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coastal state, do not possess the status of islands. They have no territorial sea of their own, and their presence does not affect the delimitation of the territorial sea of the coastal state.

4. Due notice must be given of any such installations constructed, and permanent means for giving warning of their presence must be maintained.
5. Neither the installations themselves, nor the said safety zones around them may be established in narrow channels or where interference may be caused in recognized sea lanes essential to international navigation.

Precepts of International Law ultimately depend upon international acceptance, be it expressed or implied. Without this acceptance, no *Jus Gentium* exists.⁵³ Which type of unilateral claims, those asserted by the Truman Proclamation or those asserted by the Argentina Declaration, will become established principles of international law, only the future can tell. Yet the direction of this acceptance cannot be doubted today. Free navigation—*juris et de jure!*

H. WALLACE ROBERTS.

Libel—Multi-State Defamation—Place of Commission of Tort

In recent years courts throughout the country have often been faced with the problems of multi-state defamation arising from national distribution of books and periodicals and from the wide coverage of radio and television programs. Yet, there has been almost a complete judicial reluctance to face these problems squarely. Many courts have failed to discuss the issue when it was obviously present.¹ In some cases the scope of recovery was not clearly set out;² and, even where the issue was correctly presented, courts have on occasion applied the law of the forum

⁵³ "International law consists in certain rules of conduct which modern civilized states regard as being binding on them in their relations with one another with a force comparable in nature and degree to the binding the conscientious person to obey the laws of his country, and which they also regard as being enforceable by appropriate means in case of infringement." HALL, *op. cit. supra* note 17, at 1.

"What is international law? It is the body of principles and rules which civilized States consider as binding upon them in their mutual relations. It rests upon the consent of Sovereign States." Hughes, *The World Court as a Going Concern*, 16 A. B. A. J. 151 at 153 (1930).

¹ *Levey v. Warner Bros. Pictures, Inc.*, 57 F. Supp. 40 (S. D. N. Y. 1944); *Wright v. R. K. O. Radio Pictures, Inc.*, 55 F. Supp. 639 (D. Mass. 1944); *Backus v. Look, Inc.*, 39 F. Supp. 662 (S. D. N. Y. 1941); *Cannon v. Time, Inc.*, 39 F. Supp. 660 (S. D. N. Y. 1939); *Means v. MacFadden Publications, Inc.*, 25 F. Supp. 993 (S. D. N. Y. 1939).

² *Brinkley v. Fishbein*, 110 F. 2d 62 (5th Cir.), *cert. denied*, 311 U. S. 672 (1940); *Melvin v. Reid*, 112 Cal. App. 285, 297 Pac. 91 (1931).

without much discussion of the matter.³ A few decisions have met the problem squarely, and in these the results differ.⁴

One of the underlying problems is in attempting to apply the substantive law of one jurisdiction when the tort is committed in several different jurisdictions. As many as ten different choices of law have been suggested. These will be merely mentioned and the relative merits of each will not be discussed.

1. The law of the state of the publisher's domicile or incorporation.⁵
2. The law of the state where the defendant's main publishing office is located.⁶
3. The law of the state of plaintiff's domicile, on the theory that the harm to plaintiff is centered there.⁷
4. The law of the state of plaintiff's principal business.⁸
5. The law of the state where the defamation is principally circulated.⁹
6. The law of the state where the plaintiff actually suffered the greatest harm from the defamation.¹⁰
7. The law of the state where the defendant's physical acts originating the alleged defamation occurred; that is, the state where a magazine, book or newspaper was printed or a radio or television broadcast made.¹¹
8. The law of the state where the damaging statement was first seen or heard by anyone.¹²

³ *Spanel v. Pegler*, 160 F. 2d 619 (7th Cir. 1947); *Caldwell v. Crowell-Collier Publishing Co.*, 161 F. 2d 333 (5th Cir. 1947); *Curley v. Curtis Publishing Co.*, 48 F. Supp. 29 (D. Mass. 1942); *Gautier v. Pro-Football, Inc.*, 304 N. Y. 354, 107 N. E. 2d 485 (1952); *Summit Hotel Co. v. National Broadcasting Co.*, 336 Pa. 182, 8 A. 2d 302 (1939).

