1-1-1986

Chapter 7: Conflict of Laws

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CHAPTER 7

Conflict of Laws

FRANCIS J. NICHOLSON S.J.*

§ 7.1. Annulment of Marriage — Decree Entitled to Full Faith and Credit. 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 is considered an action in rem which must be brought at the situs, that is, the domicile. If a divorce is granted by a state where at least one of the parties to the marriage is domiciled, the decree is valid and entitled to full faith and credit everywhere.\(^1\) Jurisdiction to grant annulments has followed an analogous, but somewhat different course. An annulment differs conceptually from a divorce in that a divorce terminates a legal status, whereas an annulment establishes that a marital status never existed. The absence of a valid marriage precludes strict reliance on divorce cases in formulating jurisdictional grounds in annulment actions, for no res or status can be found within the state.\(^2\) The courts, however, have recognized a state's interest in providing a forum for annulment actions, and state practice has evolved a multiple jurisdictional basis which has been endorsed by the Second Restatement.\(^3\) According to section 76 of the Restatement (Second), a state has jurisdiction to annul a marriage (a) if it would have jurisdiction to dissolve the marriage by divorce or (b) if the respondent spouse is subject to the judicial jurisdiction of the state and either the marriage was contracted there or the validity of the marriage is determined under its law. As between states of the United States, an annulment decree is entitled to full faith and credit.\(^4\)

During the Survey year, in Cavanagh v. Cavanagh,\(^5\) the Supreme Judicial Court reaffirmed that the judgment of a sister state annulling a marriage must be given full faith and credit in Massachusetts.\(^6\) The plain-

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\(^{2}\) See LEFLAR, MCDouGAL & FELIX, AMERICAN CONFLICTS LAW § 231 (4th ed. 1986);

\(^{3}\) SCOLES & HAY, CONFLICT OF LAWS §§ 15.15–15.16 (1982).

\(^{4}\) RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 76 (1971).


\(^{7}\) Id. at 839, 489 N.E.2d at 673.
tiff, Robert Cavanagh, brought an action in the Probate Court for Norfolk County to annul his marriage to Violet Cavanagh.\(^7\) At the time the complaint was filed, both parties resided in Rhode Island.\(^8\) In 1954, while the plaintiff was domiciled in Massachusetts, he and the defendant were married in Rhode Island.\(^9\) They lived together as husband and wife in Massachusetts until 1962, at which time they moved to Rhode Island.\(^10\) In 1971, the parties separated.\(^11\) In 1971, the defendant, Violet, filed for divorce in a Rhode Island court. Her divorce petition was dismissed on the ground that she was not legally married to Robert because of a prior existing valid marriage.\(^12\) The Rhode Island court, refusing to grant Robert an annulment, entered a decree of divorce \textit{ab initio}.\(^13\) Robert’s complaint in the Massachusetts action had requested an annulment of the parties’ marriage and an equitable distribution of the parties’ property.\(^14\)

The defendant, Violet, moved to dismiss on the ground that the complaint failed to state a claim upon which relief could be granted.\(^15\) That ground, in turn, was based on the claim that the Rhode Island judgment had res judicata effect in Massachusetts.\(^16\) The judge of the probate court granted the defendant’s motion to dismiss.\(^17\) The plaintiff appealed to the Appeals Court and the case was transferred to the Supreme Judicial Court.\(^18\) The Court affirmed the judgment of dismissal.\(^19\)

The Supreme Judicial Court considered the res judicata effect of the Rhode Island judgment upon further proceedings between the parties in Massachusetts. The Court noted that res judicata is an affirmative defense under Massachusetts practice.\(^20\) If the complaint shows on its face the existence of an affirmative defense, the Court continued, the complaint does not state a claim upon which relief can be granted, and a motion to dismiss is appropriate.\(^21\) The Court found that the complaint in \textit{Cavanagh} showed on its face that the Rhode Island court had dismissed the defendant Violet’s divorce action and had granted the plaintiff Robert a “di-

\(^7\) Id. at 836, 489 N.E.2d at 672.
\(^8\) Id.
\(^9\) Id.
\(^10\) Id. at 836–37, 489 N.E.2d at 672.
\(^11\) Id.
\(^12\) Id. at 837, 489 N.E.2d at 672.
\(^13\) Id.
\(^14\) Id.
\(^15\) Id.
\(^16\) Id.
\(^17\) Id.
\(^18\) Id. at 836, 489 N.E.2d 672.
\(^19\) Id.
\(^20\) Id. at 838, 489 N.E.2d at 673. \textit{See} Mass. R. Dom. Rel. P. 8(c).
voerce *ab initio.*” The Court concluded that the complaint made it clear that the Rhode Island court had jurisdiction over the subject matter and both parties, and that the judgment was final in Rhode Island.

