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Conflict of Laws—Survival of Support and the Uniform Reciprocal Enforcement of Support Act

" 'Confusion now hath made his masterpiece,' "[1] said Justice Jackson, referring to the legal chaos engendered by the often conflicting matrimonial laws of the various states. When further complicated by the well-trod path to a foreign jurisdiction and a quick, *ex parte* divorce, more often than not the domestic and divorce laws of the respective states, rather than the spouses, become entwined in "holy deadlock."[2]

Perhaps the Rhode Island Supreme Court has begun to apply the sword to the Gordian knot of legal problems that surround a foreign *ex parte* divorce decree and its effect upon prior and subsequent support proceedings. In *Rymanowski v. Rymanowski*,[3] the court utilized the concept of "divisible divorce"[4] to uphold the validity of the husband's *ex parte* Nevada divorce decree and, at the same time, granted the wife survival of a prior Massachusetts support order on the public policy grounds that underlie the Uniform Reciprocal Enforcement of Support Act (URESA).[5] The uniqueness of this decision is found in the fact that under Massachusetts law the right to support granted in a prior support order does not survive a final divorce decree.[6] It may well be that in reaching its decision, the Rhode Island court, by implication, has proved the obsolescence of the normal conflict-of-laws rule in this area of matrimonial jurisprudence.

After nine years of marriage, Joseph Rymanowski left his marital domicile of Massachusetts and resided in Rhode Island. He commenced divorce proceedings against his wife, Mary, in Massachusetts in August, 1962. Although his prayer for divorce was denied, the Massachusetts court ordered Joseph to pay $180 per month for her support.

Shortly after his retirement from the Navy, Joseph's search for employment led him to Nevada. He arrived in Las Vegas on June 7, 1965, and filed for divorce there on July 20, 1965. Although Mary received

[1] Rice v. Rice, 336 U.S. 674, 676 (1949) (dissenting opinion) *quoted in* Baer, *The Aftermath of Williams vs. North Carolina*, 28 N.C.L. REV. 265, 289 (1950).
[2] A. HERBERT, HOLY DEADLOCK (1934).
[3] — R.I. —, 249 A.2d 407 (1969).
[4] Estin v. Estin, 334 U.S. 541, 549 (1948).
[5] — R.I. at —, 249 A.2d at 412. *See* R.I. GEN. LAWS ANN. §§ 15-11-1 to -32 (1956). *See generally* N.C. GEN. STAT. §§ 52A-1 to -20 (1966); UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT, §§ 1-43 (1958 version) in 9C UNIFORM LAWS ANN. (Supp. 1967).
[6] MASS. GEN. LAWS ANN., ch. 209, § 32 (Supp. 1969) *construed in* Rosa v. Rosa, 296 Mass. 271, 5 N.E.2d 417 (1936).

notice of the pending suit, she did not make an appearance. Joseph secured a divorce decree in the Nevada district court in August, 1965. The decree omitted any provision for Mary's support. Joseph returned to Rhode Island in November, 1965, and subsequently remarried.

Upon learning of the Nevada decree, Mary instituted a declaratory judgment proceeding in Massachusetts to determine her marital status. Joseph did not appear in this proceeding although he received notice by publication. In December, 1965, the Massachusetts court adjudged that Joseph's Nevada divorce was invalid and that he was still married to Mary.

Mary then commenced support proceedings against Joseph in Massachusetts under the Massachusetts version of the URESA.[7] Both parties appeared in the Rhode Island family court. Joseph contended that he owed Mary no duty of support, since under the Nevada divorce decree she was no longer his wife. The trial court found that Joseph was a bona fide domiciliary of Nevada at the time of the divorce, which therefore was entitled to full faith and credit, and dismissed Mary's petition for support. On appeal, the Rhode Island Supreme Court held that Joseph's Nevada divorce decree was valid, but that Mary was entitled to survival of support on the public policy grounds that underlie the URESA.[8]

A brief examination of the evolution of the doctrine of "divisible divorce" will be beneficial in order to appreciate the significance of the court's disposition of the case.[9]

In *Williams v. North Carolina*,[10] the State of North Carolina relied on the ruling in *Haddock v. Haddock*[11] in prosecuting a couple for bigamous cohabitation. After abandoning their respective spouses, the couple obtained *ex parte* Nevada divorces and married each other there before returning to North Carolina. Reversing their convictions, the

[7] MASS. GEN. LAWS ANN., ch. 273A, §§ 1-17 (1954). For an explanation as to the procedural nuances of the URESA see Brokelbank, *The Problem of Family Support: A New Uniform Act Offers A Solution*, 37 A.B.A.J. 93 (1951); Note, *The Uniform Reciprocal Enforcement of Support Act: Procedural Problems and a Technological Solution*, 41 TEMP. L.Q. 325 (1968); 44 TEXAS L. REV. 814 (1966).

