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Conflict of Laws -- Choice-of-Laws: The Greatest Interest Rule

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Conflict of Laws—Choice-of-Laws: The Greatest Interest Rule

The vacillating and often conflicting theories regarding choice-of-law[1] that have developed since *Babcock v. Jackson*[2] were reconsidered in the recent New York case of *Miller v. Miller*.[3] In *Miller*, by a four to three decision, the New York Court of Appeals expanded its earlier *Babcock* ruling and adopted a "greatest interest rule" for its choice-of-law conflicts rule. By its new rule the court sought to avoid the anomalies that can occur by adherence to one particular theory or by an *ad hoc* determination of particular cases.

Mr. Earl Miller, a New York resident, was on a business trip in Maine, where he and his brother had mutual business interests. While a passenger in a car driven by his brother and owned by his sister-in-law, Mr. Miller was killed when the vehicle struck a bridge located in Maine. The automobile trip began and was to end in Maine. Later, decedent's brother and sister-in-law, who were Maine residents at the time of the accident, moved to New York state. Thereafter, the decedent's wife commenced in New York a wrongful death action against his brother and sister-in-law. As a partial defense, the defendants asserted the Maine statute that limits wrongful death recoveries to 20,000 dollars, which had been in effect in Maine at the time of the accident, but which had since

[1] When a true conflict exists, commentators have offered different approaches: (a) The forum's law should always be applied to effectuate forum policy, even though the policy of another jurisdiction would thereby be defeated. B. CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS 181-87 (1963) [hereinafter cited as SELECTED ESSAYS]; Currie, *Comments on Babcock v. Jackson, A Recent Development in Conflicts of Laws*, 63 COLUM. L. REV. 1212, 1242-43 (1963) (this collection of comments by several authors on Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963), will be hereinafter cited as *Comments on Babcock v. Jackson*, with a parenthetical indication of the appropriate author). (b) The forum should weigh the interests and apply the dominant one. Reese, *Conflict of Laws and the Restatement Second*, 28 LAW & CONTEMP. PROB. 679, 688 (1963). (c) The law of the state with the most significant relationship should control. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 379 (Tent. Draft No. 9, 1964). (d) Apply the forum's law except when variations are necessary to accommodate the interests of the parties. A. EHRENZWEIG, CONFLICT OF LAWS § 101-20 (1962); *Comments on Babcock v. Jackson* (Ehrenzweig) 1246. (e) Courts should work out rules of preference, applying the "lower standard of conduct or of a financial protection" in the absence of a pre-existing relationship between the parties. D. CAVERS, THE CHOICE-OF-LAW PROCESS 114 (1965) [hereinafter cited as THE CHOICE-OF-LAW PROCESS]; Cavers, *The Two "Local-Law" Theories*, 63 HARV. L. REV. 822 (1950); Weintraub, *A Method for Solving Conflicts Problems*, 21 U. PITT. L. REV. 573, 580 (1960).

[2] 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963).

[3] 22 N.Y.2d 12, 237 N.E.2d 877, 290 N.Y.S.2d 734 (1963).

been repealed.[4] On a motion to dismiss the partial defense, the trial court allowed the motion. The New York Court of Appeals affirmed, choosing New York law, which allowed full and unlimited recovery for a wrongful death action.

