Chapter 3: Conflict of Laws

Francis J. Nicholson S.J.
§3.1. Jurisdiction for divorce: Domicile in state of rendition a prerequisite. By traditional legal doctrine, a marriage creates a status which, viewed as a res, has its situs at the domicile of the married parties. Under this theory, a divorce action to terminate a status-res was considered as an action in rem which had to be brought at the situs, that is, the domicile. If a divorce were granted by a state where both husband and wife were domiciled, the decree was valid and entitled to full faith and credit everywhere.\(^1\) There was likewise no jurisdictional difficulty when the forum state was the domicile of only one spouse. The United States Supreme Court, in the first Williams case,\(^2\) expressly overruled its earlier Haddock decision\(^3\) and held that the domicile of one spouse alone was an adequate jurisdictional basis for a valid divorce, which had to be accorded full faith and credit.\(^4\) The second Williams case,\(^5\) however, declared that collateral attack on the finding of domicile in the ex parte decree was permitted to ascertain whether the spouse securing the ex parte divorce was a bona fide domiciliary of the state granting it. This ruling was consistent with the traditional view that, if a court purported to grant a divorce in a state which was not the domicile of either spouse, the decree was not entitled to full faith and credit anywhere.\(^6\)

In Ragucci v. Ragucci,\(^7\) the Supreme Judicial Court of Massachusetts reaffirmed its adherence to the traditional theory that the state which

Francis J. Nicholson, S.J., is Professor of Law at Boston College Law School and a member of the District of Columbia and Massachusetts Bars.

---


\(^3\) Haddock v. Haddock, 201 U.S. 562 (1906).


\(^6\) Restatement of Conflict of Laws Second §72 (Proposed Official Draft Pt. 1, 1967). On the question of validity under the due process clause as opposed to the issue of full faith and credit, the United States Supreme Court has never had occasion to determine whether the domicile of at least one spouse in the divorce state is an essential jurisdictional basis for the granting of a divorce. Domicile of at least one spouse was held a necessary jurisdictional basis in Alton v. Alton, 207 F.2d 667 (3d Cir. 1953), vacated as moot, 347 U.S. 610 (1954).

is not the domicile of the libellant lacks jurisdiction to grant a divorce. In *Ragucci*, the wife filed a petition for separate support against her husband in a Massachusetts probate court.\(^8\) The husband and wife were married in Italy while the husband was visiting there from the United States. Shortly thereafter, by mutual consent, the husband returned alone to Massachusetts and the wife remained in Italy. In the following year, a son was born to them. Neither the wife nor the child ever came to Massachusetts.

Several years later, the husband executed a complaint for divorce in Nevada. He alleged that he had been domiciled in Nevada for more than six weeks immediately before suit was brought and intended to make Nevada his home for an indefinite period of time. The complaint stated, as grounds for the suit, that the parties had lived separate and apart for more than three years. Service was made by publishing and mailing the summons and a copy of the complaint to the wife in Italy, but she never received them. The wife did not appear personally in the Nevada proceedings and was defaulted. The husband left Nevada on the day he obtained his divorce and returned to Massachusetts, where he resumed residence and subsequently married another woman.

In his findings, the probate judge stated that he was unable to find that the Nevada court did not have jurisdiction to enter the divorce decree and, hence, that the Nevada decree was entitled to full faith and credit in Massachusetts. Since a jurisdictional prerequisite to a decree for separate support in Massachusetts was that the parties be married,\(^9\) and since, at the time the petition for support was filed and heard, the marriage had been dissolved by the Nevada divorce, the probate court judge dismissed the wife's petition.

On appeal, the Massachusetts Supreme Judicial Court held that the decisive question was whether the Nevada decree of divorce was valid, and that the answer depended upon whether the husband had acquired a domicile in Nevada.\(^10\) The Court assumed that the probate judge, in stating that he was unable to find that the Nevada court did not have jurisdiction, was giving the Nevada decree a presumption of validity. This presumption was required by the criteria established by the United States Supreme Court in the second *Williams* case.\(^11\) An examination of the evidence showed, however, that this presumption was clearly rebutted. The husband had testified in the probate court that the reason he went to Nevada was to get a quick divorce there. This action was taken after he had obtained legal advice. He had lived in Massachusetts for eight years before his trip to Reno and, after satisfying the Nevada residence requirements and obtaining his divorce, he returned immediately to Massachusetts. The Supreme Judicial Court

\(^8\) G.L., c. 209, §32.
found that the husband did not acquire a domicile in Nevada, and that Nevada lacked jurisdiction to grant him a divorce for that reason. The Court, therefore, reversed the decision of the probate court.