⁴ *Leverton v. Curtis Publishing Co.*, 192 F. 2d 974 (3d Cir. 1951); *Hartmann v. Time, Inc.*, 166 F. 2d 127 (3d Cir. 1947), *cert. denied*, 334 U. S. 838 (1948); *Sidis v. F.-R. Publishing Corp.*, 113 F. 2d 806 (2d Cir.), *cert. denied*, 311 U. S. 711 (1940); *Dale System Inc. v. General Teleradio, Inc.*, 105 F. Supp. 745 (S. D. N. Y. 1952); *Howser v. Pearson*, 95 F. Supp. 936 (D. D. C. 1951); *O'Reilly v. Curtis Publishing Co.*, 31 F. Supp. 364 (D. Mass. 1940); *Schumann v. Loew's, Inc.*, 199 Misc. 38, 102 N. Y. S. 2d 572 (Sup. Ct. 1951).

⁵ Notes, 43 ILL. L. REV. 556, 560 (1948); 35 VA. L. REV. 627, 633 (1949).

⁶ 2 Rabel, *THE CONFLICT OF LAWS: A COMPARATIVE STUDY* 323, 335 (1947); Notes, 10 LA. L. REV. 339 (1950); 16 U. OF CHI. L. REV. 164, 168 (1948).

⁷ Notes, 60 HARV. L. REV. 941, 947 (1947); 35 VA. L. REV. 627, 636 (1949).

⁸ Lefler, *The Single Publication Rule*, 25 ROCKY MTN. L. REV. 263, 270 (1953); Comment, 10 LA. L. REV. 339, 345 (1950).

⁹ Ludwig, *"Peace of Mind" in 48 Pieces Versus Uniform Right of Privacy*, 32 MINN. L. REV. 734, 761 (1948).

¹⁰ *Mattox v. News Syndicate Co.*, 176 F. 2d 897 (2d Cir. 1949), 63 HARV. L. REV. 1272 (1950), 34 MINN. L. REV. 332 (1950), 25 N. Y. U. L. Q. REV. 165 (1950), 24 So. CALIF. L. REV. 103 (1950); *Caldwell v. Crowell-Collier Publishing Co.*, 161 F. 2d 333 (5th Cir.), *cert. denied*, 332 U. S. 766 (1947).

¹¹ Rheinstein, *The Place of Wrong: A Study in the Method of Case Law*, 19 TUL. L. REV. 4, 30 (1944); Comments, 60 HARV. L. REV. 941, 946 (1947); 35 VA. L. REV. 627, 634 (1949).

¹² *Banks v. King Features, Inc.*, 30 F. Supp. 352 (S. D. N. Y. 1939).

9. The law of the state which the merits of the case suggest, without any rule of thumb as to what law governs.¹³
10. The law of the forum.¹⁴

There is at least some authority to sustain each of the above choices, which serves to indicate the divergent views that exist concerning this complicated problem.

Another problem that arises stems from the rule of *Brunswick v. Harmer*,¹⁵ which is still technically the majority rule in America.¹⁶ Under this view, a new tort occurs each time libelous matter is read by a third person, and a different suit can be brought to collect for each separate cause of action. An opposing judicial effort aimed at reducing multiplicity of suits is the "single publication" rule. There is no general agreement as to what the rule is,¹⁷ but the underlying rationale is that there can be but one publication¹⁸ of libelous matter within the jurisdiction adopting the rule. All the economic steps¹⁹ leading to the publishing of the magazine, book, or newspaper are considered as a single process, and as regards that jurisdiction there can be but one cause of action against any one defendant.²⁰ The extent of the circulation will weigh heavily in determining the amount of damages but the tort is consummated as of the first communication to a third person,²¹ and the statute of limitations begins to run as of that time.²²

This rule is rapidly finding favor throughout the country,²³ but even

¹³ 63 HARV. L. REV. 1272, 1274 (1950).

