UNC SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 43 | Number 3 Article 7

4-1-1965

Conflicts -- Most Significant Relationship Rule

Richard G. Elliott Jr.

less than 1,000 dollars.[172] Hence, the present pattern of federal regulation of the financial responsibility of broker-dealers is inadequate. More than a net capital-to-aggregate indebtedness ratio is needed; a minimum net capital rule should be adopted. As recently as November 22, 1964, the SEC announced that such a rule is to be formally proposed within a short time.[173] Therefore, barring successful opposition to its adoption, a minimum net capital requirement will soon exist, and adequate protection of the investing public will be further assured.

With the adoption of a minimum net capital rule by the NASD, the regulation of the financial responsibility of broker-dealers by the self-regulatory bodies will likewise become adequate; the pattern of regulation by the stock exchanges is already sufficient.

While adoption of the pertinent provisions of the Uniform Securities Act is recommended, it appears unlikely that many states will provide this further assurance of financial responsibility in the near future. However, any concern over the lack of sufficient assurances by the states is mitigated by the extensive regulation by federal and self-regulatory bodies.

BARRY A. OSMUN

Conflicts—Most Significant Relationship Rule

Decedent, a domiciliary of Pennsylvania, purchased a ticket in Pennsylvania from an air line, a Delaware corporation with principal offices in Illinois, for a flight from Pennsylvania to Arizona. The plane crashed while landing at a scheduled stop in Colorado, causing the decedent's immediate death. The executor of his estate brought an action against the air line in Pennsylvania for breach of contract of carriage, seeking recovery under Pennsylvania's law of damages which allowed recovery for decedent's probable earnings during the period of his life expectancy.[1] The lower court sustained the contract action, but denied recovery under Pennsylvania's law of damages, holding that the law of the

[172] Special Study, pt. 1, at 85.
[173] N.Y. Times, Nov. 23, 1964, p. 59, col. 5.

[1] See, *e.g.*, Skoda v. West Penn Power Co., 411 Pa. 323, 335, 191 A.2d 822, 828-29 (1963).

place of wrong, Colorado, controlled. A Colorado statute denied recovery for prospective earnings after death.[2] The Supreme Court of Pennsylvania, in *Griffith v. United Air Lines, Inc.*,[3] reversed and held that Pennsylvania's law of damages should govern. The court first concluded that negligence rather than contract principles should be applied because the contract characterization ignored the realities of the situation. The court then overruled the state's traditional choice of law rule for personal injuries, which required the application of the law of the place of wrong,[4] and formulated a more flexible rule that permits analysis of the interests and policies of the states involved in determining which jurisdiction's law should apply.

The traditional choice of law rule for tort actions, previously followed in Pennsylvania and embodied in the first *Restatement*,[5] is the *lex loci delicti* principle that the substantive rights and liabilities of the parties are determined by the law of the place of wrong.[6] This rule has been justified by the vested rights doctrine,[7] under which the rights and obligations incurred under the law of the jurisdiction where the wrong occurs[8] are said to vest in the parties and follow them into any jurisdiction in which suit is brought.[9] The forum, or court in which suit is brought, ascertains "the place

[2] COLO. REV. STAT. ANN. § 152-1-9 (Perm. Cum. Supp. 1960). See also COLO. REV. STAT. ANN. § 41-1-3 (Perm. Cum. Supp. 1960), which limits recovery to an amount not exceeding $25,000 in a cause of action based on a wrongful act.

[3] 416 Pa. 1, 203 A.2d 796 (1964).

[4] See, *e.g.*, Vant v. Gish, 412 Pa. 359, 365-66, 194 A.2d 522, 526 (1963); Bednarowicz v. Vetrone, 400 Pa. 385, 162 A.2d 687 (1960); Rennekamp v. Blair, 375 Pa. 620, 101 A.2d 669 (1954); Rodney v. Staman, 371 Pa. 1, 89 A.2d 313 (1952).