[8] R.I. GEN. LAWS ANN. §§ 15-11-1 to -32 (1956).

[9] The United States Supreme Court first grappled with *ex parte* divorce decrees in Atherton v. Atherton, 181 U.S. 155 (1901), and Haddock v. Haddock, 201 U.S. 562 (1906), where it held that a divorce decree was entitled to full faith and credit only when entered by a forum that had personal jurisdiction over both parties or by a court of the state wherein the parties were married.

[10] 317 U.S. 287 (1942). *See* Baer, *supra* note 1.

[11] 201 U.S. 562 (1906). *See* note 9 *supra*.

Supreme Court expressly overruled *Haddock*[12] and held that *ex parte* divorce decrees are to be accorded full faith and credit despite the fact that the abandoned spouse was neither served with notice nor appeared in the state that decreed the divorce. However, the Court expressly reserved the question of whether North Carolina had to accord full faith and credit to the Nevada decree when it in fact found that no bona fide domicile was established in Nevada.[13]

The Supreme Court dealt with this question in the second *Williams v. North Carolina*[14] case (*Williams II*). North Carolina had secured convictions of the couple based on a finding that they had not established a bona fide domicile in Nevada. The Supreme Court affirmed the convictions, holding that full faith and credit did not preclude North Carolina from examining the jurisdictional facts to determine if a bona fide domicile had indeed been established in Nevada.[15]

Estin v. Estin[16] is the case generally credited with setting forth the doctrine of "divisible divorce."[17] In *Estin* the husband established a valid domicile in Nevada, obtained an *ex parte* divorce, and promptly ceased the support payments to his wife that had been ordered by a prior New

[12] 317 U.S. at 304.

[13] *Id.* at 302.

[14] 325 U.S. 226 (1945). *See* Powell, *And Repent At Leisure*, 58 HARV. L. REV. 930 (1945). The rule that an *ex parte* divorce decree granted by a foreign state may be collaterally attacked by proving that the spouse who obtained the decree was not in fact domiciled in the granting state has been subsequently restricted by the Supreme Court. The later cases hold that if both parties appeared in the original proceeding the finding of domicile becomes res judicata and may not be collaterally attacked even if the issue of domicile was not in fact contested. Cook v. Cook, 342 U.S. 126 (1951); Johnson v. Muelberger, 340 U.S. 581 (1951); Sherrer v. Sherrer, 334 U.S. 343 (1948); Coe v. Coe, 334 U.S. 278 (1948). *See* Carey & MacChesney, *Divorces By The Consent Of The Parties And Divisible Divorce Decrees*, 43 ILL. L. REV. 608, 611 (1948).

[15] On the same day that *Williams II* was decided, the Court handed down its decision in Esenwein v. Commonwealth *ex rel.* Esenwein, 325 U.S. 279 (1945). In this case the husband contended that his obligation to furnish support to his wife under a prior Pennsylvania support order terminated when he obtained an *ex parte* Nevada divorce. The Court held that under *Williams II*, the wife could defeat this contention by showing that the husband had not established domicile in Nevada.

[16] 334 U.S. 541 (1948). See Baer, *The Law of Divorce Fifteen Years After Williams v. North Carolina*, 36 N.C.L. REV. 265 (1958); Morris, *Divisible Divorce*, 64 HARV. L. REV. 1287 (1951).

[17] As early as 1869 the Ohio Supreme Court upheld a wife's alimony award when her husband asserted his *ex parte* divorce in bar of her claim. The court said, "It is not essential to the allowance of alimony that the marriage relation should subsist up to the time it is allowed." Cox v. Cox, 19 Ohio St. 502, 512 (1869). Also, it appears that Justice Douglas in *Esenwein* foreshadowed the result reached in *Estin*. *See* 325 U.S. 279, 282 (1945) (concurring opinion).

