Chapter 3: Conflict of Laws

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CHAPTER 3

Conflict of Laws

FRANCIS J. NICHOLSON, S.J.

§3.1. Fraudulent misrepresentation occurring in Massachusetts: Determined by Massachusetts law. The United States Court of Appeals for the First Circuit had occasion to apply Massachusetts choice-of-law rules in the case of Doody v. John Sexton & Co.1 The plaintiff Doody brought a diversity action against the defendant corporation in the United States District Court for the District of Massachusetts. The defendant, a merchandising company having head offices in Chicago and doing business in a number of states, had employed the plaintiff in its Boston office. At a conference in Chicago two of the defendant's officers promised the plaintiff lifetime employment in the company's Los Angeles office if he would move to California. The plaintiff did move, but he found substantially different working conditions than he had been promised. When the plaintiff complained to one of the defendant's officers on the strength of his Chicago promise, the officer averred that he had been "kidding" and that Doody would have to accept the situation or quit. The plaintiff quit his job and returned to Boston.

The plaintiff's suit for damages for his out-of-pocket loss as a result of this venture incorporated counts in both breach of contract and fraudulent misrepresentation. The federal district court directed a verdict for the defendant on the breach of contract count, but allowed the case to be submitted to the jury on the fraudulent misrepresentation issue. The court entered judgment on the jury's verdict for the plaintiff. The court of appeals, in the present case, affirmed the judgment of the district court, holding that under Massachusetts law the defendant company could be held liable for the representations made by its officers.

The conflict of laws question presented by the appeal was one of which law should govern the inquiry into whether the officers' promise of lifetime employment, with no intent to perform, was actionable. This question was of crucial significance because a misrepresentation of a present intention, actionable in Massachusetts,2 is not actionable in Illinois.3 Since jurisdiction in this case was based on diversity of

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§3.1. 1 411 F.2d 1119 (1st Cir. 1969).
3 Illinois is one of the minority of jurisdictions which do not permit recovery in

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The court of appeals noted initially that Klaxon Co. v. Stentor Electric Manufacturing Co. required it to apply the conflict of laws rules that would be applied by the courts of Massachusetts, the forum state. Therefore, Massachusetts conflicts law governed the choice-of-law issue.

Under Massachusetts conflicts law the doctrine of lex loci delicti governs tort actions. In applying the lex loci doctrine, Massachusetts follows the rule of the original Restatement of Conflict of Laws that "the place of the wrong is the state where the last event necessary to make an actor liable for an alleged tort takes place." Since reliance was necessary for the imposition of liability for misrepresentation, the tort was completed in Massachusetts, where the plaintiff gave up his Massachusetts employment and suffered his original loss. The court concluded, therefore, that the law of Massachusetts, not that of Illinois, was controlling on the issue of actionable misrepresentation.

The remaining question considered by the court of appeals was whether the defendant company could be held liable for the consequences of the officers' wrongful act. Under Massachusetts law a principal can be held liable for misrepresentation based upon the unauthorized acts of an agent not too far removed from the scope of his authority. In the present case the defendant's officers were its president and vice-president, both of whom clearly possessed certain hiring powers. The court held that it could be found that the plaintiff had a right to rely on the officers' representations, even though their actual authority did not extend to the point they had indicated.

The Massachusetts conflicts rule applied in the present case under the Klaxon mandate represents traditional choice-of-law doctrine in fraud and deceit cases. The standard approach, following the "last event" principle, states that the controlling law is that of the place where the injury first occurs. Where both the defendant's misrepresentation and the plaintiff's reliance and loss happen in the same state, the law of that state rather obviously governs matters of substance. It is only when the misrepresentation occurs in one state and the reliance and loss result in a second state that problems arise with the use of the place-of-impact test to determine governing law.

In Doody, the false statements of the defendant's officers were made in Illinois. The plaintiff's reliance certainly took place in Massachusetts. The tort for promissory statements even if, when made, there was no intention to perform. See Repsold v. New York Life Ins. Co., 216 F.2d 479 (7th Cir. 1954); Brodsky v. Frank, 342 Ill. 110, 173 N.E. 775 (1930).