¹⁴ Ludwig, *supra* note 9, at 760.

¹⁵ 14 Q. B. 185, 117 Eng. Rep. 75 (1849).

¹⁶ This rule has been adopted by the American Law Institute. RESTATEMENT, TORTS § 578, comment *b* (1938).

¹⁷ The rule has a double aspect; it sets a time for the statute of limitations to begin running, and defines the actual place of the tort for venue purposes. The rule is judicial in origin and was created mainly for the purpose of giving substance to the statute of limitations, which had little effect under the traditional rule.

¹⁸ Publication is a technical concept involving an issue of historical fact; that is, a communication to a third person. *McGlue v. Weekly Publication, Inc.*, 63 F. Supp. 744 (D. Mass. 1946); *Stella v. James J. Farley Ass'n, Inc.*, 204 Misc. 998, 122 N. Y. S. 2d 322 (Sup. Ct. 1953), *aff'd*, 284 App. Div. 873, 135 N. Y. S. 2d 234 (1st Dep't 1954).

¹⁹ The composition, printing, and distribution of a magazine or newspaper when completed is taken as the one act of publication. *Winrod v. McFadden Publications, Inc.*, 62 F. Supp. 249 (N. D. Ill. 1945), *aff'd*, 187 F. 2d 180 (7th Cir.), *cert. denied*, 342 U. S. 814 (1951).

²⁰ The rule does not preclude suits against several different defendants who publish the libel successively, such as two or more separate newspapers or a radio company and a newspaper.

²¹ See *Winrod v. McFadden Publications, Inc.*, 62 F. Supp. 249 (N. D. Ill. 1945), *aff'd*, 187 F. 2d 180 (7th Cir.), *cert. denied*, 342 U. S. 814 (1951); *Age-Herald Publishing Co. v. Huddleston*, 207 Ala. 40, 92 So. 193 (1921); *O'Malley v. Statesman Printing Co.*, 60 Idaho 326, 91 P. 2d 357 (1939).

²² See *Winrod v. McFadden Publications*, *supra* note 21; *Cannon v. Time, Inc.*, 39 F. Supp. 660 (S. D. N. Y. 1939); *Means v. MacFadden Publications, Inc.*, 25 F. Supp. 993 (S. D. N. Y. 1939).

²³ See, *e.g.*, *Kilian v. Stackpole Sons, Inc.*, 98 F. Supp. 500 (M. D. Pa. 1951);

if every state should adopt the rule there would still be difficult choice of law problems. It would seem that the rule in each state would at best curtail the causes of action only within that particular jurisdiction²⁴ because a state law cannot have extraterritorial effect;²⁵ it cannot of itself cross state lines to bar action in another state. It has been suggested that it would depend on how a plaintiff phrased his complaint in determining whether the first suit was *res judicata* as to any subsequent action.²⁶ If the complaint embraced all causes of action in every jurisdiction the plaintiff has exhausted his remedies in one suit. However, if he seeks damages only within that particular jurisdiction, he apparently is free to go elsewhere and sue the defendant in other jurisdictions.²⁷ The possibility of such multiple suits is illustrated by the Oakley and Sweeney cases.²⁸

Kelly v Loew's, Inc., 76 F. Supp. 473 (D. Mass. 1948); Hartmann v. Time, Inc., 166 F. 2d 127 (3d Cir. 1947), *cert. denied*, 334 U. S. 838 (1948); Backus v. Look, Inc., 39 F. Supp. 662 (S. D. N. Y. 1941); Cannon v. Time, Inc., 39 F. Supp. 660 (S. D. N. Y. 1939); Winrod v. Time, Inc., 334 Ill. App. 59, 78 N. E. 2d 708 (1948); Wolfson v. Syracuse Newspapers, Inc., 254 App. Div. 211, 4 N. Y. S. 2d 640 (4th Dep't 1938).