[5] RESTATEMENT, CONFLICT OF LAWS § 384 (1934): "(1) If a cause of action in tort is created at the place of wrong, a cause of action will be recognized in other states. (2) If no cause of action is created at the place of wrong, no recovery in tort can be had in any other state." See generally GOODRICH, CONFLICT OF LAWS § 92 (4th ed. 1964).

[6] *Ibid.*

[7] See 2 BEALE, CONFLICT OF LAWS §§ 377-92 (1935); STUMBERG, CONFLICT OF LAWS 8 (3d ed. 1963).

[8] RESTATEMENT, CONFLICT OF LAWS § 377 (1934): "The place of wrong is in the state where the last event necessary to make an actor liable for an alleged tort takes place."

[9] Slater v. Mexican Nat'l R.R., 194 U.S. 120 (1904) (Holmes, J.). "The theory of foreign suits is that the act complained of was subject to no law having force in the forum, it gave rise to an obligation, an *obligatio*, which, like other obligations, follows the person, and may be enforced wherever the person be found." *Id.* at 126.

where a right arose and the law that created it . . ."[10] and applies that law to the particular case, thus giving effect to a foreign created right through the forum's law of conflicts—in this case the *lex loci delicti* rule.[11] The first *Restatement* recognized two exceptions to the rule: the forum applies its own procedural rules,[12] and the forum applies its own law when the law of the place of wrong is contrary to a strong public policy of the forum.[13]

Because of the long-standing adherence to the predictable and uniform rules of the first *Restatement,* forums are reluctant to overrule them even when their application produces an unjust result. To avoid abrogation of the place of wrong rule and yet reach equitable results, some forums have devised avenues of escape, technically within the first *Restatement's* rules, by which they apply law other than that of the place of wrong. Since the first *Restatement* recognized that the forum applied its own rules of procedure,[14] some courts seeking to avoid applying the law of the place of wrong have characterized substantive problems before them as procedural, and thus subject to the law of the forum.[15] For example, one forum characterized survival of a cause of action not as an essential part of the cause of action, but rather as a matter of enforcement of the claim for damages, and hence a procedural question subject to the law of the forum.[16] Other courts have characterized actions

[10] 1 BEALE, *op. cit. supra* note 7, § 8A.8.

[11] RESTATEMENT, CONFLICT OF LAWS §§ 1, 5 (1934).

[12] *Id.* § 585. See EHRENZWEIG, CONFLICT OF LAWS §§ 124-25 (1962); STUMBERG, *op. cit. supra* note 7, at 133, 154-55.

[13] RESTATEMENT, CONFLICT OF LAWS § 612 (1934). See, *e.g.,* Gordon v. Parker, 83 F. Supp. 40 (D. Mass. 1949); Thome v. Macken, 58 Cal. App. 2d 76, 136 P.2d 116 (1949) (cause of action for alienation of affections against forum's public policy); Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961) (limitation on damages in place of wrong against forum's public policy). See generally Paulsen & Sovern, *Public Policy in Conflict of Laws,* 56 COLUM. L. REV. 969 (1956).

[14] See note 12 *supra.*

[15] See Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 42, 172 N.E.2d 526, 529, 211 N.Y.S.2d 133, 137 (1961) (damage limitation classified as procedural; see note 13 *supra* for an alternative basis for applying the forum's law). *Contra,* Slater v. Mexican Nat'l R.R., 194 U.S. 120, 126 (1904) (damage limitation considered a substantive matter); Northern Pac. R.R. v. Babcock, 154 U.S. 190 (1894). *But see* Davenport v. Webb, 11 N.Y.2d 392, 183 N.E.2d 902, 230 N.Y.S.2d 17 (1962) (subsequent decision withdrawing the procedural classification in *Kilberg*).