York decree. Upon being sued in New York for arrearages, the husband pleaded his Nevada divorce in bar of his wife's claim. Stating that New York had a legitimate interest in the wife's right to support "lest she become a public charge,"[18] the Supreme Court held that the prior New York support order was a property right belonging to the wife and that this right could not be taken away by a court lacking personal jurisdiction over her. "The result in this situation is to make the divorce divisible—to give effect to the Nevada decree insofar as it affects marital status and to make it ineffective on the issue of alimony."[19]

The decision left undecided the effect of an *ex parte* divorce on a subsequent support order. The Court dealt squarely with this question in *Vanderbilt v. Vanderbilt*.[20] Mrs. Vanderbilt left her marital domicile of California and moved to New York before her husband obtained an *ex parte* Nevada divorce. After the Nevada decree was entered, she commenced support proceedings in New York. Mr. Vanderbilt appeared, contending that the Nevada divorce terminated his obligation to support his wife. The New York Court of Appeals held that while the decree terminated the marital status, it did not extinguish Mrs. Vanderbilt's right to support under a New York statute authorizing support after divorce.[21] The Supreme Court affirmed. The majority relied on the due process considerations enunciated in *Estin*—that a court could not proceed to extinguish a property right without having personal jurisdiction over the individual.[22] Since the Nevada court lacked personal jurisdiction over Mrs. Vanderbilt, it could not terminate her right to secure financial support from her husband under New York law.

The Rhode Island Supreme Court drew on many of the principles enunciated in the aforementioned cases in reaching its decision in *Ryma-*

[18] 334 U.S. 541, 547 (1948).
[19] *Id.* at 549.
[20] 354 U.S. 416 (1957).
[21] *See* N.Y. DOM. REL. LAW § 236 (McKinney 1964), *as amended* (McKinney Supp. 1968). This section incorporates the language of N.Y. CIV. PRAC. ACT § 1170-b (1963), which was in effect at the time *Vanderbilt* was decided.
[22] *But see* Simons v. Miami Beach First Nat'l Bank, 381 U.S. 81 (1965), where the Court held that Florida could constitutionally extinguish an absent spouse's dower interest in Florida property by means of an *ex parte* divorce obtained by the husband in Florida. Justice Harlan concurred on the ground that the Court's opinion constituted a partial retreat from *Vanderbilt*. *Id.* at 86-87. Justices Douglas and Black, concurring, rejected the notion that *Simons* was a retreat from *Vanderbilt* and argued that the dower right "simply never came into existence." *Id.* at 88. *See generally* Currie, *Suitcase Divorce In The Conflict of Laws*, 34 U. CHI. L. REV. 26 (1967). *See also* Note, *Divorce Ex Parte Style*, 33 U. CHI. L. REV. 837, 844 (1966), wherein it is submitted that dower is a valuable property right entitled to due process protection.

nowski. The court, citing *Williams II* as its authority for examining Joseph's domiciliary intent, held that he had indeed established domicile in Nevada, and that therefore his divorce was valid. As to the question of Mary's right to support, the court employed the concept of "divisible divorce" enunciated in *Estin*: While Joseph's *ex parte* divorce was effective in terminating the marital status, it was wholly ineffective in terminating Mary's right to support.

Turning to the law of Rhode Island, the court stated that a wife's right to alimony survives a valid divorce, subject only to the defenses of laches and waiver.[23] It matters little, continued the court, whether Mary's claim is denominated "alimony" or "support"; what matters is that a husband should not be relieved of his responsibilities to his abandoned spouse. Following the "course of equity," the court felt no hesitancy in holding that a wife's right to support continues undiminished when her spouse leaves the state and obtains a foreign *ex parte* divorce.[24]

The court declared that the purpose of the URESA[25] was to remedy the deplorable situation that exists when an individual abandons his dependents and leaves them to fend for themselves. To that end, the court believed the statute should be liberally construed: To deny Mary her due support would nullify the legislature's efforts.[26]