There is growing dissatisfaction with the traditional view that domicile is the sole basis for divorce jurisdiction. Domicile, as the foundation for legal relationships between an individual and a state, is a highly artificial concept. In the area of divorce, it has frequently been the occasion of fraud and perjury. Statutes in a number of states allow the granting of a divorce on the basis of residence as distinguished from domicile. The most common type of statute is one which permits the granting of a divorce to military personnel who have been continuously stationed in the state for a given period, usually a year. This development is not aimed at abandoning domicile as a jurisdictional basis for divorce; rather it suggests the recognition of additional bases for jurisdiction which conform to the needs of a modern, mobile society.

But even in our advanced times, divorce is a matter of more than casual concern to the spouses and their children. Marriage is more than a contractual relationship; it is an important social institution in which the state where the husband and wife make their home has a particular interest. A divorce decree not only severs the personal relationship of husband and wife but also affects their economic relations, as by determining the extent to which one spouse must thereafter contribute to the other's support. An ex parte divorce suit, as in Ragucci where the wife had no knowledge of the Nevada proceedings, often fails to protect the interests of the absent spouse. The husband in Ragucci had no connection with Nevada, domiciliary or otherwise, that would have made it reasonable for that state to dissolve the marriage. The Supreme Judicial Court's reliance on the traditional domicile theory in Ragucci demonstrates that this basis for divorce jurisdiction is still useful for promoting justice in the context of "quickie" ex parte proceedings.

§3.2. Inter vivos trust of movables: Law of place of administration governs validity of exercise of power of appointment. In New England Merchants National Bank of Boston v. Mahoney, the Supreme Judicial Court of Massachusetts applied the usual conflict of laws rule that the validity of a trust of movables created inter vivos is governed by the law of the state where the trust is to be administered.

The settlor of the trust in question was domiciled in Florida when the trust was created, and died a domiciliary of that state. The trust instrument was held in Massachusetts by a Massachusetts corporate trustee, and it was duly executed in Massachusetts. The personal

12 See R. Leflar, American Conflicts Law 543-547 (1968).

property composing the trust was delivered to the trustee in Massachusetts at the time of the creation of the trusts, and the trust res never left Massachusetts. Before his death, the settlor executed instruments, in accordance with the provisions of the trust, in which substitute distributees were named.

Upon the termination of the trust, the settlor's nephew, one of the distributees named in the original trust indenture, claimed that the instruments naming the substitute distributees were obtained through undue influence, were invalid, and that, accordingly, he was entitled to distribution of his share of the property under the original trust. The corporate trustee petitioned a Massachusetts probate court for instructions concerning the distribution of the trust corpus. The probate court decreed that distribution should be made in accordance with the appointments executed by the settlor before his death. The nephew appealed.

Initially, the Supreme Judicial Court had to decide whether the law of Massachusetts or the law of Florida was to govern. The usual choice of law rule pertaining to the validity of an inter vivos trust of movable property is that validity is determined by the law of the state of administration, in the absence of a designation by the settlor that the law of a particular state should control. Likewise, the validity of the exercise of a power of appointment under an inter vivos trust is determined by the law which governs the validity of the trust.

The settlor in the present case had not designated the law of a particular state to control validity of the trust. He was a domiciliary of Florida, but all the relevant factors pertaining to the creation and administration of the trust were related to Massachusetts. Hence, the Court found that the settlor intended the trust to be administered in Massachusetts. The question of the validity of the exercise of the power of appointment, therefore, had to be determined by Massachusetts law.

The Court, having disposed of the choice of law question, proceeded to consider, under apposite Massachusetts law, the appellant's contention that the power of appointment exercised by the settlor was invalid because of undue influence. It was well established that the contestant had the burden of proving undue influence. The appellant had not pointed to any special instances of undue influence. The record revealed no evidence that any of the beneficiaries of the power exercised

by the settlor before his death had influenced his execution of that power. The Supreme Judicial Court held, therefore, that the settlor’s exercise of the power of appointment was valid, and affirmed the decree of the probate court.