In reaching its decision, the court traced the development of its present choice-of-law rule. At the outset it conceded that "candor requires the admission that our past decisions have lacked a precise consistency . . . ."[5] The first case considered by the *Miller* court in its chronological chart was *Babcock*, a 1963 decision.[6] In *Babcock*, the court refused to apply an Ontario guest statute barring recovery because all the parties involved were New York residents; the car was garaged, licensed, and insured in New York; the trip began and was to end in New York; and Ontario was merely the place of the accident. The rule of *Babcock* was that "[j]ustice, fairness, and 'the best practical result' . . . may best be achieved by giving controlling effect to the law of the jurisdiction, which, because of its relationship or contact with the occurrence or the parties, has the greatest concern with the specific issue raised in the litigation."[7] The *Babcock* rule, denominated under such various headings as "grouping of contacts" and "center of gravity,"[8] had its origin in earlier New York tort cases.[9] In a 1954 contracts case the emphasis was put upon the law of the place "which has the most significant contacts with the matter in dispute."[10] *Babcock* unequivocally rejected the traditional choice-of-law rule, *lex loci delicti*, which looked invariably to the substantive law of the place of the tort. The traditional rule "ignores the interest which jurisdictions other than that where the tort occurred may have in the resolution of particular issues."[11] It could be contended that *Babcock* discarded the rigid and mechanical lex loci rule and replaced it with another mechanical rule, *i.e.*, a mere quantitative grouping

[4] No Maine decisions deal with the retroactivity of the amendment, but the prevailing rule is that such amendments are substantive in nature, and, without clear contrary legislation or legislative intent, are not applied retroactively. *See generally* Annot., 98 A.L.R.2d 1105 (1964).

[5] 22 N.Y.2d at —, 237 N.E.2d at 879, 290 N.Y.S.2d at 737.

[6] Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963).

[7] *Id.* at 481, 191 N.E.2d at 283, 240 N.Y.S.2d at 749.

[8] *Id.*

[9] *See* Pearson v. Northeast Airlines, Inc., 307 F.2d 131 (2d Cir. 1962), *reviewed in* Currie, *Conflict, Crises and Confusion in New York*, 1963 DUKE L.J. 1, *noted in* Note, 111 U. PA. L. REV. 371 (1963); Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961), *noted in* Note, *Selection of Law Governing Measure of Damages for Wrongful Death*, 61 COLUM. L. REV. 1497 (1961).

[10] Auten v. Auten, 308 N.Y. 155, 160, 124 N.E.2d 99, 102 (1954).

[11] 12 N.Y.2d 473, 478, 191 N.E.2d 279, 281, 240 N.Y.S.2d 743, 746 (1963).

of contacts whereby the court adds the contacts of the two states and the state with the greatest number of contacts has its law applied. However, in *In re Estate of Crichton*[12] and *In re Estate of Clark*,[13] the court rejected such an approach and stated that "[c]ontacts obtain significance only to the extent that they relate to the policies and purposes sought to be vindicated by the conflicting laws."[14] Thus, the *Miller* case gave the court an opportunity to explain further and demonstrate its rule as it has evolved. The court set forth its new choice-of-law rule as follows:

> [T]he rule which has evolved clearly in our most recent decisions is that the law of the jurisdiction having the greatest interest in the litigation will be applied and the facts or contacts which obtain significance in defining State interests are those which relate to the purpose of the particular law in conflict.[15]

This doctrine might be denominated the "greatest interest rule."

After defining its new rule, the court demonstrated its application. New York, by its Constitution, not only permits full recovery for wrongful death, but also prohibits any legislative act providing otherwise.[16] Thus, New York is vitally concerned with compensating the economic losses of a decedent's family, probably to protect its citizens from becoming wards of the state. Although this substantial New York interest per se might have allowed the courts to apply its law,[17] the new rule required a look into more general considerations, which should concern "a justice-dispensing court in a modern American State."[18]

These countervailing considerations include fairness to the nominal and real party defendant, expectations of the parties, possible interference

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[12] 20 N.Y.2d 124, 228 N.E.2d 799, 281 N.Y.S.2d 811 (1967).

[13] 21 N.Y.2d 478, 236 N.E.2d 152, 288 N.Y.S.2d 993 (1968).

[14] 20 N.Y.2d at 135 n.8, 228 N.E.2d at 806 n.8, 281 N.Y.S.2d at 820 n.8; 21 N.Y.2d at 485-86, 236 N.E.2d at 156, 288 N.Y.S.2d at 998.