The normal conflict-of-laws rule is that a disinterested forum[27] will look to the law of the wife's domicile as determinative of her right to survival of support.[28] If the laws of her domicile afford her survival of support, then the forum state will do likewise. The court recognized but refused to follow this procedure because (1) no evidence of Massachusetts law was before the court and it would not, sua sponte, notice judicially the laws of a foreign state, and (2) it could not ignore the public policy evidenced by Rhode Island's adoption of the URESA.[29]

[23] Wilford v. Wilford, 38 R.I. 55, 94 A. 685 (1915).
[24] — R.I. —, 249 A.2d 407, 413 (1969).
[25] R.I. GEN. LAWS ANN. §§ 15-11-1 to -32 (1956).
[26] — R.I. —, 249 A.2d 407, 413 (1969).
[27] The term "disinterested forum" refers to the situation whereby Rhode Island looks to the laws of Nevada and the laws of Massachusetts as being dispositive of the case. This situation is distinguished from the one in which the forum state is concerned with the laws of only one other state.
[28] *E.g.*, Lewis v. Lewis, 49 Cal. 2d 389, 394, 317 P.2d 987, 991 (1957); Worthley v. Worthley, 44 Cal. 2d 465, 468, 283 P.2d 19, 21 (1955). It is interesting to note that in each of these cases the laws of the wife's domicile afforded her survival of support. *See also* Krauskopf, *Divisible Divorce And Rights To Support, Property And Custody*, 24 OHIO ST. L.J. 346, 355 (1963); Morris, *supra* note 16, at 1301-03; Paulsen, *Support Rights And An Out-of-State Divorce*, 38 MINN. L. REV. 709, 717 (1954).
[29] — R.I. —, 249 A.2d 407, 412 (1969).

What is the Massachusetts law that the court refused to notice judicially? Apparently, Massachusetts adheres to the principle that support is dependent upon the existence of a marital relationship.[30] When that relationship is terminated, the obligation to continue support payments under a prior order also ends.[31]

There are several practical reasons behind the court's refusal to follow normal conflict-of-laws procedure. For one thing, to have held invalid the Nevada divorce would have bastardized the issue of Joseph's second marriage. For another, the court, by granting survival of support to Mary, perhaps desired to prod Massachusetts into joining the weight of authority.[32] And from a practical standpoint, the court probably desired to avoid making Rhode Island into a haven for deserting husbands from Massachusetts.

Although the result in *Rymanowski* may well be socially desirable,[33]

[30] Ingersoll v. Ingersoll, 348 Mass. 209, 210-11, 202 N.E.2d 820, 821 (1964); Rosa v. Rosa, 296 Mass. 271, 272, 5 N.E.2d 417, 418 (1936). *But see* Adams v. Adams, 338 Mass. 776, 157 N.E.2d 405 (1959).

[31] There are several other jurisdictions, albeit a distinct minority, that also afford a wife no survival of support after entry of a final divorce decree terminating the marital relationship. *See* Yates v. Yates, 155 Conn. 544, 547, 235 A.2d 656, 658 (1967); Meeks v. Meeks, 209 Ga. 588, 591, 74 S.E.2d 861, 864 (1953); Shaw v. Shaw, 92 Iowa 722, 728, 61 N.W. 368, 371 (1894) (by implication); Lowry v. Lowry, 174 Kan. 526, 529, 256 P.2d 869, 871 (1953); Walker v. Walker, 246 La. 407, 415, 165 So. 2d 5, 8 (1964); Upham v. Upham, 238 Md. 261, 265, 208 A.2d 611, 613 (1965); Anglin v. Anglin, 211 Miss. 405, 51 So. 2d 781 (1951) (by implication); Hanna v. Hanna, 224 Mo. App. 1142, —, 32 S.W.2d 125, 126 (1930); Brown v. Brown, — Ore. —, —, 437 P.2d 845, 847 (1968); Lorusso v. Lorusso, 189 Pa. Super. 403, 406, 150 A.2d 370, 372 (1959); Loeb v. Loeb, 118 Vt. 474, 484, 114 A.2d 518, 526 (1955); Brady v. Brady, 151 W. Va. 900, —, 158 S.E.2d 359, 364, 366-67 (1967).

Most support statutes refer to a "wife" and "husband." This has been judicially construed by some courts to mean that the marriage relationship must be in existence in order for the wife to qualify for support. Paulsen, *supra* note 28, at 712.