The plaintiff, Robert, argued that the Rhode Island judgment had no res judicata effect preventing him from seeking an annulment in Massachusetts. He contended that he never had an opportunity to obtain an annulment in Rhode Island because Rhode Island did not, by law, grant annulments. The Supreme Judicial Court rejected the plaintiff’s argument. The Court held that the language of both the judgment and the statute made it clear that the Rhode Island judgment did not terminate a valid marriage but rather declared the parties’ marriage void. According to the Court, the judgment in Rhode Island was the equivalent of an annulment under Massachusetts law.

It was clear, the Court concluded, that regardless of whether the Rhode Island court had annulled or dissolved the plaintiff’s marriage, the status of the plaintiff’s marriage was established definitively by that court’s adjudication.

Article 4, section 1, of the United States Constitution, the full faith and credit clause, requires that state courts give to the judgments of sister states the same finality that they are accorded in the latter states. The full faith and credit requirement extends to state annulment decrees.

The Supreme Judicial Court stated that the Rhode Island court judgment had established with finality the status of the plaintiff’s marriage. The Court held, therefore, that the plaintiff could not relitigate the same question in Massachusetts and affirmed dismissal of the complaint.

The Supreme Judicial Court’s decision in *Cavanagh* is correct. The
complaint in *Cavanagh* stated that the plaintiff doubted the validity of his marriage to the defendant despite the legal proceedings in Rhode Island. The plaintiff sought an annulment in Massachusetts in order to clarify the marital status of the parties. The plaintiff’s misgivings had no foundation in law. Both the plaintiff and the defendant were domiciled in Rhode Island at the time they brought their case in that state, and the proceedings before the Rhode Island court were bilateral. The Rhode Island court clearly had the power to exercise judicial jurisdiction over the parties and to enter a final judgment nullifying the marriage. Article 4, section 1, of the United States Constitution mandates that the courts of Massachusetts give the same finality to the judgment of the Rhode Island court. In this way the full faith and credit clause performs its intended function by avoiding relitigation in other states of previously adjudicated issues.

§ 7.2. Forum Non Conveniens: Massachusetts Cause of Action Dismissed. The plaintiff in a transitory cause of action often has a choice of forums in which to sue. For example, in Anglo-American law, an individual is subject to the jurisdiction of any state where he can be personally served. Some of these fora may have very little connection with the case either because the cause of action sued upon occurred outside the forum state, or because neither the plaintiff nor the defendant resides in the state. The plaintiff, however, may bring suit in such a forum where he hopes to secure a larger award of damages, or where judicial procedure seems more favorable to him, or where the inconvenience of defending may induce the defendant to enter reluctantly into a settlement. In order to protect the defendant in these circumstances, the forum non conveniens rule has been adopted by most states whereby a court, in its discretion, will refuse to hear a case if it views itself to be a seriously inappropriate forum, as long as the plaintiff has a convenient forum elsewhere.

During the Survey year, in *Joly v. Albert Larocque Lumber Ltd.*, the Supreme Judicial Court applied the doctrine of forum non conveniens and found that Massachusetts did not have sufficient interest to provide a forum for this case. The plaintiff Joly, as mother and next friend of her two sons, and as administratrix of the estate of her deceased husband, brought suit for the wrongful death of her husband, arising from a one-
vehicle accident in Massachusetts. The husband was killed when a tractor-trailer in which he was a passenger overturned on a Massachusetts road. The vehicle was leased to and controlled by the defendant Albert Larocque Lumber Ltd. ("Larocque"). There were averments of agency, negligence, and reckless conduct against Larocque and the operator. Averments of negligence arising out of the maintenance of the tractor-trailer were also made against Inter Can Leasing Ltd. ("Inter Can") which had leased the vehicle to Larocque. All parties to the suit were residents of Canada.