5 see R. Leflar, American Conflicts Law 359 (1968).
setts, but reliance also occurred in California when Doody moved to Los Angeles, relying on the Illinois promises. If the major part of the plaintiff's course of action in reliance had happened in Massachusetts, Massachusetts would have had a more important contact with the occurrence than did California; but, in view of the fact that reliance detrimental to the plaintiff also transpired in California, that state's connection with the cause of action should be considered.11

Prescinding from problems of the determination of the place of reliance, the plaintiff's domicile is a contact of substantial significance when the loss is pecuniary in its nature. This is so because a financial loss will usually be of greatest concern to the state with which the person suffering the loss has the closest ties. Although the court's opinion in Doody does not indicate the plaintiff's domicile, in all probability plaintiff was a Massachusetts domiciliary and, if such were the case, the law of Massachusetts would have been the proper law to apply. Nevertheless, the question of domicile should have been raised.12

Massachusetts still retains the lex loci delicti doctrine as its choice-of-law rule in tort conflicts cases, although an increasing number of states have abandoned it. It is submitted that the automatic use of this rule, without recourse to considerations of other possible substantial contacts, is particularly undesirable with respect to the tort of fraudulent misrepresentation, where, as in Doody, the misrepresentation and plaintiff's reliance often occur in a number of different jurisdictions.

§3.2. Wrongful death action: Law of state with most significant relationship governs damages. In the recent decision of Tiernan v. Westext Transport, Inc.,1 the United States District Court for the District of Rhode Island held that the Rhode Island death act, and not the Massachusetts statute, would be controlling in a wrongful death action, notwithstanding the fact that the fatal accident had occurred in Massachusetts.

In April, 1964, James Tiernan, a domiciliary of Rhode Island, was seriously injured in a highway accident in Massachusetts. Tiernan was riding in the automobile of one Dunn, a domiciliary of New York, who was acting in the course of his employment for Supervised Investors Services, Inc., a Delaware corporation. The Dunn car was struck by a tractor-trailer owned and operated by Westext, a Texas corporation, and driven by its employee West, a domiciliary of Vermont. Shortly after the accident, Tiernan died in Rhode Island as a result of his injuries; when the collision occurred, Tiernan was returning to Rhode Island, having left that state earlier in the day.

12 Ibid.

The plaintiff administrator of the decedent Tiernan brought two diversity suits in the United States District Court for the District of Rhode Island. Westext, Supervised, and West were the defendants in the first suit. Dunn's wife, as administratrix of his estate, was the defendant in the second suit. In both cases the plaintiff stated causes of action under both the Rhode Island and Massachusetts wrongful death statutes. The plaintiff was a Rhode Island domiciliary, as were the decedent Tiernan's wife and family. The defendant administratrix was a domiciliary of Massachusetts but, at the time of the accident, had been domiciled in New York, where she was appointed administratrix and where Dunn's estate was being probated.

The defendants moved for dismissal as to the Rhode Island wrongful death claims. The Rhode Island wrongful death statute places no limit on recovery, and is compensatory in that it focuses on the pecuniary loss to the beneficiaries. The Massachusetts statute provides for a maximum recovery of $50,000, and measures damages by the standard of the degree of the defendant's culpability. The defendants argued that the Rhode Island wrongful death act could not be the basis for the plaintiff's claims because Rhode Island conflict of laws principles required the application of the substantive law of the place of the wrong, here Massachusetts. The plaintiff opposed the motions on the basis that the Rhode Island Supreme Court, if given the opportunity, would apply more modern conflicts rules by which Rhode Island law would control. After the parties had rejected the suggestion of the federal district court that they obtain an authoritative determination of Rhode Island conflicts law in the state courts, the federal court granted the defendants' motions to dismiss in July, 1965. The cases, however, continued in litigation because of the vitality of the Massachusetts wrongful death causes of action. In the interim, the Rhode Island Supreme Court, in Woodward v. Stewart, discarded the lex loci delicti rule in the area of multi-state torts, adopting the grouping of contacts and interest analysis principles.

On the basis of the Woodward decision, the plaintiff moved to vacate the July, 1965 orders of dismissal. The plaintiff argued that the dismissals were not final, and that the Woodward criteria required the application of Rhode Island's wrongful death law. The defendants responded by asserting that the previous dismissals were final

2 Because the accident had occurred in Massachusetts, and because the decedent's estate was being probated in New York, the plaintiff commenced identical actions against the same defendants in the federal courts of Massachusetts and New York one month after the commencement of these suits in Rhode Island. The New York court transferred its case to Massachusetts, and the Massachusetts court thereupon transferred both cases to Rhode Island. Consolidation of all these cases was sought and granted. See Tiernan v. Westext Transport, Inc., 295 F. Supp. 1251 (D.R.I. 1969).

4 G.L., c. 229, §2.
judgments which could not be vacated at the trial level, and that the Rhode Island wrongful death statute was not the governing law under Woodward's standards.

The federal district court first considered the procedural aspects of the plaintiff's motion to vacate. The court pointed out that the question of the finality of decisions of the federal district courts was measured by Rule 54(b) of the Federal Rules of Civil Procedure. That procedural rule requires an express determination by the district court that there is no just reason for delay and an express direction for the entry of judgment as the two-fold sine qua non for a final determination. Because both of these requirements were lacking in each of the present cases, the dismissals of July, 1965 were not final judgments and could be reconsidered by the court.

The court found there was a further reason why it was obligated to reconsider the previous orders of dismissal. That reason rested upon principles of federalism elaborated in decisions of the United States Supreme Court. In Vandenbark v. Owens-Illinois Glass Co., the Supreme Court held that the federal courts should modify their orders to conform to changes in state law during the pendency of the case on appeal. A fortiori, the court reasoned, a change in state law during the pendency of the case at the trial level merited a similar modification. Thus, the district court in Tiernan held that the Rhode Island Supreme Court's change from the lex loci delicti doctrine to the "significant contacts" rule in Woodward required the court to vacate the previous orders of dismissal.

The court then considered the conflict of laws question, specifically whether the conflicts principles enunciated in Woodward warranted the application of Rhode Island law. In terms of the factual contacts with the whole transaction, the interest of Rhode Island clearly predominated over that of Massachusetts.

The court next considered the respective interests of Rhode Island and Massachusetts with respect to the central issue of compensation of the decedent's survivors. The interests of Massachusetts were limited. Massachusetts' only genuinely relevant contact was that the accident occurred there. Given that contact alone, the governmental interest of Massachusetts would not be furthered by the application of Massachusetts law. There was no Massachusetts defendant to be protected by the statute's recovery limitation, and it could not be supposed that deterrence of recklessness on the Massachusetts highways would result from the imposition of a statutory $50,000 ceiling in a case in which over $450,000 was sought. On the other hand, Rhode Island's governmental interest was obvious. The plaintiff was the Rhode Island administrator of a Rhode Island citizen's estate seeking benefits for a Rhode Island wife and family. Rhode Island's interest in compensation as both parens patriae and family supporter would

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6 See 311 U.S. 588 (1941).
7 See also Commerce Oil Refining Corp. v. Miner, 303 F.2d 125 (1st Cir. 1962).
be advanced by the use of Rhode Island law. Therefore, the court, holding that the Rhode Island wrongful death statute was controlling, granted the plaintiff's motion to vacate the previous dismissal orders.

The decision in Tiernan restates the significant relationship or interest-weighing approach now firmly established in Rhode Island tort conflicts law by the Woodward case. This flexible approach, it is submitted, has properly safeguarded the forum state's interest in the question of damages in this litigation. The strict application of the lex loci delicti doctrine in this case would have produced a harsh result, for Massachusetts was not vitally concerned with the manner in which the Rhode Island wife and family of a Rhode Island decedent were to be compensated for the wrongful death of their "bread winner."

The somewhat unique fact pattern of this case prompts the further observation that the application of the "contacts" or interest-weighing approach need not be restricted to simple cases. The decision in Tiernan, with its complicated fact situation, indicates that this new technique makes it reasonably easy for bench and bar to calculate the equitable resolution of more difficult choice-of-law cases. Indeed, it may in fact be that the efficacy of the interest-weighing approach to choice-of-laws problems is enhanced in cases where a complicated fact situation provides a greater number of contacts for the court to weigh in resolving which jurisdiction's law should govern its decision.