It has been pointed out that statutes concerning a wife's right to support were enacted in the pre-*Williams* I era when the states felt no need to protect their domiciliaries from foreign *ex parte* divorces. Support was incidental to local decrees of separation and divorce. Hence, the statutes were not intended to deprive a wife of support should her husband obtain a foreign *ex parte* divorce. *See* Note, *Divisible Divorce*, 76 HARV. L. REV. 1233, 1241 (1963).

[32] Hudson v. Hudson, 52 Cal. 2d 735, 344 P.2d 295 (1959). See Note, *Conflict of Laws: Divisible Divorce in California—Hudson v. Hudson*, 48 CALIF. L. REV. 303 (1960). *See generally* Annot., 28 A.L.R.2d 1378 (1953).

[33] Query: Is there a likelihood that Joseph may become a public charge of Rhode Island due to the fact that he must now support two families? *But see* Griffin v. Griffin, 327 U.S. 220 (1946): If enforcement of the wife's rights jeopardizes the welfare of the husband or of his newly acquired family, a support order usually can be modified on the ground of changed circumstances. *Id.* at 238 (dissenting opinion).

the decision raises serious problems of full faith and credit.[34] At the outset one is confronted with the question of whether Rhode Island should have given full faith and credit by judicial notice to the Massachusetts statute terminating the wife's right to support.[35] While there is some authority suggesting that foreign statutes be given full faith and credit,[36] the general rule is that there is no federal constitutional mandate requiring that extra-territorial effect be given the statutory law of a sister state.[37]

Rhode Island has adopted the Uniform Judicial Notice of Foreign Law Act,[38] the purpose of which is to provide an expedient means of

[34] U.S. CONST. art. IV, § 1, provides in part:

> Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

28 U.S.C. § 1738 (1964) provides in part:

> Such Act, records, and judicial proceedings [of any State, Territory, or Possession] or copies thereof, so authenticated, shall have the same full faith and credit within . . . the United States and its territories and Possessions as they have by law or usage in the courts of such State, Territory or possession from which they are taken.

[35] The court cites Potemkin v. Leach, 65 R.I. 1, 13 A.2d 250 (1940), as authority for refusing to notice judicially Massachusetts law. This was a tort case wherein the court, without citing any precedent or supporting authority, said:

> The plaintiff contends in his brief that the Connecticut law applies to this case; but there was no evidence introduced that the law of that state . . . was any different from that of Rhode Island. Hence, if Connecticut law should be applied, we must assume that the applicable law of that state is the same as the law of this state on this subject.

Id. at 8, 13 A.2d at 254. *But see* Paine v. Schenectady Ins. Co., 11 R.I. 411 (1877), where the court said:

> The first question is, whether we can take judicial cognizance of the law of New York, or must presume it to be the same as ours until it is shown . . . to be different. The decisions upon this point are conflicting, but we think . . . State of Ohio v. Hinchman, 27 Pa. St. 479, rests upon the better reason. The court there held that, when the judgment impleaded is the judgment of a sister state, the court will notice *ex officio* the law of the state in which it was rendered . . . We think the reasoning is sound, and that it is not satisfactorily met by courts which adopt a different view.

Id. at 415-16.

[36] The Constitution requires full faith and credit to be given to the public acts, as well as to the records and judicial proceedings of other states. Although Congress has not prescribed the effect to be given statutes in other states, as it did in the case of records and judgments, this has not prevented the Supreme Court from requiring their recognition; with regard to statutes, the Court has apparently considered the clause self-executing. H. GOODRICH, CONFLICT OF LAWS 609 n.22 (3d ed. 1949).

[37] Pacific Employers Ins. Co. v. Industrial Accident Comm'n, 306 U.S. 493 (1939); Western Life Indem. Co. v. Rupp, 235 U.S. 261 (1914); Tennessee Coal, Iron, & R.R. v. George, 233 U.S. 354 (1914).