[15] 22 N.Y.2d at —, 237 N.E.2d at 879, 290 N.Y.S.2d at 736. *See* Reich v. Purcell, 63 Cal. Rptr. 31, 432 P.2d 727 (1967); Griffith v. United Air Lines, Inc., 416 Pa. 1, 203 A.2d 796 (1964); Wilcox v. Wilcox, 26 Wis. 2d 617, 133 N.W.2d 408 (1965); *Comments on Babcock v. Jackson* (Currie) 1235; Traynor, *Is This Conflict Really Necessary?*, 37 TEXAS L. REV. 657 (1959).

[16] N.Y. CONST. art. I, § 18.

[17] SELECTED ESSAYS 181-87; *Comments on Babcock v. Jackson* (Currie) 1242-43. In the case of an unavoidable conflict between the legitimate interests of two sister states, Professor Currie would have the court apply the law of the forum. Many writers have commented on the Currie approach. *See* Hill, *Governmental Interest and the Conflict of Laws—A Reply to Professor Currie*, 27 U. CHI. L. REV. 463 (1960); Traynor, *Professor Currie's Restrained and Enlightened Forum*, 49 CALIF. L. REV. 845 (1961); Whitman, *Conflict of Spousal Immunity Laws: The Legislature Takes A Hand*, 46 N.C.L. REV. 506 (1968).

[18] Leflar, *Choice-Influencing Considerations in Conflicts Law*, 41 N.Y.U.L. REV. 267, 295 (1966).

with a legitimate interest of a sister state, and the prevention of forum shopping. First, it would be unfair for the forum to apply its law to a party patterning his conduct upon another state's statute; however, in *Miller* the Maine statute limiting a wrongful death recovery is remedial in nature, obviously, and not a statute upon which a person would rely in governing his conduct. Second, the liability insurer, the real party in interest, might be harmed by the application of New York law. The court found through an analysis of the actuarial process and information gathered from the Insurance Commission of Maine that the presence of the 20,000 dollars limitation had no substantial effect on insurance rates, and that refusing to apply Maine law would have little, if any, effect on the insurance premiums in Maine.[19] Third, as to the expectations of the parties, the court considered it an obvious fiction that parties rely on certain statutes and expect their application in a lawsuit.[20]

> Though our nation is divided into fifty-one separate legal systems, our people act most of the time as if they live in a single one. They suffer from a chronic failure to take account of the differences in state laws.[21]

There are few speculations more difficult than assessment of the expectations of parties as to the laws applicable to their activities, and this is especially true when the expectations relate to the law of torts.[22] Fourth, Maine by its statutory limitation, showed a desire to protect its residents in wrongful death actions. The fact that the defendants in *Miller* were no longer Maine residents meant to the court that to apply New York law would not unduly interfere with a legitimate interest of Maine in regulating the rights of its citizens, since no judgment would be entered against a Maine resident. Finally, a court might ignore a change in domicile to prevent forum shopping, but apparently the court found that the defendants' move to New York was not made to achieve a more favorable legal climate. The *Miller* court compiled these various contacts relating them to the countervailing interests and expectations of the parties and of the two states. This approach is vastly different from a mere numerical or quantitative grouping of contacts and from the mechanical application of the law of the place of the tort.

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[19] 22 N.Y.2d at —, 237 N.E.2d at 882, 290 N.Y.S.2d at 740. *See* Morris, *Enterprise Liability and the Actuarial Process—The Insignificance of Foresight*, 70 YALE L.J. 554, 560-81 (1961).

[20] 22 N.Y.2d at —, 237 N.E.2d at 883, 290 N.Y.S.2d at 741.

[21] THE CHOICE-OF-LAW PROCESS 119.

[22] *Id.* at 302. *See also* Traynor, *Conflict of Laws in Time*, 1967 DUKE L.J. 713, 715.