²⁴ See O'Reilly v. Curtis Publishing Co., 31 F. Supp. 364, 365 (D. Mass. 1940): "The publication in each of the 38 states give rise to separate causes of action. The defendant's liability for the libel published in each state is governed by the laws of that state."

Why does circulation of libel in a new state give a new cause of action when circulation in new counties within a state does not? Dean Prosser suggests that the various states realize they are getting into deep water when they say a cause of action exists in one state only, because each state has its own law and some of them may recognize the existence of the cause of action whereas others do not. Prosser, *Interstate Publication*, 51 MICH. L. REV. 959, 965 (1953).

²⁵ See 11 AM. JUR., *Conflict of Laws* § 10, n. 5 (1937) for a collection of cases.

²⁶ See Note, 43 ILL. L. REV. 556 (1948). Generally, a cause of action for a tort is transitory in nature, and can be sued on wherever the tortfeasor can be found. Collins v. Brotherhood of Railroad Trainmen, 226 Ala. 659, 148 So. 133 (1933); Piplack v. Mueller, 97 Fla. 440, 121 So. 459 (1929); Johnston v. MacFadden Newspaper Corp., 238 App. Div. 68, 263 N. Y. Supp. 561 (1st Dep't 1933). However, some torts such as trespass are local in nature and suit must be brought at the place the tort was committed. Livingston v. Jefferson, 15 Fed. Cas. 660, No. 8,411 (C. C. D. Va. 1811).

²⁷ Of course the plaintiff can do this only if he can get jurisdiction over the defendant in the various states.

²⁸ Annie Oakley once brought fifty different suits for being labeled a dope addict. She recovered judgments in forty-eight of the fifty for amounts ranging from \$500 to \$27,500. See EARNST & LINDEY, *HOLD YOUR TONGUE* 190 (1950). A typical case was Butler v. Hoboken Printing and Publishing Co., 73 N. J. L. 45, 62 Atl. 272 (1905).

Congressman Martin Sweeney of Ohio brought sixty-eight suits for an alleged libel printed in a nationally syndicated column. At least fifteen of these cases are reported on the appellate level: See Donnelly, *The Law of Defamation: Proposals for Reform*, 33 MINN. L. REV. 609, 627, n. 79 (1949) for a listing of some of these cases. An example is Sweeney v. Schenectady Union Publishing Co., 122 F. 2d 288 (2d Cir. 1941), *aff'd without opinion by evenly divided court*, 316 U. S. 642 (1942).

In both of the above situations the defendants were separate newspapers throughout the country and therefore they have little relation to the single publication rule but they do give concrete evidence of the probable consequences of a single libelous statement.

The Commission on Uniform State Laws has proposed a Uniform Single Publication Act which has thus far been adopted by six states.²⁹ The act contemplates a single cause of action which will include recovery for damages incurred in all jurisdictions where the tort occurred so that the judgment will be *res judicata* as to any other action on the same tort. There is no doubt that the act has merit, but it would seem that in order for it to be fully effective it is necessary that all states adopt it. Experience has demonstrated the reluctance of many states to adopt uniform laws in the past, and there is no foreseeable reason why this reluctance would be discarded in the case of this particular act.

Suggestions have been made that federal legislation be enacted to unify the law in this area.³⁰ It is settled that Congress has the power to regulate tort liability which affects interstate commerce,³¹ and there are probably no constitutional barriers to legislation by Congress in the area of multi-state defamation.³² The propriety of upsetting the established substantive law of each state would be questionable, but federal legislation which would simply limit the causes of action and formulate a choice of law rule would seem to have merit. It is true that some instances of interstate defamation are so related to a particular jurisdiction that it has a significant interest in applying its own law, but this would seem almost to be the exception rather than the rule in this day when defamation if interstate at all, is so often spread throughout the country thus providing significant contacts with many states.