[38] R.I. GEN. LAWS ANN. §§ 9-19-2 to -8 (1956).

ascertaining the law of any other state.[39] A literal reading of the first section of the Act would require Rhode Island to notice judicially Massachusetts law.[40] While there is authority that a court may take judicial notice of foreign law on its own initiative,[41] the Act has also been interpreted as imposing no obligation on a court to do so;[42] and many states require that the foreign law not only be brought to the court's attention by way of pleadings or allegations in the brief, but that reasonable notice be given to the adverse party as well.[43] Rhode Island apparently adheres to this latter principle, and failure to provide reasonable notice will result in the application of the law of Rhode Island.[44]

An additional threshold issue is whether the full faith and credit clause demands that Rhode Island be bound by the Massachusetts declaratory judgment that Joseph's Nevada divorce was invalid. Although " '[t]he principles of *res judicata* apply to questions of jurisdiction as well as to other issues,' "[45] it should be noted that the declaratory judgment action was wholly *ex parte*; and Rhode Island could therefore legitimately inquire into the jurisdictional facts of Joseph's Nevada domicile under the broad language of *Williams II*.[46]

Another problem is that the court, by granting Mary survival of support, impliedly gives full faith and credit to the prior Massachusetts support order. The court thus runs afoul of the traditional limitation that only final and conclusive judgments are entitled to full faith and credit[47] as well as the rule that a duty of support imposed by one state "is of no special interest to other states and . . . is not enforceable elsewhere under principles of the Conflict of Laws."[48] However, it is widely

[39] Cliff v. Pinto, 74 R.I. 369, 375, 60 A.2d 704, 707 (1948).

[40] R.I. GEN. LAWS ANN. § 9-19-3 (1956), provides: "Every court of this state shall take judicial notice of the common law and statutes of every state, territory and other jurisdiction of the United States."

[41] *E.g.*, Strout v. Burgess, 144 Me. 263, 68 A.2d 241 (1949).

[42] *E.g.*, Scott v. Scott, 153 Neb. 906, 46 N.W.2d 627 (1951).

[43] *E.g.*, Leatherbury v. Leatherbury, 233 Md. 344, 196 A.2d 883 (1964).

[44] Cliff v. Pinto, 74 R.I. 369, 60 A.2d 704 (1948).

[45] Treinies v. Sunshine Mining Co., 308 U.S. 66, 78 (1939), *quoting* American Sur. Co. v. Baldwin, 287 U.S. 156, 166 (1932).

[46] "To permit the necessary finding of domicile by one State to foreclose all States in the protection of their social institutions would be intolerable." Williams v. North Carolina, 325 U.S. 226, 232 (1945). *But see* Baer, *supra* note 16, at 268: "Whether any other state, or any interested person who was not a party to the Nevada proceedings would have the same privilege that was accorded to North Carolina was not decided in *Williams 2nd.*"

[47] Sistare v. Sistare, 218 U.S. 1 (1910).

[48] RESTATEMENT OF CONFLICT OF LAWS § 458, comment *a* (1934). The incorrectness of this provision is recognized in RESTATEMENT (SECOND) OF CONFLICT OF LAWS (Tent. Draft No. 10, 1964).

recognized that one state may honor another state's support order as a matter of comity.[49]

Although the Rhode Island court reached a decision in *Rymanowski* that is desirable in light of today's mobile society, one can only speculate as to the final outcome had evidence of Massachusetts law been before the court. It is submitted that the outcome would have been the same and that the Rhode Island court has determined not to follow the usual conflicts rule of the spouse's domicile being determinative of her right to survival of support.[50]

It is arguable that Rhode Island was in reality an ordinary forum rather than a disinterested one[51] because Nevada really had no compelling interest in the litigation, other than the efficacy of its *ex parte* divorce decree. By the court's upholding the validity of Nevada's divorce decree, the interests of that state were entirely accommodated. On the other hand, Rhode Island had a compelling interest in the suit because Joseph, his second wife, and his child of that marriage were domiciled there. In upholding Joseph's *ex parte* divorce, the court protected an interest of Rhode Island—preventing the issue of Joseph's second marriage from being bastardized. Massachusetts likewise had a compelling interest in the litigation—that Mary be furnished with support sufficient to prevent her becoming a public charge. By granting Mary survival of support, Rhode Island accommodated this interest. If Rhode Island could deem itself cast in the role of an ordinary forum, under the URESA it could look to its own law as dispositive of the issue of support,[52] thus reaching the same result obtained in *Rymanowski.*

Moreover, the court could have grounded its decision strictly on the language of the URESA, and avoided the normal conflicts rule.[53] The policy that the Act stresses is that a husband should not be capable of extinguishing his obligation to support his dependents by the simple

[49] RESTATEMENT (SECOND) OF CONFLICT OF LAWS (Tent. Draft No. 10, 1964) § 436(a)(2). *See also* Note, *Interstate Enforcement of Modifiable Alimony And Child Support Decrees,* 54 IOWA L. REV. 597, 600 n.27 (1969).