[16] Grant v. McAuliffe, 41 Cal. 2d 859, 866, 264 P.2d 944, 949 (1953). *Contra,* RESTATEMENT, CONFLICT OF LAWS § 390 (1934), which considers survival of a cause of action to be a substantive matter governed by the

essentially sounding in tort as questions of contract law to avoid the place of wrong rule.[17] On the other hand, some courts have found exception to the place of wrong rule and have formulated specific new choice of law rules in tort actions involving questions of intrafamilial immunity from tort liability,[18] decedent's estates law,[19] and workmen's compensation,[20] in order to apply the law of a jurisdiction other than that of the place where the wrong occurred. For example, one forum characterized an action involving interspousal immunity from tort liability as family law to be governed by the law of the domicile of the parties, which, in this case, was the forum.[21] Other courts have ignored the place of wrong rule and applied the forum's statutory liability for a certain act where the law of the place of wrong imposed no such liability.[22]

The results reached by these courts have been said to be desirable, but the means of reaching them have been criticized.[23] Many commentators have advocated abolition of the first *Restate-*

law of the place of wrong. For an alternative basis of *McAuliffe,* see note 19 *infra.*

[17] See Dyke v. Eire Ry., 45 N.Y. 133 (1871) (personal injury action arising out of train accident characterized as breach of contract).

[18] See Emery v. Emery, 45 Cal. 2d 421, 289 P.2d 218 (1955) (unemancipated minor permitted to recover from parent under law of domicile); Haumschild v. Continental Cas. Co., 7 Wis. 2d 130, 95 N.W.2d 814 (1959). See generally Ehrenzweig, *Parental Immunity in Conflict of Laws,* 23 U. CHI. L. REV. 474 (1956); Ford, *Interspousal Immunity for Automobile Accidents in Conflict of Laws: Law and Reason Versus the Restatement,* 15 U. PITT. L. REV. 397 (1954).

[19] Grant v. McAuliffe, 41 Cal. 2d 859, 866, 264 P.2d 944, 949 (1953) (survival of tort action is question of administration of decedent's estate governed by law of decedent's domicile).

[20] See, *e.g.,* Pacific Employers Ins. Co. v. Industrial Acc. Comm'n, 306 U.S. 493 (1939); Alaska Packer Ass'n v. Industrial Acc. Comm., 294 U.S. 532 (1935).

[21] Haumschild v. Continental Cas. Co., 7 Wis. 2d 103, 137, 95 N.W.2d 814, 818 (1959).

[22] See Schmidt v. Driscoll Hotel, Inc., 249 Minn. 376, 82 N.W.2d 365 (1957) (forum's dram shop act applied to hold innkeeper liable for negligent act occurring outside forum).

[23] Commenting on his opinion in Grant v. McAuliffe, 41 Cal. 2d 859, 264 P.2d 944 (1953), Judge Traynor says:

> It may not be amiss to add that although the opinion in the case is my own, I do not regard it as ideally articulated, developed as it had to be against the brooding background of a petrified forest. Yet I would make no more apology for it than that in reaching a rational result it was less deft than it might have been to quit itself of the familiar speech of choice of law.

Traynor, *Is This Conflict Really Necessary?,* 37 TEXAS L. REV. 657, 670 n.35 (1959).

ment's mechanical rules[24] and the adoption of other approaches, some emphasizing an analysis of the policies and interests of the competing states,[25] some the interests of the parties involved,[26] and others the significant contacts of the states with the tortious occurrence and the parties[27] to determine which jurisdiction's law applies. The latter approach has been adopted by the second *Restatement* in place of the *lex loci delicti* rule.[28] However, it was not until