Due to the myriad of writers and rules in the choice-of-law area, the "greatest interest rule," as defined in *Miller*, may still be misunderstood. Such potential misunderstanding is aptly demonstrated in the dissenting opinions in *Miller*. Two dissenters would have applied Maine law under either the "significant contacts rule" of *Babcock*, the principle of preference, or the newly emerging "greatest interest rule." The significant contacts in *Miller* would be that Maine was the place of the accident; the car was licensed and garaged in Maine; the trip was wholly in Maine; the trip was connected with Maine business; and, decedent's stay in Maine was not transient but was one of several recurring sojourns in connection with a business in Maine. Thus, Maine law would be applied under the *Babcock* doctrine since Maine had the most significant contacts.[23] As to Professor Caver's approach to a principle of preference,[24] both Maine and New York have an interest in applying their rules regarding damages, and therefore a true conflict exists. Under this analysis, the "lower standard of conduct or of a financial protection" of the state where defendant acted and the injury occurred should be applied in the absence of a previously existing relationship between the parties.[25] Lastly, these dissenters felt the majority had applied the interest analysis too rigidly and had given too much weight to the domicile of the parties seeking recovery. The dominant consideration in adjudication of multistate transactions is the "reasonable expectations of persons participating in transactions,"[26] since this lends justice to the determination. The majority, as previously mentioned, rejected the reasonable expectation argument as being based upon an obvious fiction that it is possible in tort cases to assess the parties' expectations of what law governs their actions.

In their consideration of the greatest interest rule, the dissenters thought the majority had adopted Professor Currie's approach of governmental interest analysis, which leads to the conclusion that a party carries most of the defenses and rights of his domiciliary law about with him.[27] States then must apply their law to protect legitimate objects of

[23] Babcock v. Jackson, 12 N.Y.2d 473, 481, 191 N.E.2d 279, 283, 240 N.Y.S.2d 743, 749 (1963).

[24] THE CHOICE-OF-LAW PROCESS 114-138; Cavers, *The Two "Local Law" Theories*, 63 HARV. L. REV. 822 (1950); Cavers, *A Critique of the Choice-of-Law Problem*, 47 HARV. L. REV. 173 (1933).

[25] See THE CHOICE-OF-LAW PROCESS 114; note 1(e) *supra*.

[26] 22 N.Y.2d at —, 237 N.E.2d at 886, 290 N.Y.S.2d at 747. *See* Rheinstein, Book Review, 32 U. CHI. L. REV. 369 (1965).

[27] 22 N.Y.2d at —, 237 N.E.2d at 885, 290 N.Y.S.2d at 746. For Professor Currie's analysis of the governmental interest approach, see SELECTED ESSAYS 183-84.

their legislative concern.[28] Professor Currie would have the court inquire into the policies of the respective conflicting laws and then "inquire into the circumstances in which it is reasonable for the respective states to assert an interest in the application of those policies."[29] Yet, after the above construction and interpretation, if there is still a "conflict between the legitimate interests of the two states, . . . [Currie would] apply the law of the forum."[30] Certainly, the majority adopted aspects of several approaches, and in applying the rule illustrated the duty of a court to compare all countervailing considerations. The New York "greatest interest rule" then is more flexible than Professor Currie's approach, while containing similar features. The rule adequately analyzes the forum's relationship to the case in terms of possible forum interests and adds a flavor of individualized justice in its countervailing considerations.

North Carolina has not entered the battleground of the conflicting choice-of-law rules, choosing instead to retain the traditional *lex loci delicti* rule.[31] The reason for not abandoning lex loci is probably based upon a desire for stability and predictibility through stare decisis, and a desire that the legislature make any change in the present conflicts rule. In 1967, the North Carolina General Assembly did modify the state's traditional rule as it applies to spousal immunity.[32] It is evident that the North Carolina courts will not venture into what it has termed a "voy-

[28] *See* SELECTED ESSAYS 183-84; Currie, *Survival of Actions: Adjudication Versus Automation in the Conflict of Laws*, 10 STAN. L. REV. 205, 221-22 (1958).

[29] *Comments on Babcock v. Jackson* (Currie) 1242.

