kin, therefore, was critical in determining the applicability of the Kilberg rule to wrongful death action statutes of other states.

The district court noted that the Gore case was similar to Kilberg in that New York was the domicile of the decedent and also the place where he bought his ticket and boarded the plane. But the two cases were dissimilar with respect to the domiciles of the beneficiaries. The decedent in Gore was survived by a widow and two infant children, all residents of New York at the time of his death. The deceased was also survived by an adult daughter, and a son aged nineteen. These latter two children were both born of a prior marriage and had been domiciled in California before the decedent's death. One month after the decedent's death, his widow and two infant children moved from New York to Maryland where they have been domiciled ever since. None of the five beneficiaries, therefore, was a New York domiciliary when the suit was commenced.

The court pointed out that the California and Maryland courts would have had to apply the Massachusetts wrongful death statute with respect to the limitation of damages.\textsuperscript{11} The court concluded that it could hardly be argued that New York had a legally recognizable interest in the decedent's dependents sufficient to justify New York's courts in refusing to apply the damage limitation in the Massachusetts statute.\textsuperscript{12} The court therefore denied the plaintiff's motion to strike the affirmative defense.

The defendant Northeast, claiming that on the pleadings there was no genuine issue as to any material fact and that upon these material facts it was, as a matter of law, entitled to a defendant's judgment, moved, pursuant to Federal Rule of Civil Procedure 56(b), for summary judgment dismissing the plaintiff's wrongful death action insofar as it sought damages in excess of $15,000. Northeast also moved pursuant to Federal Rule of Civil Procedure 12(c) that judgment be entered against Northeast on the pleadings in the plaintiff's favor for $15,000 on the wrongful death cause of action. Both of Northeast's motions were granted in an unreported opinion, and a final judgment was entered thereon. The plaintiff appealed only from so much of the judgment as limited damages to $15,000 in the wrongful death cause of action.\textsuperscript{13}

The court of appeals found, after an examination of New York cases,

\textsuperscript{10} Id. at 40, 172 N.E.2d at 528, 211 N.Y.S.2d at 528.
\textsuperscript{11} 222 F. Supp. 50 (S.D.N.Y. 1963).
\textsuperscript{12} Id.
\textsuperscript{13} Id. at 720.
that the reasons behind New York's policy proscribing statutory limitations upon recoverable damages in wrongful death action were based upon the state's interest in preserving a citizen's life, as well as upon its interest in the well-being of a citizen's surviving dependents. It held that the date of death rather than the date of the commencement of an action for damages caused by the death was the determinative date as to the beneficiaries' domicile for the purpose of choosing the applicable state law in a wrongful death action. Therefore, the relevant domicile of the survivors in the present case was not distinguishable from the New York domicile of the widows in Kilberg and Pearson, and the court was bound by Kilberg's dictate that New York's strong public policy against such limitations would apply.

The court then proceeded to find another basis for the application of New York law in the present case. In Kilberg, the New York Court of Appeals had recognized the traditional rule that the lex loci delicti creates the cause of action for wrongful death. Hence, the substantive cause of action was governed by the Massachusetts statute. In holding, however, that New York law, not Massachusetts law, governed the damages issue, the court departed from the traditional rule. Two years after Kilberg came the landmark case of Babcock v. Jackson, in which the New York Court of Appeals rejected the familiar place-of-impact rule, and adopted for tort cases with multi-state settings the principle that the law of the state which has the significant contacts with the transaction controls the rights of the parties. Subsequent New York cases reaffirmed the Babcock rationale, and indicated that it was just as applicable to wrongful death actions as to actions for nonfatal tortious injuries.

The federal court of appeals, after examining the present case in the light of the Babcock criteria, found that the New York law and procedures governing the nature and the amount of recovery for the decedent's wrongful death were the most logical ones to be applied. The defendant Northeast could advance no contacts with Massachusetts or California or Maryland and no interest held by these states which could be regarded as superior to the contacts New York had with the transaction. Hence, New York possessed the superior interest in the consequences flowing from the decedent's death, and this interest would dictate that the New York law should be applied both as to the substantive cause of action and damages.

The decision of the United States Court of Appeals in Gore marks another advance of the "contacts" approach in New York conflicts law.

14 Id. at 723.
15 Id.
16 Id.
20 373 F.2d 717, 725-726.
In the earlier Kilberg and Pearson cases the courts were content to allow the law of Massachusetts to stand as the basis for the wrongful death actions. Undoubtedly, the courts felt obliged to reason in this way because the action for wrongful death was unknown to the common law and continues to be thought of as having no existence separate from a statutory enactment. The present decision, with its finding that New York law alone should be applied to the Massachusetts death, makes the “contacts” principle just as applicable to wrongful death actions as to tort actions generally. Thus, the continued validity of the Kilberg-Pearson rationale is dubious.

Some four months after the present decision by the federal appellate court, the New York Court of Appeals ratified the statement of New York conflicts law found in Gore. In Farber v. Smolack, a wrongful death action arising out of an automobile accident in North Carolina, the New York court held that the New York wrongful death statute determined the rights of the victim’s survivors, because New York was the jurisdiction of the most “significant relationship” with the issue presented. The court cited Gore in support of this ruling.

§7.2. Foreign country judgment: Prima facie evidence of underlying claim. In Svenska Handelsbanken v. Carlson, the plaintiff, a Swedish bank, brought a diversity action in the United States District Court for the District of Massachusetts against the defendant as administrator of the estate of his deceased brother and as distributee of the estate. The plaintiff sought to recover on a judgment against the defendant entered in a Swedish court or, alternatively, on the original claim on which the action in the Swedish court was based.

The decedent, a New Jersey resident engaged in the export-import business, had executed a guarantee in favor of the plaintiff bank. Upon the decedent’s death intestate, the defendant, his sole heir, was appointed administrator of his estate in New York on January 11, 1961. The defendant was discharged as administrator by a final decree, dated February 5, 1962, and he received a distribution of $500,000 from the estate.

During his administration of the estate, the defendant notified the bank of his brother’s death and the bank in turn apprised the defendant of the existence of the guarantee. More than a year after the defendant was discharged as administrator and the estate was distributed, the plaintiff bank first made demand upon the defendant for payment under the guarantee. No such payment was made. On January 24, 1964, the plaintiff filed suit in a Swedish court against the defendant to recover the full amount of the guarantee. Service of process and of a copy of the complaint was made in hand upon the defendant at his home in Massachusetts on May 19, 1964. The defendant failed to an-

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21 Id. at 723.
23 Id. at —, 229 N.E.2d at 40, 282 N.Y.S.2d at 253.

swer the complaint, and judgment was entered against him by the Swedish court on September 4, 1964. The defendant was thereafter served in hand with a copy of the judgment. He was also notified of his right to appeal or to reopen the judgment, but failed to exercise it.

The plaintiff bank first contended that the judgment of the Swedish court should be given conclusive effect and judgment be entered upon it. The district court, however, was not convinced that the Swedish judgment was entitled to conclusive effect. In *Hilton v. Guyot* the United States Supreme Court held that a judgment of a court of a foreign country would be given conclusive effect only if the courts of that nation would give similar effect to judgments rendered in the United States. Where such reciprocity does not exist, the foreign judgment is only prima facie evidence of the correctness of the underlying claim. The district court noted that the plaintiff offered no evidence to support its assertion that the Swedish court, which rendered the judgment sued upon, had given conclusive effect to judgments of American courts.

The court held, however, that under the doctrine of *Erie R.R. v. Tompkins* Massachusetts rather than federal law was applicable. On the basis of early Massachusetts decisions, the court construed the Massachusetts rule to be that a judgment of a court of a foreign country would be only prima facie evidence of the underlying claim, and that the defendant would be entitled to all the defenses he might have made to the original action.

The district court then had to decide under whose laws the construction of the guarantee agreement would be made. Looking to conflicts of laws rules, the court held the contract to be governed by Swedish law. The district court also ruled against the defendant's statute of limitations argument, holding that the suit, as a contract action, was timely brought under the Massachusetts six-year statute.