[24] Cheatham & Reese, *Choice of the Applicable Law*, 52 COLUM. L. REV. 959 (1952); Currie, *Conflict, Crisis and Confusion in New York*, 1963 DUKE L.J. 1; Currie, *The Disinterested Third State*, 28 LAW & CONTEMP. PROB. 754 (1963); Ehrenzweig, *The "Most Significant Relationship" in the Conflicts Law of Torts*, 28 LAW & CONTEMP. PROB. 700 (1963); Ehrenzweig, *Comments on Babcock v. Jackson*, 63 COLUM. L. REV. 1243 (1963); Harper, *Policy Bases of the Conflict of Laws: Reflections on Rereading Professor Lorenzen's Essays*, 56 YALE L.J. 1155 (1947); Morris, *The Proper Law of a Tort*, 64 HARV. L. REV. 881 (1951); Reese, *Conflict of Laws and the Restatement Second*, 28 LAW & CONTEMP. PROB. 679 (1963); Stumberg, *"The Place of the Wrong": Torts and the Conflict of Laws*, 34 WASH. L. REV. 388 (1959); Traynor, *supra* note 23.

[25] Most critics agree that any approach to the solution of a conflicts problem must include an analysis of the policies of the competing states, but there is a divergence of views as to the methods to be used in analyzing the policy interests in order to determine which state's law should be applied. Some critics prefer to analyze the policy interests underlying the respective laws in terms of each state's contact with the events and parties, weighing the respective policies in light of their contacts. See Cheatham, *Comments on Babcock v. Jackson*, 63 COLUM. L. REV. 1229 (1963); Lefar, *Comments on Babcock v. Jackson*, 63 COLUM. L. REV. 1247 (1963); Weintraub, *A Method for Solving Conflict Problems—Torts*, 48 CORNELL L.Q. 215 (1963). On the other hand, Professor Currie prefers an analysis by the forum of its governmental interests in the issues. If the forum finds a legitimate interest, Currie believes the forum should apply its law even if the foreign state has a contrary interest. See Currie, *Comments on Babcock v. Jackson*, 63 COLUM. L. REV. 1233 (1963); Currie, *Conflict, Crisis and Confusion in New York*, 1963 DUKE L.J. 1.

[26] Analysis of the interests of the parties in light of the forum's policy is the solution proposed by Professor Ehrenzweig. This approach emphasizes the interests of the defendant by applying the law of the forum if such application will not be prejudicial to the defendant. Ehrenzweig says the primary interests the forum should consider are the ability of the defendant to procure liability insurance adequate under the applicable law and the ability of the insurer to reasonably calculate the premium. Ehrenzweig, *Comments on Babcock v. Jackson*, *supra* note 24.

[27] This approach analyzes the competing state's contacts with the events and parties to determine which state has the most significant relationship to the events and parties and applies that state's law. See note 28 *infra*.

[28] RESTATEMENT (SECOND), CONFLICT OF LAWS § 379 (Tent. Draft No. 9, 1964, approved May 21, 1964):

> (1) The local law of the state which has the most significant relationship with the occurrence and with the parties determines their rights and liabilities in tort.

1963 that a court overruled the place of wrong rule in a tort action. In this case, *Babcock v. Jackson*,[29] the New York Court of Appeals formulated a jurisdiction-selecting test in which the forum analyzes the policies of each state as expressed in their conflicting laws and weighs the interests of each in vindicating its policy in light of its physical contacts with the events and the parties. This test combined several of the approaches that have been urged by critics to replace the traditional rule.[30]

The Pennsylvania court in *Griffith* followed the test set forth in *Babcock*. In determining that Pennsylvania's damage law applied, the court first analyzed the interests of Colorado and the policies behind her damage law in light of her contacts with the events and parties. Colorado's lone contact with the occurrence was place of wrong. The court found that the state where the wrong occurs has no interest in compensation where, as here, death is immediate and the site of the accident is fortuitous. In considering the policy reasons behind the damage limitation, the court indicated Colorado's lack of interest in the amount of recovery in a Pennsylvania court,

---

(2) Important contacts that the forum will consider in determining the state of most significant relationship include:

(a) the place where the injury occurred,

(b) the place where the conduct occurred,

(c) the domicil, nationality, place of incorporation and place of business of the parties, and

(d) the place where the relationship, if any, between the parties is centered.