§3.3. Federal Tort Claims Act suit: Liability law of Massachusetts governs where alleged negligence occurred in Massachusetts resulting in Rhode Island death. In Bannon v. United States, the plaintiff administratrix of the estate of Bannon brought a suit against the United States and the Administrator of Veterans Affairs, in the United States District Court for the District of Rhode Island under the Federal Tort Claims Act. The decedent Bannon was a veteran with a history of mental illness. At the time of his death he was under the supervision and care of a VA hospital in Massachusetts. At the hospital, Bannon was on so-called full privileges status with respect to his freedom of movement. In essence this meant he had full access to the ground facilities. Bannon eloped from the hospital, went into Rhode Island, and there took his own life. The plaintiff, alleging negligent conduct on the part of the defendant's agents, servants, and employees in failing to maintain proper hospital surveillance, sought damages for Bannon's death. The defendant government argued that the hospital had given the decedent the care which his condition required. After weighing all the evidence, the federal district court dismissed the plaintiff's complaint.


§3.3. 1 298 F. Supp. 1050 (D.R.I. 1968).
The federal district court was presented with the problem of determining the applicable law of liability and damages where the allegedly negligent act of permitting the deceased to elope had occurred in Massachusetts, while the death claimed to have resulted therefrom had occurred in Rhode Island. Since the suit was being brought under the Federal Tort Claims Act, the choice-of-law provision of that statute controlled. The statute’s choice-of-law rule states that the federal government should be liable in tort “where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.”

The accepted interpretation of the words “the place where the act or omission occurred” has traditionally been that the reference is to the place where the negligent acts happened, not to the place where the harmful impact occurred. Thus, the Federal Tort Claims Act does not follow the standard lex loci delicti principle of tort conflicts law. The law of Massachusetts, therefore, governed the question of liability and damages.

Since the plaintiff’s suit was for damages for Bannon’s death, the district court ruled that the Massachusetts wrongful death statute applied. The statute sets a limit of $50,000 as maximum recovery, and this limitation would have been applicable to any judgment in favor of the plaintiff administratrix.

The court then proceeded to analyze the apposite Massachusetts negligence law. It noted that there was a paucity of cases in Massachusetts concerning the measure of care imposed on a hospital in caring for its patients, and particularly with respect to the duty of mental hospitals. On the basis of germane decisions of the Massachusetts Supreme Judicial Court, however, it was clear that the hospital’s duty of reasonable care imposed by Massachusetts law was limited by the rule of foreseeability. Considering all the evidence, the court found it could conclude it to have been foreseeable that the decedent might act irrationally or elope from the hospital. Nevertheless, the evidence did not warrant the inference that the hospital, in the exercise of its duty of reasonable care, should have anticipated Bannon’s self-destruction. As the plaintiff administratrix had not made out a case in negligence by a preponderance of the evidence, her complaint was dismissed.

The choice-of-law rule of the Federal Tort Claims Act, in its departure from the traditional place-of-impact doctrine, is clearly inept. Judge Goodrich once attempted to discover why the rule was written in this strange way, but he found only that the draftsmen of the stat-

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8 Ibid.
5 G.L., c. 229, §2.
7 See R. Leflar, American Conflicts Law 227 (1966).
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ute thought that reference to the place of the negligent act or omission was the standard rule.\(^8\) The United States Supreme Court was finally able, in *Richards v. United States*,\(^9\) to suggest a remedy for the abnormality which the statute had created.

In *Richards*, the action was for negligence in Oklahoma, causing in Missouri an airplane crash which killed the plaintiff's decedent. Missouri law limited recovery to a $15,000 maximum while Oklahoma law set no limitation on the amount of damages which could be recovered. The Supreme Court, using a renvoi approach, held that the reference to the law of "the place where the act or omission occurred" (Oklahoma) was a reference to the whole law of that state, including its conflicts law. The Oklahoma choice-of-law rule was that the law of the place of the injury controlled. The reference to the whole law of Oklahoma was thus a reference to Missouri law, and the case was decided in an orthodox torts fashion. If the choice-of-law rule in Oklahoma had been the modern "significant contact" principle, it too would have been followed. The Federal Tort Claims Act, as interpreted in the *Richards* case, permits growth in conflicts law, if the state "where the act or omission occurred" desires its conflicts law to develop. The unfortunate error in drafting the Federal Tort Claims Act has been remedied.