The plaintiff brought her suit in the Superior Court for Suffolk County seeking damages under the death statute and for the decedent’s conscious pain and suffering. The defendant’s motion to dismiss on the ground of forum non conveniens was allowed by a judge of the superior court. The plaintiff’s request for direct appellate review was granted. The Supreme Judicial Court affirmed the dismissal of the plaintiff’s claim by the superior court.

In its ruling, the Supreme Judicial Court noted that it infrequently had decided cases under the doctrine of forum non conveniens. The Court cited its decision in Lydia E. Pinkham Medicine Co. v. Gove in which it held that the doctrine was to be used with caution. The Joly Court was not concerned with jurisdiction, but noted that whether a suit should be entertained or dismissed under the forum non conveniens rule depends largely upon the facts of the particular case and is a matter within the sound discretion of the judge. The Court subsequently turned to the decision of the United States Supreme Court in Gulf Oil Corp. v. Gilbert for a catalogue of the considerations which should guide a judge in deciding whether to apply forum non conveniens. Among the considerations which the Supreme Judicial Court listed included the follow-
ing: (1) access to sources of proof; (2) availability of process to compel attendance of unwilling witnesses; (3) the expense of obtaining the presence of willing witnesses; (4) the enforceability of a judgment. 20

Applying these considerations to the facts in Joly, the Supreme Judicial Court concluded that a Canadian forum would be more convenient. 21 All the parties resided in Canada, the place where the tractor-trailer originated and was to return. 22 Many witnesses were residents of Canada. 23 The alleged negligence of Inter Can occurred in Canada. 24 The vehicle was registered and regularly garaged in Canada, 25 and finally, Quebec, the domicile of the plaintiffs, had a no-fault death statute. 26

The Supreme Judicial Court acknowledged that Massachusetts had an interest in the case with respect to enforcing its traffic laws on roads of the Commonwealth. 27 On balance, however, the Court found that the factors favoring a trial in Canada far outweighed the interest of Massachusetts as a forum for litigating the case. 28 Accordingly, the Court held that the superior court judge did not abuse his discretion in granting the motions to dismiss. 29

The Supreme Judicial Court’s decision in Joly reaffirms the usefulness of the forum non conveniens doctrine as a means of limiting jurisdiction in conflict cases. Since the plaintiff is free to choose the place of suit, his choice of forum should not be disturbed except for weighty reasons. 30 Accordingly, as the Court stated, the doctrine should be applied with caution. 31 When the chosen forum is clearly inappropriate, as in Joly, however, the action should be dismissed. 32 If a state chooses to exercise the judicial jurisdiction which it possesses despite the fact that it is an inappropriate forum, its decision to do so is valid and will be recognized by other states under the full faith and credit clause. 33 If, however, the chosen forum has no substantial interest in the litigation, legitimate state interest dictates that the court dismiss the case. 34 Although Massachu-
setts did possess some interest in the facts and circumstances of Joly, this interest did not outweigh the factors enumerated by the Court favoring Canada as a forum and thus, the Court's affirmation of the dismissal of the plaintiff's claim was correct.

§ 7.3. Workers' Compensation — Massachusetts Law Applied Barring Tort Suit Against Fellow Employee. During the Survey year the Appeals Court of Massachusetts, in Frassa v. Caulfield, applied the conflict of laws rule of Massachusetts in a workers' compensation case to bar a wrongful death action brought against a fellow employee of the decedent following a New Hampshire accident.

The plaintiff administratrix's decedent, Frassa, and the defendant, Caulfield, were Massachusetts residents and employees of a Massachusetts accounting firm assigned to conduct an audit of a private school in New Hampshire. Frassa and Caulfield usually conducted audits on clients' premises. On June 19, 1978, Frassa and Caulfield traveled to the school in Caulfield's car. The employer was required to reimburse Caulfield for his car mileage and both men for their meal expenses. They stayed overnight at the school and were required to take their evening meal outside the school's premises. On June 22, the audit was not yet complete and Frassa and Caulfield drove in Caulfield's car to a restaurant, located about one-half hour from the school, for dinner. After dinner, they drove to two other establishments for entertainment. Approximately two hours later, on the trip back to the school and at a point about a ten minute drive from the school, Caulfield failed to make a turn on the road, the car overturned, and Frassa was killed. The plaintiff and the defendant were in agreement that Caulfield's negligence was the proximate cause of Frassa's death, and as to the amount of money damages resulting from Frassa's death.