North Carolina has neither adopted the single publication rule³³ nor wrestled with the choice of law problem in multi-state torts. A recent case, *Putnam v. Triangle Publications Co.*,³⁴ seemed to present the problem in its basic facts, but the case was dismissed on procedural grounds and the question was not expressly reached. However, in discussing one issue, the court made a statement that could affect North Carolina's position in this area. Suit was brought against a Pennsylvania corporation for an alleged libel³⁵ which was circulated in defendant's

²⁹ ARIZ. CODE ANN. §§ 27-2001 to -2005 (Supp. 1954) (Arizona); WEST'S ANN. CIV. CODE §§ 3425.1 to .5 (1955) (California); IDAHO CODE ANN. §§ 6-702 to -705 (Supp. 1955) (Idaho); N. M. STAT. ANN. §§ 40-27-30 to -34. (Supp. 1955) (New Mexico); N. D. REV. CODE §§ 14-0210 to -0214 (Supp. 1953) (North Dakota); PA. STAT. ANN. tit. 12 §§ 2090.1 to .5 (Purdon Supp. 1954) (Pennsylvania); see 9 A. U. L. A. (Supp. 1956) for a text of the act.

³⁰ Notes, 4 SYRACUSE L. REV. 310, 317 (1953); 35 VA. L. REV. 627, 638 (1949); 60 HARV. L. REV. 941, 951 (1947).

³¹ See *Second Employers' Liability Cases*, 223 U. S. 1 (1912).

³² Such legislation could be supported under the commerce clause, U. S. CONST. art. I, § 8, cl. 3; or under the power to regulate the mails, U. S. CONST. art. I, § 8, cl. 7. See Note, 35 VA. L. REV. 627, 639 (1949).

³³ See Note, 27 N. C. L. REV. 271 (1949).

³⁴ 245 N. C. 432, 96 S. E. 2d 445 (1957).

³⁵ There was also alleged a cause of action for invasion of privacy. The same problems encountered in suits for libel are also encountered in suits for invasion

magazines in North Carolina. The plaintiff served process on defendant by publication pursuant to the statute allowing such service on a corporation for, among other things, any cause of action arising "out of any tortious conduct in this State, whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance."³⁶ One of the questions presented was the validity of service under this provision.³⁷ In the course of the decision, the court stated: "We agree with the conclusion of the judge below that plaintiff's cause of action did not arise out of any tortious conduct of the defendant in this state."³⁸

There are two possible explanations which might justify the court's summary dismissal of the tort issue. Both theories were argued in the defendant's brief. (1) Assuming a tort consists of two phases, conduct and harm, the two could well occur in different jurisdictions. So, if the statute is interpreted literally, there would be no tortious *conduct* within the state even though there was a *tort* committed in the state under the normal conflict of laws rules. (2) It could be argued simply that no tort had been committed in North Carolina. A state can decide as a part of its law of conflict of laws that when a libel is printed in a foreign state there is no local tort committed because each state can determine whether or not an act is an actionable wrong within its borders.³⁹ Thus if in the *Putnam* case the court intended to imply that no tort was committed in North Carolina, it would be a valid exercise of power; however, it would destroy the traditional rule declared in the *Brunswick* case and followed by the *Restatement*. Aside from any question of the desirability of overruling this long-standing multiple publication doctrine, it is believed that if the court did in fact decide on the basis of the defendant's second argument it should have elaborated on its reasoning so as to inform the public of the significance of the decision.

If the plaintiff should now sue in Pennsylvania where he can get personal service of process, he might be jeopardized by the ambiguous wording of the principal case. For example, assume plaintiff is known only in North Carolina, and, consequently has his reputation injured only in

of privacy and unfair competition. See Notes, 32 MINN. L. REV. 934 (1948); 60 HARV. L. REV. 1315 (1947) for a discussion of these.

³⁶ N. C. GEN. STAT. § 55-38.1 (a) (4) (Supp. 1955). The attempted service was also made pursuant to the provisions of §§ 55-38.1 (a) (1) through (3), and the major portion of the opinion was devoted to these other parts of the statute. However, for the purposes of this discussion, only the subsection (4) relating to tortious conduct will be considered.