In *Bannon*, the federal district court did not consider using a renvoi approach in applying the Massachusetts wrongful death statute as the law of "the place where the act or omission occurred." If the court had viewed the reference in the choice-of-law rule of the Federal Tort Claims Act as a reference to the whole law of Massachusetts, including its conflicts law, the case would have been decided differently on the issue of the law governing liability and damages. The Massachusetts conflicts rule with respect to wrongful death actions is that the substantive rights of the parties are governed by the law of the place where the wrong was done.\(^10\) The lex loci delicti rule also determines the theory upon which damages are assessed.\(^11\) A reference to the whole law of Massachusetts, then, would have been a reference to the Rhode Island wrongful death act.

A reading of the facts in *Bannon* seems to indicate that Rhode Island had the greater concern for the welfare of the decedent and his administratrix, and the liability law of Rhode Island should therefore have been applied by the court. The *Richards* interpretation of the Federal Tort Claims Act would have made this application possible.

§3.4. Guest-host action: Law of state with most significant relationship applies to action for death of guest. As a result of incon-

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\(^8\) See Goodrich, *Yielding Place to New*: Rest Versus Motion in the Conflict of Laws, 50 Colum. L. Rev. 881, 894-895 (1950).


sistencies in several recently decided cases, the New York Court of Appeals has attempted in Tooker v. Lopez\(^1\) to give more precision to New York choice-of-law rules for guest-host actions. The defendant in Tooker, a New York domiciliary, was the owner of a New York registered and insured automobile which was used by his daughter, a student at Michigan State University. The defendant's daughter, while driving the car from the university to Detroit, was killed when the car overturned. The accident also took the life of her passenger, a classmate at the university and the daughter of the plaintiff. Both girls were New York domiciliaries. The plaintiff, father of the decedent passenger, brought an action for wrongful death as the administrator of her estate. The defendant asserted as an affirmative defense the Michigan "guest statute,"\(^2\) which permits recovery by guests only upon a showing of gross negligence on the part of the driver. The plaintiff moved to dismiss this defense on the ground that under the governing choice-of-law rules it was New York law rather than Michigan law which applied. The New York Supreme Court, Special Term, granted the motion to dismiss. The New York Supreme Court, Appellate Division, reversed, and appeal was taken. The court of appeals held that the law of New York rather than the Michigan "guest statute" was applicable to the action, and thus reversed the order of the appellate division.

The court of appeals was presented with a choice-of-law problem which it has had occasion to consider in several cases since its decision in Babcock v. Jackson,\(^3\) in which the court rejected the traditional rule of lex loci delicti in tort cases. The court had recently acknowledged that its decisions in multi-state highway accident cases, subsequent to the rejection of the lex loci delicti rule, "have lacked a precise consistency."\(^4\) Guest-host suits had proved to be a class of cases which had been particularly troublesome. Tooker gave the court the opportunity to lay down more exact guidelines for the solution of guest-host conflicts problems.

In Babcock, the plaintiff, while on a weekend trip with her neighbors to Ontario, Canada, was injured when an automobile in which she was a passenger crashed into a stone wall. Both plaintiff and her neighbors, who owned and operated the vehicle, were New York domiciliaries, and the car was registered and insured in that state. Upon her return to New York the plaintiff commenced an action to recover for her personal injuries. The Ontario "guest statute," which prohibits suit by guests against negligent hosts, was asserted as a defense. The court of appeals rejected unequivocally the traditional lex loci delicti rules and refused to apply Ontario law. The