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At the time of the accident, Frassa and Caulfield were covered by
workers' compensation. The plaintiff filed a claim for workers' compensation benefits which the Industrial Accident Board ("Board") denied. Subsequently, the plaintiff and the employer's insurer compromised the claim, and the board approved a $155,500 settlement. The agreement expressly provided that it was not an acknowledgement that Frassa was acting in the course of his employment at the time of the accident. After the original denial of the claim by the Board and before the settlement was negotiated, the plaintiff commenced the action in this case against Caulfield seeking damages for wrongful death and conscious pain and suffering. Upon a request of the parties, the Superior Court for Middlesex County heard a motion for summary judgment and reported the case to the Appeals Court. The Appeals Court remanded the case to the superior court with instructions to enter judgment for the defendant.

The plaintiff in Frassa made two arguments before the Appeals Court. The plaintiff argued first that the law of New Hampshire, the place of the wrong, should be applied to determine Caulfield's liability. Under New Hampshire workers' compensation law at the time of the accident, a deceased employee's legal representative was permitted to bring a suit against a fellow employee based on common law principles. On the other hand, chapter 152 provides that, in Massachusetts, an employee injured in the course of his employment by the negligence of a fellow employee cannot recover from that fellow employee if he too was acting in the course of his employment. Alternatively, the plaintiff contended that even if Massachusetts law applied, the plaintiff's suit was not barred by the fellow employee rule because neither Frassa nor Caulfield was acting in the course of his employment at the time of the accident.

The Appeals Court began its analysis by considering the choice of law

11 Id. Frassa had not reserved his common law rights. Id. See G.L. c. 152, § 24.
12 Id.
13 Id.
14 Id. at 106–07, 491 N.E.2d at 658.
15 Id. at 107, 491 N.E.2d at 658. Amendments added the employer's partners as defendants. After the Board approved the settlement agreement, the Superior Court granted summary judgment as to the partners. Id. at 107 n.1, 491 N.E.2d at 658 n.1.
16 Id. at 105, 491 N.E.2d at 657.
17 Id. at 113, 491 N.E.2d at 662.
18 Id. at 107, 491 N.E.2d at 658.
problem raised by the plaintiff’s first argument. The court stated that the
decision of the Supreme Judicial Court in Saharceski v. Marcure22 was
determinative of which state’s law applied when deciding whether the
plaintiff’s action could be maintained.23 In Saharceski, the plaintiff and
the defendant were residents of Massachusetts and employees of a Mas-
sachusetts corporation.24 The plaintiff and the defendant traveled by
motor vehicle for their employer’s business from Massachusetts into
Connecticut intending to pass through that state without stopping.25 The
defendant was driving the vehicle when he negligently struck another car
in Connecticut.26 Both parties were covered by workers’ compensation
insurance under chapter 152 and the plaintiff, who sustained injuries in
the accident, collected compensation from the company’s insurance car-
rier.27 Under the law of Connecticut, the plaintiff would also be entitled
to recover from the defendant.28 The Supreme Judicial Court concluded
that the substantive law of Massachusetts applied, thus barring recovery
under the fellow employee rule.29 The Court, in deciding that Massachu-
setts law governed, stated that the application of the law of the state of
common employment provided both a certain basis for the resolution of
the issue and assurance that the maintenance of a tort suit would not
depend solely on the fortuitous place of the accident.30

The Appeals Court found that Frassa was similar to Saharceski on the
facts.31 As in Saharceski, the court stated, all of the significant contacts
of Frassa and Caulfield were in Massachusetts, including the collection
of substantial workers’ compensation benefits under Massachusetts law.32
In addition, the court continued, Frassa and Caulfield were in New
Hampshire for only a few days.33 Finally, the court rejected the plaintiff’s
argument that New Hampshire had a greater interest than Massachusetts
because of highway safety concerns arising from Frassa’s death on a
New Hampshire road.34 In sum, the court concluded, New Hampshire’s

SURV. MASS. LAW § 7.5, at 265–68.
24 373 Mass. at 305, 366 N.E.2d at 1246.
25 Id.
26 Id. at 305–06, 366 N.E.2d at 1246.
27 Id.
28 Id. at 305, 366 N.E.2d at 1246.
29 Id. at 311–12, 366 N.E.2d at 1249.
30 Id. at 310–12, 366 N.E.2d at 1249.
32 Id.
33 Id.
34 Id.
transient interest in the circumstances of Frassa was insignificant in relation to the established employment relationship of Frassa, the defendant Caulfield, and their employer under Massachusetts law.35

The Appeals Court then turned to the status question raised by the plaintiff’s second argument. Were Frassa and Caulfield, the court asked, acting in the course of their employment at the time of the car accident which caused Frassa’s death?36 If so, the court stated, the plaintiff was barred from recovery against Caulfield under the fellow employee rule.37 The court noted that general principles with respect to determining employment status were well established,38 and cited the following criteria from the Supreme Judicial Court decision in Papanastassiou’s Case:39

"An injury arises out of the employment if it arises out of the nature, conditions, obligations or incidents of the employment, in other words, out of the employment looked at in any of its aspects."40 Applying the Papanastassiou test to the facts in Frassa, the Appeals Court held that "there is no question that during reasonable travel to and from the evening meal on the night of the accident, travel clearly impelled by the nature and conditions of the employment, Frassa and Caulfield were acting in the course of their employment."41 The court ruled that the plaintiff was, therefore, barred by the fellow employee rule from maintaining her action against the defendant Caulfield.42

The Appeals Court’s resolution of the choice of law question in Frassa follows the approach taken in workers’ compensation cases.43 Workers’ compensation statutes were designed to provide a quick and certain remedy for employees who sustain work injuries by statutorily imposing absolute but limited and determinate liability upon the employer, including immunity from common law tort suits.44 Many states extend immunity from tort suits to third-party tortfeasors like fellow employees.45 These laws represent a compromise that inures to the benefit of both employer

35 Id. at 109, 491 N.E.2d at 659.
36 Id. at 109, 491 N.E.2d at 660.
40 Id. at 93–94, 284 N.E.2d at 600.
41 22 Mass. App. Ct. at 110, 491 N.E.2d at 660. The court also held that the visits Frassa and Caulfield made to the two places of entertainment on the evening of the accident were reasonably to be expected of employees away from home and were incidental to their employment. Id. at 110–11, 491 N.E.2d at 660–61.
42 Id. at 113, 491 N.E.2d at 662.
45 Id.
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and employee. Social justice necessitates such a *quid pro quo* arrangement in our industrial world. It is logical, therefore, to choose the compensation law of the state with the substantial connection to the employment relationship. As the Appeals Court’s analysis clearly indicates, only Massachusetts had a significant interest in the rights of the parties in *Frassa*. The *Frassa* opinion tracks the decision of the Supreme Judicial Court in *Saharceski* and further evidences the conflicts law of Massachusetts applied in workers’ compensation cases.

§ 7.4. Statute of Limitations — Borrowing Statute Bars Cause of Action. Historically, statutes of limitations were considered as procedural in conflict of laws cases. Hence, forum statutes of limitations usually applied.\(^1\) This was true whether the forum statute to which the action was connected was shorter or longer than that of another state.\(^2\) This approach to limitation statutes obviously promoted forum shopping as plaintiffs and their attorneys looked for the jurisdiction related to the cause of action having the longer limitation period.\(^3\) Concern for the forum-shopping problem has led to a statutory exception to the general approach, the borrowing statute.\(^4\) As a general proposition, the borrowing statute requires the forum to apply or “borrow” the shorter limitation statute of another state with the result that an action cannot be maintained if it is barred by the statute of limitations of that other state.\(^5\) The borrowing statutes do not all use the same criteria to identify the other state. Some refer to the state where the cause of action “arose” or “accrued” or to the state in which the plaintiff and/or the defendant were domiciled during a period subsequent to the transaction on which the claim is based.\(^6\)

During the Survey year, the Appeals Court of Massachusetts applied the Massachusetts borrowing statute in *Wilcox v. Riverside Park Enterprises, Inc.*\(^7\) to bar a suit brought by Connecticut plaintiffs.