(3) In determining the relative importance of the contracts, the forum will consider the issues, the character of the tort, and the relevant purposes of the tort rules of the interested states.

See Reese, *supra* note 24. For a criticism of the RESTATEMENT (SECOND) approach, see Comment, *The Second Conflicts Restatement of Torts: A Caveat*, 51 CALIF. L. REV. 762 (1963).

[29] 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963), 77 HARV. L. REV. 355 (1963); 42 N.C.L. REV. 419 (1964); 49 VA. L. REV. 1362 (1962). The court allowed a New York domiciliary who was injured in Ontario while riding as a guest passenger in a New York automobile to recover against the host driver who was also a New York domiciliary, although Ontario prohibits recovery by a guest against a host driver. See *Comments on Babcock v. Jackson, a Recent Development in Conflict of Laws*, 63 COLUM. L. REV. 1212 (1963). *But cf.* Sparks, *Babcock v. Jackson—A Practicing Attorney's Reflections upon the Opinion and Its Implications*, 31 INS. COUNSEL J. 428 (1964).

[30] See *Comments on Babcock v. Jackson, a Recent Development in Conflict of Laws, supra* note 29. Professor Currie, referring to the reasoning of the *Babcock* court, says: "Indeed, the majority opinion contains items of comfort for almost every critic of the traditional system." Currie, *Comments on Babcock v. Jackson*, 63 COLUM. L. REV. 1233, 1234 (1963).

because the policy behind the limitation could only be intended to prevent Colorado courts from engaging in "speculative computation of expected earnings"[31] or to prevent large verdicts against Colorado defendants. On the other hand, the court concluded that Pennsylvania had an interest in the amount of compensation. The relationship giving rise to the air line's duty to the decedent arose in Pennsylvania, and more important, the decedent and his surviving dependents were domiciled in that state. Because of these contacts, the court considered Pennsylvania to be vitally concerned with the administration of the decedent's estate and the well-being of the surviving dependents to the extent of granting full recovery, including expected earnings.[32] Finally, the court examined the interests of the defendant and concluded that subjecting the air line to unlimited recovery placed no undue burden on it or its insurer for both could protect against this eventuality.

The jurisdiction-selecting rule followed in *Griffith* is designed to choose the law of one state for each particular issue presented.[33] In *Griffith,* the issue was damages. Presumably, if asked to decide which state's standard of care should apply, the court would look to Colorado law because Colorado has a greater interest that Pennsylvania in requiring a given standard of care within its borders. In contrast to this approach, both the first and second *Restatement* rules choose the law of one state to govern all issues of the case.[34]

[31] Griffith v. United Air Lines, Inc., 203 A.2d 796, 807 (Pa. 1964).

[32] Pennsylvania's policy of granting full recovery is found in its constitution which prohibits the state legislature from limiting recovery for injuries resulting in death. PA. CONST. art. III, § 21. Conceivably, the court in *Griffith* could have refused to apply Colorado's damage limitation as being against the strong public policy of the forum and thus avoided overruling the place of wrong rule. See Mertz v. Mertz, 271 N.Y. 466, 472, 3 N.E.2d 597, 599 (1936) (public policy defined as "the law of the state, whether found in the Constitution, the statutes or judicial records"); Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 40, 172 N.E.2d 526, 528, 211 N.Y.S.2d 133, 136 (1961) (damage limitation of place of wrong against forum's public policy of allowing full recovery, defined in the forum's constitution).

[33] See Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963); Dym v. Gordon, 411 Misc. 2d 657, 245 N.Y.S.2d 656 (Sup. Ct. 1963).

[34] RESTATEMENT, CONFLICT OF LAWS § 384, (1934); RESTATEMENT (SECOND), CONFLICT OF LAWS § 379 (Tent. Draft No. 9, 1964, approved May 21, 1964). The introductory note to § 379 of the RESTAREMENT (SECOND) states that "the law selected governs all issues dealt with in Title B (§ 3791-390g)." For example, § 380 provides that "the law selected by application of the rule of § 379 determines the standard of care by which the actor's conduct shall be judged."