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court adopted the “significant contacts” doctrine, which emphasizes
the need for analyzing and measuring the relevant interests of the
states involved as to the particular issue presented in order to deter­
mine which decisional rule is to govern. The specific issue in Bab­
cock was whether the plaintiff was barred from recovering damages
because she was a guest. As to that issue the court concluded that
it was New York which had the only interest:

New York’s policy of requiring a tort-feasor to compensate
his guest for injuries caused by his negligence cannot be doubted
. . . and our courts have neither reason nor warrant for depart­
ing from that policy simply because the accident, solely affecting
New York residents and arising out of the operation of a New
York based automobile, happened beyond its borders. 5

Babcock was followed by Dym v. Gordon. 6 The plaintiff and the
defendant in that case were New York domiciliaries taking summer
courses at the University of Colorado. The plaintiff, while a passen­
ger in a car driven by the defendant, was injured during a short trip
in Colorado when the automobile collided with a vehicle owned
and operated by a resident of Kansas. Upon her return to New York,
the plaintiff commenced an action to recover for her personal in­
juries. The defendant asserted a “guest statute” defense based on
Colorado law, which statute barred a guest’s recovery against his
host unless there was a showing of gross negligence. The issue in
Dym, quite simply, was whether the rationale of Babcock required
the application of the law of New York or Colorado. A closely di­
vided court concluded that the purpose of the Colorado “guest stat­
ute” was to grant injured parties in other cars priority over the
“ungrateful guest” in the assets of the negligent driver. Since Dym
involved another vehicle, and since third parties were injured, the
court ruled that Colorado, unlike Ontario in Babcock, had an in­
terest in the application of its law. Therefore, Colorado law governed.

In Tooker, the appellate division felt constrained by the holding
in Dym to apply the Michigan “guest statute.” The court of appeals,
in reversing the appellate division, held that the decision in Dym was
clearly distinguishable on the basis of the different facts in the two
cases. There was in Tooker no third-party “non-guest” who was injured,
and there was therefore no question of denying such a party priority in
the assets of the negligent defendant. On the contrary, the present
case was one of the simplest in the choice-of-law area. It was clear that
New York had the only real interest in whether recovery should be
granted, and that Michigan, on the other hand, had no interest in
whether a New York plaintiff recovered against a New York defendant
where the car was insured in New York. The fact that the deceased

guest and driver were in Michigan for an extended period of time was plainly irrelevant.

Not content, however, to distinguish the two cases on their facts, the court of appeals then proceeded to overrule Dym. The primary point of the division of the court in Dym had been the construction placed on the Colorado "guest statute" by the majority opinion; this construction, the court concluded, was mistaken. The teleological argument advanced by some,7 that the guest statute is intended to assure the priority of injured non-guests in the assets of a negligent host, overlooked not only the statutory history but also the fact that the statute permits recovery by guests who can establish that the accident was due to the gross negligence of the driver. If the purpose of the statute is to protect the rights of the injured "non-guest," there can be no rational basis for predicating that protection on the degree of negligence which the guest is able to establish. The only justification for the gross negligence statute is that the legitimate purpose of the statute—prevention of fraudulent claims against local insurers—is furthered by increasing the guest's burden of proof. This purpose can never be vindicated by the application of the Michigan guest statute when, as in Tooker, the insurer is a New York carrier and the defendant is sued in the courts of New York. Under such circumstances, the court concluded, the jurisdiction enacting such a "guest statute" can have absolutely no interest in the application of its law.

The faulty analysis of the majority in Dym resulted in a decision which confused and clouded the choice-of-law process in New York, particularly in guest-host suits. Tooker, by coming to grips with the mistaken approach in Dym, has given the "significant contacts" rule of Babcock a new and welcome clarity.

Two months after Tooker was decided by the court of appeals, the New York Supreme Court, Trial Term, relied upon this clarification of New York conflicts law. In MacKendrick v. Newport News Shipbuilding & Dry Dock Co.,8 a wrongful death action arising out of an industrial accident in Virginia, the New York court held that the law of New York and not of Virginia governed the rights of the victim's survivors, because New York was the jurisdiction of the most "significant relationship" with the issue of damages. The court cited Tooker in support of this ruling.9

9 Id. at 1001, 302 N.Y.S.2d at 131-132.