The plaintiffs, Wilcox, a minor and his parents, were residents of Connecticut.\(^8\) In their complaint, filed on November 21, 1984, they alleged that on July 22, 1982, the minor plaintiff sustained injuries while riding a “rocket ship” at an amusement park operated negligently by the defendant, Riverside Park Enterprises, Inc., (“Riverside”), a Massachu-

\(^1\) See LEFLAR, MCDUGAL & FELIX, AMERICAN CONFLICTS LAW § 127 (4th ed. 1986).
\(^2\) Id.
\(^3\) Id.
\(^4\) Id. at § 128. Some thirty-five states have enacted borrowing statutes of various kinds. See RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 142 comment b (rev. ed. 1986).
\(^5\) See SCOLES & HAY, CONFLICT OF LAWS § 3.11 (1982).
\(^6\) Id.
\(^8\) Id. at 420, 487 N.E.2d at 861.
The park was located in Agawam, Massachusetts, three miles from the Connecticut border. An affidavit submitted by the defendant stated that an estimated one-half million Connecticut residents visited the park in 1982, and that the defendant, in that year, spent more than half of its advertising budget in Connecticut. The Superior Court for Hampden County, on the defendant's motion to dismiss the complaint, entered summary judgment for the defendant. The plaintiffs appealed and the Appeals Court, holding that the Massachusetts borrowing statute barred the cause of action, affirmed.

The Appeals Court noted that the seldom-used Massachusetts borrowing statute was the basis for the defendant Riverside's claim that the plaintiffs' personal injury action was time-barred. The statute provides, in relevant part, as follows: "[N]o action shall be brought by any person upon a cause of action which was barred by the laws of any state or country while he resided therein." According to the court, this clause bars a nonresident plaintiff from suing in Massachusetts on a cause of action barred by the laws of the state in which the plaintiff resides.

The court observed that, apart from the borrowing statute, Massachusetts would apply its own three-year statute of limitations, and the suit would not be barred. Massachusetts followed the traditional view that statutes of limitations are procedural rules requiring the application of the law of the forum. Because a state following the traditional view considers its borrowing statute as part of its statute of limitations, the court continued, it would seem that the Massachusetts borrowing statute required the application of Connecticut law. The court noted that Connecticut had a two-year statute of limitations for suits for personal injuries caused by negligence. If an action were brought in Connecticut on a claim for personal injuries sustained in another state, the court continued, a Connecticut court would apply its own two-year statute of limitations.

9 Id.
10 Id. at 421, 487 N.E.2d at 861.
11 Id. at 420, 487 N.E.2d at 861.
12 Id. at 420–21, 487 N.E.2d at 861.
13 Id. at 419, 487 N.E.2d at 860.
14 Id.
15 Id.
21 Id.
as a procedural rule. Therefore, the court concluded, if the plaintiffs in Wilcox had brought suit in Connecticut more than two years after the accident in Massachusetts, Connecticut law would have barred their recovery. Because Connecticut, the domicile of the plaintiffs, would have barred their suit, the Massachusetts borrowing statute, if applicable, would certainly bar recovery by the plaintiffs in Massachusetts.

The Appeals Court considered the plaintiffs' argument that the Massachusetts borrowing statute did not apply in Wilcox because a Connecticut court would not have had jurisdiction over the defendant. Nevertheless, the court found that Connecticut could have exercised jurisdiction over the defendant Riverside. Therefore, the court declined to consider the question whether the Massachusetts borrowing statute would apply in a case in which the state of a plaintiff's residence did not have jurisdiction over a defendant. The court found that the "minimum contacts" test was met by Riverside's active solicitation of Connecticut residents to patronize its amusement park three miles from the Connecticut border. The court stated correctly that Connecticut could have subjected the defendant to its jurisdiction in compliance with the requirements of due process.