The defendant finally claimed that the action was barred by applicable New York probate law. The court agreed that, since the plaintiff presented no claim in the New York proceedings, he was barred from any recovery against the defendant in his capacity as administrator of the estate. However, recovery against the defendant as distributee of assets of the estate was authorized by Section 170 of the New York Decedent Estate Law. An action based upon this section might properly

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2 159 U.S. 113 (1895).
3 304 U.S. 64 (1938).
5 Restatement (Second) of Conflicts of Laws §346j (Tent. Draft No. 6, 1960).
6 G.L., c. 260, §2.
7 Surrogate's Court Act §208 (now Surrogate's Court Procedure Act §1802).
8 N.Y. Deced. Est. Law §170, provides: "An action may be maintained, as prescribed in this article, against the surviving husband or wife of a decedent, and the next of kin of an intestate, or the next of kin or legatees of a testator to recover, to the extent of the assets paid or distributed to them, for a debt of the decedent, upon which an action might have been maintained, against the executor or administrator. The neglect of the creditor to present his claim to the executor or
be brought in the Massachusetts courts. The plaintiff bank, therefore, was entitled to recover the full amount of the guarantee with interest from the date of demand.

Judgments rendered in a foreign country are not entitled to the protection of the full faith and credit clause of the Federal Constitution. In many states, however, such judgments, provided they comply with due process requirements, will be accorded the same degree of recognition to which sister state judgments are entitled. It seems probable that the Massachusetts prima facie evidence rule, based as it is on early Massachusetts cases, will be changed when the Supreme Judicial Court has the opportunity to reconsider the problem of the recognition of foreign country judgments. It is submitted that a rule which would apply the principles of res judicata to judgments rendered in foreign countries would be more in accord with the public interest in seeing a timely end to litigation.

The reciprocity doctrine of the Hilton case has not received much approbation from the commentators and has been rejected by many state courts. The Hilton opinion involved an appeal from a lower federal court, and it did not discuss whether its rule as to reciprocity would be binding on state courts. So far as is known, no federal or state court has ever made such a suggestion. As a consequence, in the absence of a treaty or act of Congress, the federal courts, sitting in diversity actions, are usually required by the Erie rule to apply the law of the state in which they sit as to the measure of respect that should be accorded a foreign country's judgment. Hence, the federal district court in the present case was correct in holding that Massachusetts rather than federal law as embodied in the Hilton decision was applicable.

§7.3. Amendment as to parties in diversity cases: Law of forum state controls. In Burns v. Turner Construction Co., the plaintiff Burns brought a diversity action in tort against a single defendant, Turner. The plaintiff had been injured on March 26, 1962, at the Children's Hospital Medical Center when a platform railing which he leaned against gave way and he fell to the ground below. The plaintiff alleged that the construction company was negligent in designing administrator, within the time prescribed by law for that purpose, does not impair his right to maintain such an action.” Massachusetts has no such statute.

10 U.S. Const., art. IV, §1.
11 See Restatement (Second) of Conflict of Laws §430e (Tent. Draft No. 11, 1965).
13 E.g., Leflar, Conflicts of Laws §70 at 132 (1959); Stumberg, Conflict of Laws 132-133 (2d ed. 1951).
15 See Leflar, Conflict of Laws 131-132 (1959); Restatement (Second) of Conflict of Laws §430e, Comment e (Tent. Draft No. 11, 1965).

§7.3. 1 265 F. Supp. 768 (D. Mass. 1967), also noted in §21.2 infra.
and installing the platform and its railings from which the plaintiff fell. The suit against Turner was commenced on March 23, 1964. The plaintiff filed an amended complaint on January 17, 1966, in which he added seven causes of action against several new defendants. The amended complaint was based on information which the plaintiff had learned during discovery proceedings which he conducted in early 1965. The new defendants filed motions to dismiss on the ground that the plaintiff’s suit, brought four years after the tort, was barred by the statute of limitations. The court granted the motions to dismiss and ruled that the case would stand for trial only against the original defendant Turner.

Since jurisdiction in this case was based upon diversity of citizenship, the district court noted that the *Erie* doctrine required the application of the statute of limitations of the forum state. The Massachusetts statute of limitations for tort actions is two years from the date on which the cause of action occurs. Since the plaintiff’s amended complaint was filed more than two years after his injury, his causes of action against the defendants other than Turner were barred by the Massachusetts statute.

In order to amend his action pursuant to the Massachusetts statute of limitations, the plaintiff must establish the propriety of his amendment as a matter of law, as well as demonstrate that the proposed amendments will not operate to prejudice the defendants. In interpreting this statute the Supreme Judicial Court has held that the statute permits the substitution of parties to a cause of action, but it has never held that the statute permits the addition of new parties. In fact, the statute of limitations has been held to bar an amendment to a declaration which seeks to bring in new defendants under a new cause of action. In the present case, the federal district court observed that the plaintiff amended his complaint by adding additional parties defendant and new causes of action, not by substituting one defendant for another.