[30] *Id.* at 1242-43.

[31] The reports are filled with cases that praise and follow lex loci. *See, e.g.*, Hutchins v. Day, 269 N.C. 607, 153 S.E.2d 132 (1967); Petrea v. Ryder, 264 N.C. 230, 141 S.E.2d 278 (1965); Doss v. Seawell, 257 N.C. 404, 125 S.E.2d 899 (1962); Harper v. Harper, 225 N.C. 260, 34 S.E.2d 185 (1945). *See* Wurfel, *Conflict of Laws, Survey of North Carolina Case Law*, 44 N.C.L. REV. 923 (1966). This traditional, mechanical choice of law rule of *lex loci delicti*, embodied in the first RESTATEMENT OF CONFLICT OF LAWS § 383 (1934), is that the substantive rights and liabilities arising out of a tortious occurrence are determinable by the law of the place of the tort. It has as its conceptual foundation the vested rights doctrine, namely, that a right to recover for a foreign tort owes its creation to the jurisdiction where the injury occurred and depends for its existence and extent solely on such law. Professor Beale explained that "[i]t is impossible for a plaintiff to recover in tort unless he has been given by some law a cause of action in tort; and this cause of action can be given only by the law of the place where the tort was committed. That is the place where the injurious event occurs, and its law is the law therefore which applies to it." 2 J. BEALE, CONFLICT OF LAWS § 378.1 (1935).

[32] N.C. GEN. STAT. § 52-5.1 (Supp. 1967). This statute and its implications upon existing choice-of-law doctrines has been discussed by Professor Whitman. He considers the Currie governmental interest analysis in depth and concludes that the legislature should further consider the choice-of-law problem on a case-by-case, fact-by-fact basis. *See* Whitman, *supra* note 17, at 519.

age into . . . an uncharted sea,"[33] preferring the comfortable predictibility of stare decisis to individualized justice. In this still inchoate area of law, however, a case-by-case development of rules without rigid adherence to any one theory is necessary in order to establish sound principles. "The objective is to achieve justice in a particular case and cases of like kind, avoiding ideology, on the one hand, and particularistic result-oriented determinations, on the other."[34] This rational approach would end ad hoc decisions. If a court, choosing between particular state laws, can identify the policies embodied in those laws and determine if a true conflict exists,[35] then it should use the facts or contacts to determine which state has a better claim, giving weight to the parties' expectations and other countervailing considerations. A few wide-sweeping rules could thus be avoided. This process would give hope that decisions founded upon discriminating assessments of policies and expectations will slowly build up a body of differentiated rules to which courts can adhere, bringing predictibility back into play. North Carolina for the present is content with lex loci. Perhaps a rule so well defined as the "greatest interest rule" will cause the court to reassess its status quo position and perceive the possible individualized justice for each case and a possible predictibility therein.

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Constitutional Law—Reapportionment—One Man, One Vote Applied to Local Governing Bodies

The one man, one vote rule of the United States Supreme Court has been described as "the symbol of an aspiration for fairness, for avoidance of complexity and for intelligibility in our representational processes in our mass democracy."[1] By *Avery v. Midland County*,[2] the Court has expanded the equal representation concept of *Reynolds v. Sims*[3] and its

[33] Shaw v. Lee, 258 N.C. 609, 616, 129 S.E.2d 288, 293 (1963).

[34] 22 N.Y.2d at —, 237 N.E.2d at 890, 290 N.Y.S.2d at 752. *See also* THE CHOICE-OF-LAW PROCESS 121-23.

[35] *See generally*, Traynor, *supra* note 15; Comment, *False Conflicts*, 55 CALIF. L. REV. 74 (1967).

[1] Dixon, *Reapportionment Perspectives: What Is Fair Representation?*, 51 A.B.A.J. 319, 324 (1965).

[2] 390 U.S. 474 (1968).

[3] 377 U.S. 533 (1964). The Court said:

> [W]e conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators.