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CHAPTER 10

Conflict of Laws

FRANCIS J. NICHOLSON, S.J.

§10.1. Jones Act: Application of federal law. Erie R.R. v. Tompkins,1 overruling Swift v. Tyson,2 held that the Rules of Decision Act3 requires federal courts in diversity cases, when deciding nonfederal issues of substantive law, to follow state court decisions as well as state statutes. The Erie rule is inapplicable when the case does not come to the federal court by reason of its diversity jurisdiction. If a "federal question" is the basis of the jurisdiction, that is, if the case is one "arising under" the Constitution, laws, and treaties of the United States,4 then a federal conflict of laws rule may be used in the disposition of the case. Hence in admiralty suits the federal courts are not bound by state conflicts law.5 If the case is governed by a federal statute, it is clear that state conflict of laws rules have no bearing on the case.

When state and federal courts have concurrent jurisdiction in "federal question" actions, the state court, in trying such a case, is bound by the supremacy of the federal law and must apply the applicable federal principles of law. The Massachusetts Supreme Judicial Court, in Boudreau v. Boat Andrea G. Corporation,6 an admiralty action, held that the rights of the parties were governed by the apposite federal statute.

The plaintiff in Boudreau, as administratrix of her husband's estate, brought an action for damages against the owner of a fishing vessel upon which her husband, a crew member, had died. The first count sounded in negligence under the Jones Act.7 The second count alleged that the decedent's death was caused by the unseaworthiness of

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§10.1. 1304 U.S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188 (1938).
241 U.S. (16 Pet.) 1, 10 L. Ed. 865 (1842).
7 46 U.S.C. §688 (1964). The Jones Act gives the personal representative of a deceased seaman the right to bring suit when the seaman's death was the result of a personal injury suffered in the course of his employment and expressly makes applicable to such suit the provisions of the Federal Employers' Liability Acts, 45 U.S.C. §§51-60, "confering or regulating the right of action for death in the case of railroad employees." The Jones Act says nothing about negligence but incorporates by reference the negligence provision of the F.E.L.A.
the defendant's vessel and was brought under the Death on the High Seas Act. A third count, for cure and maintenance under general maritime law, was by agreement of the parties left for finding by the trial judge and did not become a part of the appeal proceedings. The case was tried to a jury. At the close of the evidence, the judge, subject to the plaintiff's exception, directed a verdict for the defendant on both of the first two counts.

Before considering the merits, the Supreme Judicial Court dealt with a jurisdictional question. It is settled doctrine that state and federal courts have concurrent jurisdiction in Jones Act actions. Jurisdiction with respect to suits under the Death on the High Seas Act is exclusively in the federal district court. The Court ruled, therefore, that an action under the High Seas Act may not be joined with a suit under the Jones Act in a state court and dismissed the second count for want of jurisdiction.

The Court then summarized the evidence in order to consider the propriety of the directed verdict for the defendant on the first count under the Jones Act. In the evening of November 13, 1962, the vessel Andrea G. was 70 miles off-shore heading for fishing grounds. The decedent, hired as a deckhand, was making his first trip on the boat and, at the time stated, was at the wheel in the pilothouse which was hot and stuffy because of a defective heat regulator. In addition, the pilothouse door was warped and had to be kicked or pushed with the shoulder to open it. This condition had existed for some time. The captain and the crew were aroused by a noise on deck and they found the decedent, in a moribund condition, lying on the deck with his foot on the step leading to the door of the pilothouse.

The Court held that the evidence relating to the fatal accident and the medical testimony as to the cause of death established a case for the jury under the Jones Act and hence the directed verdict was not warranted. Federal standards, by which the rights of a seaman or his personal representative are to be measured under the Jones Act, clearly dictated this conclusion. The United States Supreme Court

8 46 U.S.C. §§761-768 (1964). The Death on the High Seas Act provides a remedy for death "caused by wrongful act, neglect or default occurring on the high seas beyond a marine league from the shore of any State." The availability of the alternative remedy under the High Seas Act can be important because, although like the Jones Act the High Seas Act limits recovery to a list of designated beneficiaries, the lists in the two statutes are not identical. Another reason for the common practice in federal courts of joining counts under both acts in a death action is that the Jones Act, unlike the High Seas Act, provides that the decedent's right of action for pain and suffering before death survives for the benefit of the statutory beneficiaries. See Gilmore & Black, Admiralty 301-308 (1957).