The district court concluded its analysis of pertinent Massachusetts law by stating that even if General Laws, Chapter 231, Section 51, would permit the plaintiff to amend his complaint by adding additional parties, it was clear under Massachusetts law that the allowance of the amendments lay within the court’s discretion. Finding that a Massachusetts judge, in exercising his discretion, would consider such standards as those enumerated in Federal Rule of Civil Procedure

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4 G.L., c. 231, §51.
8 265 F. Supp. at 770.
15(c), the court ruled that those standards had not been met.\textsuperscript{10} The new defendants had not received notice of the suit within the two-year limitation period. Moreover, they probably would be prejudiced in defending on the merits by the passage of almost four years between the date of the accident and notice of the suit. The court therefore granted the motions to dismiss and allowed Burns to sue only the original defendant.\textsuperscript{11}

For \textit{Erie} purposes "substance and procedure" is a phrase with a meaning different from that of the traditional substance-procedure distinction in conflicts law. Under the Rules of Decision Act,\textsuperscript{12} where state law is in issue as to matters of "substance," the law which governs is the law of the state in which the federal court sits.\textsuperscript{13} Since the sole basis for diversity jurisdiction is the prevention of local bias against out-of-state litigants, the outcome of each case should be the same in the federal court as it would be in a state court. Therefore, all matters materially affecting the outcome of the case are considered "substantive" and must be determined by state law.\textsuperscript{14} As a result federal courts have been forced to follow state law with respect to matters which for other purposes are often treated as procedural.

Matters of pleadings, including the amendment of pleadings, will ordinarily not materially affect the outcome. For \textit{Erie} purposes, therefore, federal law will usually apply. A different case is presented, however, when the amendment has the effect of introducing new causes of action against new defendants which would have been barred by the local statute of limitations if the amendments were not permitted. Whether the amendment relates back to the original date of filing is a question which materially affects the outcome. The decision to apply Massachusetts law in the present case, therefore, is consistent with the requirements of the \textit{Erie-York} rule.

\section*{§7.4. Federal change of venue statute: Transferee district as convenient forum.} The forum non conveniens rule, whereby a court in its discretion will refuse to hear a case if it conceives itself to be a seriously inappropriate forum,\textsuperscript{1} is becoming increasingly important.\textsuperscript{2} The doctrine is now law in about half of the states\textsuperscript{3} and has been espoused by the Supreme Court of the United States.\textsuperscript{4} The principle of forum non conveniens also underlies Section 1404(a) of the Judicial

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\textsuperscript{10} 265 F. Supp. at 770.
\textsuperscript{11} Id.
\textsuperscript{13} Erie R.R. v. Tompkins, 304 U.S. 64 (1938).
\textsuperscript{14} Guaranty Trust Co. v. York, 326 U.S. 99 (1945).
\end{flushleft}
Code of 1948, which provides for the transfer of jurisdiction among the federal district courts.

In *Spencer, White & Prentis, Inc. v. Jacet Construction Corp.*, the United States District Court for the Southern District of New York transferred the case to the District of Massachusetts in the interest of convenience and justice. The plaintiff, a New York corporation, contracted with the defendant, a Massachusetts corporation, to build a slurry-trench wall around the foundation of a building in Boston. The plaintiff brought a diversity suit for the unpaid balance allegedly due for its services under the contract. The defendant represented that it would assert a defense and counterclaim for damages caused by faulty performance.

The New York federal court found that the case could be tried more conveniently in Boston. The court noted that it might be desirable for the court and jury to visit the building site, which was less than a mile from the United States Courthouse in Boston. All, except two, of the non-party witnesses were in Massachusetts and subject to process there but not in New York. In addition, many of the pertinent records were situated in Massachusetts. The court concluded, therefore, that "the balance of convenience of parties and witnesses and the interest of justice weigh heavily in favor of the District of Massachusetts."7

It should be noted that, in addition to the interests of the parties, factors of public interest also have a place in applying the forum non conveniens doctrine. One of these latter considerations is the avoidance of administrative difficulties for courts with crowded dockets. The court in the present case indicated its concern for the public interest when it stated that the action would come to trial several months sooner in the much less congested trial docket of the Federal District Court of Massachusetts.8

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7 Id. at 474.
8 Id.