³⁷ For a discussion of the constitutional aspects of this subsection, see Note, 35 N. C. L. REV. 546 (1957).

³⁸ *Putnam v. Triangle Publications Co.*, 245 N. C. 432, 443, 96 S. E. 2d 445, 454 (1957).

³⁹ See 11 Am. Jur., *Conflict of Laws* § 182, n. 4 (1937). In support of this second theory, the defendant cited decisions of those courts adopting the single publication rule.

North Carolina. Should the Pennsylvania courts construe the principal case as deciding that no tort was committed in North Carolina, plaintiff might be in the unenviable position of having been definitely injured without a right of redress. This is because a cause of action, if any, must arise at the place of injury and not at the place where the act or omission which caused the injury occurred.⁴⁰ North Carolina being the place of injury, and no cause of action arising in North Carolina, plaintiff would have no right to recover. Of course the result is absurd, but it is within the realm of possibility. Moreover, several North Carolina cases⁴¹ in the area of defamation and negligence have previously intimated that the tort occurred as of the time of the act or omission rather than at the time of the injury. In *Powers v. Planters National Bank and Trust Co.*,⁴² the court said: "It is well settled in an action for damages, resulting from negligent breach of duty, the statute of limitations begins to run from the breach, from the wrongful act or omission complained of without regard to the time when the harmful consequences were discovered."⁴³ While this pertains to the statute of limitations, the implication is that the tort occurred at the time of the act.

Whatever the actual basis of the decision on this tort issue, the court did refrain from any open discussion of the question of multi-state defamation just as so many other courts have done. In view of the constitutional issues presented, it was probably not an ideal case for treatment of the defamation aspect. It is hoped that when such a case does arise, the court will devise a working formula.

HAMLIN WADE.

Libel and Slander—Immunity of Counsel for Defamatory Matter Published in a Judicial Proceeding

In *Wall v. Blalock*,¹ the Supreme Court of North Carolina was confronted with a problem not often presented to the Court.² The defendant,

⁴⁰ *Smyth Sales, Inc. v. Petroleum Heat and Power Co.*, 128 F. 2d 697 (3d Cir. 1942); *Mike v. Lian*, 322 Pa. 353, 185 Atl. 775 (1936); 86 C. J. S., *Torts* § 24 (1954).

⁴¹ *Lewis v. Shaver*, 236 N. C. 510, 73 S. E. 2d 320 (1952); *Powers v. Planters Nat'l Bank and Trust Co.*, 219 N. C. 254, 13 S. E. 2d 431 (1941); *Bank of Spruce Pine v. McKinney*, 209 N. C. 668, 184 S. E. 506 (1936); *Gordon v. Fredle*, 206 N. C. 734, 175 S. E. 126 (1934); *State v. Grizzard*, 117 N. C. 105, 23 S. E. 93 (1895).

⁴² 219 N. C. 254, 13 S. E. 2d 431 (1941).

⁴³ *Id.* at 256, 13 S. E. 2d at 432.

¹ 245 N. C. 232, 95 S. E. 2d 450 (1956).

² For North Carolina cases dealing generally with this problem see, *Scott v. Veneer Co.*, 240 N. C. 73, 81 S. E. 2d 146 (1954); *Jarman v. Offutt*, 239 N. C. 468, 80 S. E. 2d 248 (1954); *Perry v. Perry*, 153 N. C. 266, 69 S. E. 130 (1910); *Taylor v. Huff*, 130 N. C. 595, 41 S. E. 873 (1902); *Ramsey v. Cheek*, 109 N. C. 270, 13 S. E. 775 (1891); *Nissen v. Cramer*, 104 N. C. 574, 10 S. E. 270 (1889); *Shelfer v. Gooding*, 47 N. C. 175 (1855); *Biggs v. Byrd*, 34 N. C. 377 (1851).