It is obviously desirable that a trust estate of personal property be treated as a unit and, to this end, that all the movables in the trust be controlled by a single law. This is true whether the movables consist of chattels, rights embodied in a document, or intangibles, no matter where they happen to be when the trust is created. When the settlor does not designate a state whose law is to govern the validity of the inter vivos trust, the court will make the choice of law from among the states having connections with the trust. Ordinarily, the state where the settlor intended the trust to be administered will be deemed to be the state of most significant relationship with respect to the issue of validity. Its law should determine matters of validity, including the question of the validity of the exercise of the power of appointment contained in the trust instruments.

It must be remembered, however, that one factor which the courts consider in selecting the state of the applicable law is whether application of a particular law would result in sustaining the trust’s validity. It is presumed that the settlor intended to execute a valid instrument. Consequently, an inter vivos trust will be upheld if valid under the law of the settlor’s domicile, even though it would be invalid under the law of the state of administration.7 The element of uncertainty, more pronounced with respect to trusts than other areas of conflicts law, makes it desirable that the trust instrument clearly indicate what state’s law is to govern validity.

§3.3. Jurisdiction for adoption: Law of domiciliary state controls. In Adoption of a Minor,1 the Supreme Judicial Court of Massachusetts sustained the exercise of jurisdiction in the matter of an adoption by a Massachusetts probate court. The case was an appeal by the father of a minor child from a decree of the probate court allowing adoption by the mother and stepfather, residents of Massachusetts, without the consent of the father.

The appellant father and his former wife were married in North Carolina in 1958. The minor child, Deborah, was born in 1960, and the family lived together in North Carolina until the parents separated in September, 1963. Deborah stayed with her mother, who filed for divorce in North Carolina; the divorce was granted. The decree, which became final in November, 1965, made no provision for alimony, support of the child, or rights of custody or visitation. Deborah’s father had agreed informally to provide $40 per month for her support. This arrangement continued until December, 1965, when the petitioners for


Adoption were married in North Carolina and left immediately for Massachusetts. Thereafter the appellant paid no support for his daughter and did not communicate with her in any way.

The principal argument of the appellant father was that Deborah remained a ward of the North Carolina court and could not be removed from the court’s jurisdiction without its permission. Hence Deborah’s removal from North Carolina was illegal. The Supreme Judicial Court noted, however, that the North Carolina court had made no order on the custody of the child who had been with her mother since September, 1963. Moreover, Deborah and her adopting parents had made their home in Massachusetts since December, 1965. The Court held, therefore, that the Massachusetts probate court had properly exercised jurisdiction in the case.2

It should be noted that Massachusetts law requires written consent of the “lawful parents” in an adoption proceeding.3 Such written consent is dispensed with, however, if the parent has neglected to provide proper care for the child.4 It was clear from the evidence that the father had shown no interest in Deborah from December, 1965, to the date of the filing of the petition for adoption. The Supreme Judicial Court, agreeing that the granting of the adoption was in the best interests of the child, affirmed the decree of the probate court.

One of the few problems in the area of adoption, so far as conflict of laws is concerned, is the judicial jurisdiction of a state to provide for an adoption. There are no choice of law problems since, in determining whether to grant the adoption, the forum will apply the local provisions of its own law and not those of some other state.

With respect to jurisdiction for adoption, it is generally recognized that such jurisdiction exists in a state (a) which is the domicile of either the child or the adoptive parent and (b) which has personal jurisdiction over the adoptive parent and the adopted child.5 Two main questions are involved in an adoption proceeding: whether the adoption is in the child’s best interests and, if so, whether the would-be adopter is a desirable person from the child’s point of view. Courts sitting in either the state of domicile of the child or in that of the adoptive parent are well situated to decide such issues. Where the child and adoptive parent are domiciled in the same state, as in Adoption of a Minor, its jurisdiction cannot be questioned.