The latter approach arbitrarily ignores the often valid interests of another jurisdiction in one or more issues of the case.

The underlying concept of any test that rejects the traditional rules of conflicts seems to be that the forum will avoid, where possible, laws that deny or limit the injured party's recovery. The *Griffith* test places certain limitations on such a policy. The forum may apply the law of another jurisdiction if the forum determines that that jurisdiction has a greater policy reason than the forum in seeing its laws vindicated. Except where the defendant is domiciled in the state, it is questionable if the place of wrong ever has a policy interest in the determination of the amount of recovery, because its policies of limiting recovery have no relationship to the events and parties.[35] Where the defendant is domiciled in the place of wrong, it may have a policy interest in protecting its domiciliary from excessive tort liability.[36] On the other hand, the place of wrong always has a greater interest in requiring a given standard of conduct within its borders.[37] Another limitation on the policy of allowing full recovery is the protection of the defendant's personal interests. If the defendant cannot reasonably protect against the application of the liability of the forum, the forum may apply the law of the place of wrong. In the case of interstate enterprises in general and specifically in the case of air lines, this consideration is meaningless, for such concerns must protect against all forms of liability in all jurisdictions in which they do business.[38] Finally, the *Griffith* test may be used by courts to select the law of the place of wrong where obligations, such as medical

[35] Weintraub, *supra* note 25, at 220, 227. See Grant v. McAuliffe, 41 Cal. 2d 859, 264 P.2d 944 (1953); Schmidt v. Driscoll Hotel, Inc., 249 Minn. 376, 82 N.W.2d 365 (1957); Haumschild v. Continental Cas. Co., 7 Wis. 2d 130, 95 N.W.2d 814 (1959).

[36] See Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961) (place of wrong said to have a policy interest in limiting liability of domiciled air line). See generally Currie, *Conflict, Crisis and Confusion in New York, supra* note 24. It is questionable whether the place of wrong has an interest in protecting its domiciled corporation when that state has no interest in protecting the defendant if the tort occurs in another jurisdiction. Weintraub, *supra* note 25, at 228-29.

[37] Babcock v. Jackson, 12 N.Y.2d 473, 483, 191 N.E.2d 279, 285, 240 N.Y.S.2d 743, 750-51 (1963). Referring to the issue of the defendant's standard of care, the court said: "[I]t is appropriate to look to the law of the place of the tort so as to give effect to that jurisdiction's interest in regulating conduct within its borders, and it would be almost unthinkable to seek the applicable rule in the law of some other place." *Ibid.*

[38] EHRENZWEIG, CONFLICT OF LAWS § 213 (1962).

expenses, are incurred in that jurisdiction, because that jurisdiction has an interest in seeing that the obligations are met. This interest seems relevant only where application of the forum's law would completely deny recovery, because where damage limitations are involved some recovery is always assured if a tort has been committed; hence such obligations will be met regardless of which state's law is applied.

The fact situation in *Griffith* posed an ideal situation for the application of the forum's law. By varying the facts to bring into play any of the limitations that may deny the use of the forum's law, there is created what has been called a true conflicts problem because each state has a valid interest in seeing its laws applied.[39] Under the *Griffith* rationale, if the forum is the domicile of the injured party, the conflict will usually be resolved in favor of the forum, for in balancing the interests and policies in light of the contacts, the forum will give greater weight to its interests and policies than those of another jurisdiction.[40] But if a disinterested forum were to apply the same test, the balancing of the interests and policies would be made without the emphasis on the law of the domicile of the injured parties, and a different conclusion could be reached.[41]

By subjecting the law of conflicts to a test that balances the interests and policies of the states involved in order to yield a socially desirable result, the Pennsylvania court may have opened a

[39] See Currie, *The Disinterested Third State, supra* note 24, at 764. Currie considers Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961), to be an example of a true conflict problem because the forum has an interest in protecting its domiciled plaintiff by granting full recovery and because the place of wrong has an interest in protecting its domiciled corporation, which is also doing business in the state, from unlimited liability. In *Kilberg,* a New York domiciliary was allowed full recovery under New York law as a matter of public policy in a wrongful death action arising out of a plane crash in Massachusetts. The defendant air line was domiciled in Massachusetts, which limited recovery in wrongful death actions.