has stated that "the test of a jury case is simply whether the proofs justify with reason the conclusion that employer negligence played any part, even the slightest, in producing the injury or death for which damages are sought."\(^{11}\) The "liberal construction" which should be given to the Jones Act,\(^{12}\) requires that the evidence be considered most favorably to the seaman so that the jury which, under the act, "plays a pre-eminent role," may decide the issues.\(^{13}\)

Applying these standards, the jury could find that the defendant was negligent in maintaining the heat regulator and the door to the pilothouse. The jury could also conclude that excessive heat, combined with heaving against a door that refused to open, followed by falling to the deck after being catapulted from the pilothouse, could have aggravated the decedent's pre-existing heart condition and caused his death. The Court, therefore, sustained the plaintiff's exception to the directed verdict on the first count.

The United States Supreme Court has clearly established the supremacy of federal maritime law over state common law, while it has simultaneously, under the *Erie* doctrine, established the supremacy of state common law over the general federal common law.\(^{14}\) The Supreme Court has affirmed the supremacy of federal law even when maritime tort suits are tried in state courts.\(^{15}\) There has been little or no confusion with respect to the supremacy doctrine in Jones Act cases. Since in suits under the Jones Act, the courts, state or federal, are dealing with a federal statute which states its own rules, little difficulty can arise as to the choice between federal and state law. It is clear, therefore, that a state which undertakes to enforce federally created maritime rights cannot dilute claims fashioned by federal power "which is dominant in this field."\(^{16}\) The decision of the Supreme Judicial Court in the *Boudreau* case recognized this supremacy of federal maritime law and is in accord with the past practice of the Court.\(^{17}\)

\(\S 10.2\) Jones Act: Choice of law rule. Tort cases in admiralty raise problems with respect to choice of law. The traditional lex loci delicti principle had been commonly accepted as governing the rights of the parties in maritime tort cases. But since the decision of the United States Supreme Court in *Lauritzen v. Larsen*,\(^{1}\) the "significant con-

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\(^{14}\) See Gilmore & Black, Admiralty 374-377 (1957).


\(^{17}\) See Keough v. Cefalo, 330 Mass. 57, 60, 110 N.E.2d 919, 921 (1953).
The "contacts" rule is on the ascendancy as it is generally in the tort area. In *Lauritzen* the Court suggested the following seven possible bases for substantive choice of law: (1) place of the wrongful act; (2) law of the flag; (3) allegiance or domicile of the injured seaman; (4) allegiance of the defendant shipowner; (5) place of contract of hiring; (6) inaccessibility of a foreign forum; and (7) law of the forum. The actual holding in the case was that Danish law, not the Jones Act, controlled with respect to an injury suffered by a Danish seaman on a Danish ship in Cuban territorial waters under a contract of hiring made in New York.

The decision of the United States District Court for the District of Massachusetts in *Filippou v. Italia Societa Per Azioni Di Navizione* is in accord with this recent development in admiralty tort cases. In *Filippou* the plaintiff seaman brought an action under the Jones Act and the general maritime law to recover for injuries received while he was serving as a crew member of a vessel owned by the defendant corporation. The complaint alleged that the plaintiff was a resident of Greece and that the defendant was a foreign corporation which had a place of business in Massachusetts and owned the vessel in question, which carried passengers between Europe and the United States. It was silent as to the citizenship of the plaintiff, as to the place where the injury occurred, as to the place where the voyage began and ended, and as to where the plaintiff signed on as a member of the crew. The defendant filed a motion to dismiss.

The court noted that the United States Supreme Court, applying the choice of law criteria of *Lauritzen*, had held that the general maritime law of the United States, including the Jones Act, is not applicable in an action involving an injury sustained by a foreign seaman on board a foreign vessel in the course of a voyage beginning and ending in a foreign country, even when the injury was sustained in an American port. While the admiralty courts of the United States do have jurisdiction over maritime suits between foreigners, the court may properly dismiss such a case at its discretion when the plaintiff's injuries have no significant contact with the United States, and United States law is not applicable.

The district court found that the complaint failed to allege sufficient facts to bring the case within the Jones Act or the general maritime law of the United States, or to establish that the court was in any way a convenient forum. It, therefore, allowed the defendant's motion to dismiss.