§3.4. Guest-host action: Law of state with most significant relationship applies. In Beaulieu v. Beaulieu,1 the Supreme Judicial

---

2 See G.L., c. 210 §1; c. 215, §3.

§3.4. 1—Me.—, 265 A.2d 610 (1970).
§3.4 CONFLICT OF LAWS

Court of Maine has added Maine to the growing list of states which have abandoned the traditional "place of impact" doctrine in favor of the "more significant contacts" rule in tort cases.

The plaintiff in Beaulieu, while riding as a passenger in an automobile owned and operated by his father, sustained injuries in an accident in Massachusetts caused by his father's negligence. At the time of the accident the parties were domiciled in Maine, and they continued to reside in that state. The plaintiff, seeking compensation, brought an action in a Maine court against his father. The plaintiff conceded that his claim was not based upon any factual setting of gross negligence. The defendant father moved to dismiss on the ground that the law of Massachusetts, with its gross negligence standards in guest-host cases, determined the rights and liabilities of the parties. The case was reported without decision to the Supreme Judicial Court by the trial court.

Before the Beaulieu decision, it was well-settled conflicts law in Maine that the right of the plaintiff to recover for personal injuries was controlled by the law of the place where the injuries were received. It was also Maine law that a plaintiff's cause of action in guest cases was dependent upon proof of wrongful conduct amounting to no more than ordinary negligence. The law of Massachusetts provided that a guest had to establish gross negligence in order to recover from his host. Thus, there was a clear conflict between the law of Maine and that of Massachusetts, and the choice of law question raised by the defendant's motion to dismiss in Beaulieu was which law governed.

The Maine Supreme Judicial Court acknowledged that it had invariably applied the law of the place of the injury as its conflict of laws rule in tort cases. This deference shown to the lex loci delicti by Maine law in the matter of guest-host suits was in accord with the traditional "vested rights" doctrine. Recent decisions from various jurisdictions, however, support the view that the choice of substantive conflicts law in guest-host cases is to be determined more logically by the "more significant contacts" rule. The Maine Supreme Judicial Court, taking note of this development, stated:

... We must decide anew whether the traditional rule of lex loci delicti ... fully satisfies the present needs of a motoring society

2 Winslow v. Tibbetts, 131 Me. 318, 162 A. 785 (1932).
3 Levesque v. Pelletier, 131 Me. 266, 161 A. 198 (1932).
accustomed to fast, frequent and distant travel and at the same
time subjected to ever-increasing motor vehicle injuries and
fatalities.\(^7\)

Among the objections to modification of the lex loci delicti doctrine
is the stare decisis rule. The court, conceding the need for stability in
the law, pointed out that adherence to established precedent should
not be used to preclude change in legal rules required by the realities
of modern automobile travel. Another relevant consideration was the
court's interest in advancing its own state's governmental interests. The
parties in the present case were domiciled in Maine, and their journey
began and was to end in that state. The car presumably was registered,
garaged and insured in Maine. In light of Maine's policy of imposing
liability in the guest-host situation on a showing of ordinary negligence,
it was perfectly clear that Maine had the only real interest in whether
recovery of damages should be permitted in this suit between Maine
citizens. Massachusetts, on the other hand, had no real concern in the
application of its gross negligence rule here, where its only connection
with the transaction was the occurrence of an accident in the course
of a short trip over its highways.

Comparing the relative contacts and interests of Maine and Massa-
chusetts in this litigation respecting the issue of responsibility of a host
to his guest, the Maine Supreme Judicial Court concluded that Maine
had the more substantial relationship to the parties and the occurrence
and that Maine law applied to the case. The court added that earlier
Maine tort-conflicts decisions which did not apply the most significant
relationship rule were accordingly modified. It then remanded the
case to the superior court for trial.

Though the traditional "place of impact" rule was easy to apply, it
ignored the purposes of the conflicting laws of the respective states and,
thus, often failed to produce just results. Under the "significant rela-
tionship" approach, a court determines for itself relevant contacts for
resolving choice of law problems. This more modern approach con-
cededly creates problems with respect to the certainty and predictability
of legal rules, but it represents a more rational use of the judicial
process. Maine has now joined New Hampshire and Rhode Island
among the New England states which have abandoned the lex loci
delicti doctrine for the "contacts" approach in tort-conflicts cases.