[40] See Kilberg v. Northeast Airlines, Inc., *supra* note 39. In Pearson v. Northeast Airlines, Inc., 309 F.2d 553 (2d Cir. 1962) (rehearing in banc), *reversing* 307 F.2d 131 (2d Cir. 1962), *cert. denied,* 372 U.S. 912 (1963), the court held that the result reached in *Kilberg* did not violate the full faith and credit clause of the Constitution because "a state with substantial ties to a transaction in dispute has a legitimate constitutional interest in the application of its own rules of law." 309 F.2d at 559. *Cf.* Richards v. United States, 369 U.S. 1 (1962).

[41] See Skahill v. Capital Airlines, Inc., 234 F. Supp. 906 (S.D.N.Y. 1964); Gore v. Northeast Airlines, Inc., 222 F. Supp. 50 (S.D.N.Y. 1963).

Pandora's box of judicial uncertainty. With the introduction of such a rule, uniform treatment would not be given to a cause of action in all jurisdictions where it might be litigated.[42] Lack of uniformity between jurisdictions encourages forum-shopping to find the jurisdiction with the most advantageous law in which to bring the action.[43] Lack of predictability and certainty lengthens courtroom procedure through drawn-out adjudication of conflict problems.[44] Instability and confusion enters the field of conflicts under such a rule. On the other hand, the place of wrong rule totally ignores the policy considerations behind the laws of the other jurisdictions having contact with the occurrence. It ignores the interests of the parties by applying the law of a jurisdiction that does not purport to account for their interests. Furthermore, as the court in *Griffith* said, the standard it used is no less clear than the concepts of reasonableness and due process which the courts presently employ.[45]

In deciding to apply the law of the forum, the Pennsylvania court did not avoid the traditional rules by some devious characterization.[46] It chose to overrule the place of wrong rule in favor of a new test now followed by two jurisdictions.[47] The merits of such a test outweigh the place of wrong rule, which is still followed and reaffirmed by a majority of courts, including North Carolina.[48] The ideal conflict of laws rule is one that is uniform and predictable and yet produces just results. The traditional place of wrong rule is predictable and uniform, but its application often leads to unjust and arbitrary results. The *Griffith* test is designed to give socially desirable results. Although it is not uniform and certain at present, sophisticated judicial application of the *Griffith* test to numerous choice of law problems will hopefully produce sound precedents that establish its certainty and uniformity.

RICHARD G. ELLIOTT, JR.

---

[42] See Sparks, *supra* note 29, at 434-35.

[43] *Id.* at 435. *But see* Cravers, *The Changing Choice-of-Law Process and the Federal Court*, 28 LAW & CONTEMP. PROB. 373 (1963).

[44] *Cf.* Texas v. New Jersey, 85 Sup. Ct. 626 (1965).

[45] 203 A.2d at 806.

[46] For possible alternatives the *Griffith* court could have used to avoid overruling the place of wrong rule, see notes 15, 17 & 32 *supra*.

[47] Though other states have avoided the effects of the place of wrong rule, see notes 15-22 *supra*, only New York and Pennsylvania have overruled it.

[48] See, *e.g.*, Shaw v. Lee, 258 N.C. 609, 129 S.E.2d 288 (1963), where the court, when asked to overrule the place of wrong rule, replied, "We do not deem it wise to voyage into such an uncharted sea, leaving behind well established conflict of laws rules." *Id.* at 616, 129 S.E.2d at 293.