In admiralty cases the courts must apply those choice of law rules that are consonant with the needs of a general federal maritime law and that take into account the legitimate concern of the international community in the regulation of maritime commerce. The present case,
following the reasoning of Lauritzen and Romero, properly assessed the interacting interests of the United States and of the foreign countries concerned.4

§10.3. Federal question jurisdiction: Federal common law. The proposition that “there is no federal general common law,” enunciated in Erie R.R. v. Tompkins,1 does not apply when a cause of action involves a paramount federal interest. In such cases federal law must control and, in the absence of a federal statute, federal courts must develop a federal common law even in areas in which state common law also exists.2 The United States District Court for the District of Massachusetts has reaffirmed this priority of federal law in Nationwide Charters and Conventions, Inc. v. Garber.3

The plaintiff brought suit in a Massachusetts court charging the defendants with an abuse of process that led to the destruction of the plaintiff's business. The defendants allegedly persuaded an airline company to bring a suit against the plaintiff in the federal district court under the Federal Aviation Act. The latter suit charged the plaintiff with engaging in unauthorized air transportation and asked for an injunction against such conduct. The injunction was issued and the plaintiff sought redress in the Massachusetts court for the resultant damage to its business. The defendants removed the case to the federal district court, alleging that the latter court had original jurisdiction of the cause under the provisions of Title 28 of the United States Code, Section 1331(a).4 The plaintiff then moved to remand the case to the Massachusetts court.

The district court found that the plaintiff's argument in support of the motion to remand was basically that abuse of process was a common law tort which derived from state law and that the right to recover for it was governed by state law. The court disagreed, pointing out that the process alleged to have been abused was federal process, which raised a federal question. The federal interest involved was the essential concern of the federal courts with the integrity of their process, a kind of housekeeping or policing function; it was necessary that this problem be resolved uniformly regardless of the plaintiff's choice of remedy. Federal law, therefore, governed the claim.

It was not necessary for the district court to spell out the applicable federal law, and it limited itself to observing that federal courts have


§10.3. 1 304 U.S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188 (1938).
4 28 U.S.C. §1331(a) states: "The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interests and costs, and arises under the Constitution, laws, or treaties of the United States."
frequently developed a federal common law when they have discerned a paramount federal interest. The district court thus properly held that it had jurisdiction under Section 1331(a) and denied the plaintiff's motion to remand.

§10.4. Interspousal immunity: Application of domiciliary law. The decision of the Supreme Court of New Hampshire in Thompson v. Thompson,1 noted in the 1964 Survey,2 held that the question of interspousal immunity for tort was governed by the domiciliary state's law. The same court in Johnson v. Johnson,3 in which the facts are the reverse of Thompson, has again determined that the spouses' domicile is controlling for choice of law as to interspousal immunity in tort cases.

In Johnson a wife brought an action for damages against her husband in the New Hampshire court for injuries resulting from an automobile accident while they were driving in New Hampshire. The couple were domiciled in Massachusetts. The defendant husband moved to dismiss the action, primarily on the ground that the Massachusetts law of interspousal immunity barred the action between Massachusetts domiciliaries. The motion was denied. On appeal, the Supreme Court of New Hampshire sustained the defendant's exception, holding that the Massachusetts law of interspousal immunity did govern the action.

Before the Thompson decision it was well-settled law in New Hampshire that although a wife could bring a tort action against her husband for acts of negligence committed in New Hampshire, her right to recover against him for personal injuries inflicted upon her in another state was determined by the law of the second state.4 This deference shown to the lex loci delicti by New Hampshire law in the matter of interspousal tort suits was in accord with the traditional vested rights doctrine.5 In Thompson, however, where the injury took place in Massachusetts, the Supreme Court of New Hampshire refused to apply the Massachusetts rule which bars interspousal suits.6 It was there recognized that whatever the purposes of the Massachusetts law, they related to Massachusetts spouses. Those purposes would not be impaired in any way by giving effect to the purposes of the contrary New Hampshire rule in a suit between New Hampshire spouses. The court thereby endorsed the trend toward choosing the interspousal law of the domicile as having the greatest interest in the matter.7

In Johnson the New Hampshire Supreme Court recognized that the

7 See Restatement of Conflict of Laws Second §390g (Tent. Draft No. 9, 1964); Ehrenzweig, Conflict of Laws 581-583 (1962).
law of the domicile, Massachusetts, prohibiting interspousal suits, conflicted with the purpose of the New Hampshire tort law which was to give financial protection to persons injured on New Hampshire highways. The court, however, using the “significant relationship” test employed in the Restatement of Conflict of Laws Second, 8 decided to give effect to the law of the domicile here as it did in Thompson. Recognition of the Massachusetts immunity would not render a Massachusetts spouse less careful on New Hampshire roads since careless driving on his part would jeopardize the safety of both spouses. The court also pointed out that the application of New Hampshire law would expose the defendant’s insurer to greater liability than it would have anticipated in computing its rates. Finally, the choice of the domiciliary law provided a simple rule that would remain constant as the spouses journeyed from state to state. For these reasons, the court concluded that the interspousal law of Massachusetts had such a significant relationship to the issue in dispute as to overcome the ordinary preference for the application of New Hampshire law to determine the rights of persons injured on New Hampshire highways.

The traditional place-of-impact rule was an easy principle to apply, but since it ignored the purposes of the conflicting laws of the respective states, it often produced results that were not justifiable. Under the significant relationship approach, a court makes its own determination as to controlling contacts for choice of law purposes. This more recent approach obviously creates problems with respect to the certainty and predictability of legal rules, but it represents a much more rational use of the judicial process. The Supreme Court of New Hampshire, in the present case, opted for the interspousal law of Massachusetts after it had considered the purposes of the respective state laws in conflict. The court, in this thoughtful opinion, has made a contribution to the recent trend to examine and solve conflict problems in a more realistic way.

§10.5. Merger doctrine: Non-termination by judgment. A judgment for the plaintiff merges his cause of action, so that the original cause of action is terminated and cannot be sued upon again in the same or any other court. Thereafter the judgment itself is a cause of action, which may become the basis of a later action in the same or another state. 1 The judgment, however, does not destroy all traces of the underlying cause of action, and the rights of the successful plaintiff in his original cause persist. In Jay’s Stores, Inc. v. Ann Lewis Shops, Inc., 2 the New York Court of Appeals has called attention to this limitation upon the merger doctrine.

The defendant, a Delaware corporation authorized to do business in New York, executed an instrument in New York guaranteeing to


§10.5. 1 Leflar, Conflict of Laws 131 (1959); Stumberg, Conflict of Laws 110 (3d ed. 1963); see Restatement of Judgments §§47-55 (1942).

the plaintiff certain obligations of a third party under a sublease of
business property in Massachusetts. The owner of the property
instituted an action in Massachusetts in which both the plaintiff and the
defendant were parties, and a judgment was entered March 1, 1957,
determining liabilities between the present parties based on the
defendant's instrument of guarantee. During the pendency of that
action, on March 15, 1956, the defendant filed a certificate of surrender
of authority to do business in New York which, as the applicable New
York statute required, included a consent that process in an action
"upon any liability or obligation incurred within the State of New
York" before the surrender of authority might be served upon the New
York Secretary of State.3

The plaintiff began the present action on the Massachusetts judg-
ment against the defendant by service upon the Secretary of State. The
defendant argued that, since the Massachusetts judgment was not a
"liability or obligation incurred" within New York, no jurisdiction
had been obtained of the defendant by the service upon the Secretary
of State of New York. The New York Supreme Court at Special Term
granted summary judgment in favor of the defendant, and the Appel-
late Division affirmed.

The New York Court of Appeals found that the main question in
the case was whether, because the contract which the Massachusetts
court enforced by its judgment was made by the defendant in New
York, the present action on the Massachusetts judgment was to be
deemed an action on a "liability or obligation incurred" by the defen-
dant in New York. The answer to this question depended upon the
proper understanding of the theory of merger of a judgment and its
underlying cause of action.

Merger by judgment did not destroy all of the identifying charac-
teristics or relationships of the cause of action which the judgment
determined. And it was clear that the doctrine was not designed to
weaken rights which the prevailing party had in his original cause and
which he succeeded in establishing by judgment in his favor. Hence
the court would examine the basis of the Massachusetts judgment to
determine its enforceability and effect in New York. The United States
Supreme Court has endorsed this interpretation of the merger doctrine
in Wisconsin v. Pelican Insurance Co.,4 as follows:

The essential nature and real foundation of a cause of action are
not changed by recovering judgment upon it; and the technical
rules, which regard the original claim as merged in the judgment,
and the judgment as implying a promise by the defendant to pay
it, do not preclude a court, to which a judgment is presented for
affirmative action, . . . from ascertaining whether the claim is

4 127 U.S. 265, 8 Sup. Ct. 1370, 32 L. Ed. 299 (1888).
The Court of Appeals, following this direction of decisional law, ruled that the present action on the Massachusetts judgment should be treated as an action upon a “liability or obligation incurred” within New York before the surrender of authority, since the Massachusetts judgment was based on such a liability whose characteristics to this extent survived the Massachusetts adjudication. Hence, the service upon the New York Secretary of State was sufficient to acquire jurisdiction of the defendant under the terms of the statute which governed the surrender of authority. The court, therefore, reversed the order below and granted summary judgment to the plaintiff for the sum stated in the Massachusetts judgment.

§10.6. Conditional sale: Repossession of chattel. The cases dealing with conditional sales of chattels continue as a prolific source of complexities in the law of conflicts. A basic cause of the difficulty is the fact that most transactions involving chattels have both contractual and proprietary aspects. Questions relating to interests in a chattel are controlled by the law of the situs. Essentially contractual matters, such as the right to damages for breach of warranty or excuses for non-performance, are determined by the law governing the contract. Issues collateral to repossession under a conditional sale, such as the creditor’s right to hold the debtor liable for any deficiency remaining after the repossession, are also governed by the contractual conflicts rules.1

In this case the Civil Court of the City of New York, applying the Massachusetts Uniform Commercial Code, refused to permit recovery of a deficiency. The defendant, a serviceman, purchased an automobile in the District of Columbia on a conditional sales contract. The dealer assigned the contract to the plaintiff, a national finance company, which notified the defendant to make payments to it. Despite a contract provision against removal of the car from the District of Columbia, the defendant buyer, under official military orders, moved to Massachusetts with the car and made several payments to the Massachusetts office of the plaintiff finance company. When the defendant defaulted in his payments, the plaintiff repossessed the car in Massachusetts and, pursuant to the terms of the contract, resold the car without notice at a private sale in Massachusetts for less than half of the original price. The defendant later came to New York where he was served in the present action by the plaintiff to recover the deficiency.

1 Id. at 292-293, 8 Sup. Ct. at 1375, 32 L. Ed. at 244.
The court stated that the law of New York would not permit a suit for a deficiency if the requirements of the law relating to repossession and resale had not been satisfied. The critical question was, therefore, which law governed the validity of the resale. The New York conflicts rule with respect to contracts applies the "significant relationship" or "grouping of contacts" test. By this criterion, New York statutes governing repossession and resale procedures in conditional sales would have no application to a District of Columbia contract which was the subject of an enforcement suit in Massachusetts, the suit being brought at a time when neither of the parties had any relation to New York. The choice, then, lay between the law of Massachusetts and the law of the District of Columbia as to whether there had been a valid resale. The former required a notice of resale, while the latter permitted resale without notice.

The court, noting that the action was not concerned with the validity of the contract but with the remedies for an admitted breach of an admittedly valid contract, concluded that the law of Massachusetts governed the resale. Since the repossession and the resale took place in Massachusetts, and since Massachusetts had the usual interest of the situs in the peaceful possession of property within its borders, the law of Massachusetts clearly had the significant relationship to this aspect of the transaction between the parties.

The apposite Massachusetts law, the Uniform Commercial Code, had its own built-in conflicts rules which would determine whether Massachusetts would judge the resale without notice to be legal or illegal. Section 1-105(2) of the Uniform Commercial Code explicitly provides for the application of Section 9-102 to secured transactions. This section calls for applying its own provisions to "any personal property . . . within the jurisdiction of this state." The New York court concluded that Massachusetts would rule that, since the failure to give notice violated Section 9-504, the resale was illegal. It held, therefore, that New York would not permit recovery of any deficiency.

The court in the present case, in considering the choice of law problem, rejected the plaintiff's contention that the lex loci contractus should control. It chose rather the "contacts" standard enunciated in the New York Court of Appeals decision of Auten v. Auten. The court also cited with approbation the "significant relationship" test enunciated in the Restatement of Conflict of Laws Second. This newer approach to the contracts problem in the conflict of laws permits a court to focus its attention upon the law of the jurisdiction which

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4 G.L., c. 106, §§9-504.
6 G.L., c. 106, §1-105(2).
7 Id. §9-102.
§10.6 CONFLICT OF LAWS

has the paramount interest in the multi-state transaction.¹⁰ The question of the resale arose from the dealings with the property by the parties in Massachusetts. The New York court, therefore, properly concluded that the law of Massachusetts governed the plaintiff’s behavior in retaking and reselling the automobile.

¹⁰ In any event, the traditional lex loci contractus rule had no application to the facts of the present case, since the validity and interpretation of the contract were not in issue.