§3.5. Liability insurance contract: Law of state with most signifi-
cant relationship governs the right of insurer to disclaim liability.
The United States District Court for the District of Massachusetts has
applied Massachusetts choice of law rules in Hart v. State Farm Mutual
Automobile Insurance Co.,\(^1\) an action in which a judgment creditor

\(^7\) — Me. —, 265 A.2d 610, 613 (1970).

sought to reach and apply the liability of the defendant insurer under a policy covering a judgment debtor's automobile.

Prior to October 9, 1964, the defendant insurance company (State Farm), an Illinois corporation with its principal place of business in that state, issued a policy of liability insurance covering an automobile jointly owned by two residents of Illinois. On October 9, 1964, plaintiff Marilyn Hart, a resident of Massachusetts, was a passenger in the automobile when it became involved in a single-car accident in Massachusetts, while the car was being operated by one of the insured, one Dimmick. Hart sustained personal injuries in the accident and thereafter brought an action in tort against Dimmick in a Massachusetts court. She recovered a default judgment against him. An execution issued against Dimmick in the amount of $12,058.47. Subsequently counsel for the plaintiff made demand on defendant State Farm for payment of this sum. When the demand was refused, the present diversity action was commenced in the federal district court.

Since jurisdiction in this case was based upon diversity of citizenship, the district court noted initially that the *Erie* doctrine required it to apply the conflict of law rules that would be applied by Massachusetts courts. In view of the facts that both insureds were residents of Illinois, that State Farm was an Illinois corporation with a principal place of business in that state, and that the insurance contract was made and the policy issued in Illinois, the court ruled that, under Massachusetts choice of law principles, the right of defendant State Farm to disclaim under the policy was to be determined by reference to the law of Illinois.

At the trial in the federal district court, the plaintiff offered in evidence the execution issued by the state court and the liability insurance policy issued by the defendant, and rested. The remainder of the trial consisted of presentation of evidence on behalf of the defendant, offered to support the defense of lack of cooperation on the part of Dimmick as grounds for defeating liability under the policy. After reviewing the evidence, the district court stated that there were two questions for resolution in the case: (1) did the insured's conduct constitute non-cooperation; and (2) if so, had the insurer waived that defense by failure to assert it properly?

With respect to the issue of the insured's non-cooperation, the court asserted that it had been proved in the case that Dimmick failed to appear for depositions, that he made conflicting statements to the defendant's claims investigator, and that he failed to attend the trial. All three of these factors constituted a substantial and material lack

---


of cooperation under the law of Illinois. Thus, defendant State Farm had the right to disclaim liability. With regard to the remaining issue of the waiver of the non-cooperation defense by State Farm, the court found that the defendant had given notice of withdrawal from the case to Dimmick in timely fashion as required by the law of Illinois, and properly exercised its right to withdraw. The district court, ruling that the defendant State Farm had sustained its affirmative burden of establishing both the defense of non-cooperation and the nonwaiver thereof, gave judgment for the defendant.

The court's opinion is significant with respect to the proper choice of law rules relating to the rights created by liability insurance contracts. The generally accepted position, following the traditional lex loci contractus rule, has been that the validity, interpretation, and effect of an insurance contract are governed by the law of the place where it is made. The modern approach, which repudiates the mechanical use of the lex loci contractus, favors the application of the law of the state which has the most significant relationship with a contract in the absence of an effective choice of law by the parties. The particular application of the "significant relationship" rule pertaining to liability insurance contracts is that the validity of such a contract and the rights created thereby are determined by the local law of the state which the parties understood was to be the principal location of the insured risk during the term of the policy. The federal district court endorsed the "significant relationship" approach in the present case when it determined that Illinois had the important contacts with the contract and that Illinois law, therefore, was controlling.

The parties to the liability insurance contract are intensely concerned with the nature and extent of the insured risk and with the terms and conditions of the policy. A consideration of such contacts as the domicile of the insured, the location of the insured risk, the state of incorporation of the insurer, and the place of the making of the contract, is essential to a proper determination of the law which governs the rights of the parties to the insurance contract. It is submitted that the court's decision in the present case, giving full scope to the governmental interest of Illinois in the transaction and in the parties, is an admirable example of modern conflicts law in operation.

6 See R. Leflar, American Conflicts Law 380-381 (1968).
8 Id. §193.