The Appeals Court noted that the plaintiffs also raised the question whether the borrowing statute applied to a cause of action arising in Massachusetts, since both the allegedly tortious conduct and the resulting injuries occurred in the Commonwealth. The court conceded that the plaintiffs' argument on this point had some logical appeal. Because Massachusetts was the state most directly concerned with the defendant Riverside's activity, the court observed, Massachusetts was the state whose laws, including the statute of limitations, most appropriately applied. The court also noted that the borrowing statutes of most states provide that the controlling statute of limitations is that of the state where the cause of action arose. The court, however, refused to accept the

22 Id.
23 Id. at 421–22, 487 N.E.2d at 861.
24 See G.L. c. 260, § 9: "[N]o action shall be brought by any person upon a cause of action . . . barred by the laws of any state . . . while he resided therein."
26 Id.
27 Id.
28 Id. at 422, 487 N.E.2d at 862.
31 Id.
32 Id.
33 Id. See Ester, Borrowing Statutes of Limitation and Conflict of Laws, 15 Fla. L. Rev. 33, 79–84 (1962), the authoritative article on borrowing statutes in conflict of laws.
interpretation of the borrowing statute advanced by the plaintiffs. Since 1880, when the borrowing statute was enacted, the court pointed out that the Massachusetts legislature has consistently rejected a version which referred to the state or country where the cause of action accrued. The court held that "we must accept the Massachusetts statute for what it is: the only borrowing statute that makes the law of the State of the plaintiff's residence the determinative factor." 

The Appeals Court found a justification for the unique Massachusetts borrowing statute: the avoidance of forum shopping. According to the court, the Massachusetts statute prevented the Connecticut plaintiffs from receiving a benefit via a suit in Massachusetts that they could not have received in their home state where their cause of action was barred. The court also found it appropriate that Connecticut's law was applied through the borrowing statute. Connecticut was the state of the plaintiff's residence and the jurisdiction in which the infant plaintiff was experiencing his disabilities. It was altogether proper that Connecticut, as parens patriae, have its law applied to the cause of action. Finally, the court observed pointedly, the plaintiffs had two years to file a timely action in the courts of either Connecticut or Massachusetts. Following this analysis, the Appeals Court affirmed the judgment of the superior court for the defendant, Riverside.

The decision of the Appeals Court in Wilcox is a welcome affirmation of the continued viability of the borrowing statute in Massachusetts conflicts law. As the court indicated, the Massachusetts borrowing statute has not been used very much in recent years. Yet the borrowing statute remains a prominent topic in the law of conflicts and appears regularly in the choice of law decisions of many courts in other jurisdictions. The Wilcox decision indicates that the borrowing statute is alive and well in Massachusetts.

One further comment should be made with respect to the status of the statute of limitations in conflicts law. The Appeals Court in Wilcox noted

35 Id. at 423–24 and n.4, 487 N.E.2d at 862 and n.4.
36 Id. at 424 and n.5, 487 N.E.2d at 863 and n.5. See Restatement (Second) of Conflict of Laws § 142 comment b (rev. ed. 1986).
38 Id.
39 Id.
40 Id.
41 Id.
42 Id.
43 Id.
44 Id. at 419, 487 N.E.2d at 860.
45 See Restatement (Second) of Conflict of Laws § 142(1) (rev. ed. 1986).
that section 2 of the 1982 Uniform Conflict of Laws Limitation Act, proposes to make applicable the statute of limitations of the state whose law governs other substantive issues inherent in the cause of action. The court stated that two states, not including Massachusetts, had adopted this position. The Appeals Court’s observation evidences the change which is beginning to take place in the characterization of statutes of limitations, including borrowing statutes — the shift from the traditional procedural to the substantive classification. In a number of recent conflicts decisions, with the courts of New Jersey leading the way, courts have rejected the automatic application of forum law via a procedural characterization in favor of a substantive characterization. These cases take the position that an action will not be maintained if it is barred by the statute of limitations of the state which, with respect to that issue, is the state of most significant relationships. This new approach seems more logical. The statute of limitations, with its borrowing statute provision, clearly touches in a substantive way the rights and liabilities of the parties to a cause of action and the interests of the state with which the parties are connected. It will be interesting to see if and when Massachusetts adopts this emerging trend in conflict of laws with respect to the statute of limitations.

50 See Restatement (Second) of Conflict of Laws § 142 comment g (rev. ed. 1986).
51 Id.