[50] See note 28 *supra.*

[51] See note 27 *supra.*

[52] Wheeler v. Wheeler, 196 Kan. 697, 414 P.2d 1 (1966); Lambrou v. Berna, 154 Me. 352, 148 A.2d 697 (1959); Rosenberg v. Rosenberg, 152 Me. 161, 125 A.2d 863 (1956); Daly v. Daly, 21 N.J. 599, 123 A.2d 3 (1956); Green v. Green, 309 P.2d 276 (Okla. 1957); Bjorgo v. Bjorgo, 402 S.W.2d 143 (Tex. 1966).

[53] R.I. GEN. LAWS ANN. § 15-11-2(6) (1956) provides: "Duty of support includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise."

expedient of crossing state lines. The language of the Act purports to give a mandate to the responding state (Rhode Island) to utilize its laws to determine whether a duty of support exists.[54] If under the laws of the responding state a duty of support is found, it is not necessary that the responding state look to the laws of the abandoned spouse's domicile to determine her survival rights; it can look to its own laws. Hence, the judge-made conflict rule applying the law of the wife's domicile should not survive under uniform support legislation.

There is authority that a wife should not be allowed to migrate to a foreign forum in order to seek the benefits of its more favorable support laws after the husband has secured an *ex parte* divorce.[55] To allow her to do so would violate the substantive due process rights of the husband.[56] It is conceivable that Rhode Island has in fact allowed the wife to "migrate" to its forum, figuratively speaking, in order to benefit from its laws, which afford her survival of support. Rhode Island thus obviates the necessity of the wife's literally migrating to a forum in order to secure survival of support and enables her to avoid the due process problems that she would confront if she were to seek refuge in a more favorable forum expressly for this purpose. And this result is accomplished within the mandate of the URESA.

Rhode Island impliedly has shown the way to dispose of the normal conflicts rule that the law of the wife's domicile is determinative of her right to survival of support. The URESA has been enacted by every state in the Union.[57] Each state can utilize the language of the Act to grant the wife survival of support as a matter of public policy and on the basis of its own laws.

Rhode Island, however, is one of the few states that retained the language of the 1950 version of the Act granting the wife an "election" of either the laws of her domicile or the laws of the state wherein the

[54] R.I. GEN. LAWS ANN. § 15-11-13 (1956) provides: "Duties of support enforceable under this chapter are those imposed or imposable under the laws of any state where the alleged obligor was present during the period for which support is sought or where the obligee was present when the failure to support commenced, at the election of the obligee."

[55] Vanderbilt v. Vanderbilt, 354 U.S. 416, 433-34 (1957) (dissenting opinion); Morris, *supra* note 16, at 1302.

[56] The situation in which the wife pursues the husband into a foreign jurisdiction in order to obtain personal jurisdiction over him for the purposes of enforcing a prior support order by litigating it as any foreign money judgment should be distinguished.

[57] HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS AND PROCEEDINGS OF THE ANNUAL CONFERENCE MEETING IN ITS SEVENTY-SEVENTH YEAR 223 (1968).

obligor resides.[58] Such an election provides the wife with a forum-shopping opportunity. To combat this result, the Act was amended in 1952 to provide that the only applicable law is that of the state where the obligor was present during the period for which support is sought.[59] The amended version, while destroying the opportunity of the wife to forum shop, allows the husband to shop for a favorable state in which to reside.

The states operating under this amended version and at the same time affording a spouse no survival of support[60] face a dilemma. If they follow the Act and revert to the support law of their jurisdiction, the wife has no right to survival of support—their own laws terminate it. In such a situation, they may resort to the normal conflicts rule and find that the wife is afforded the right of survival under the law of her domicile. But what if the laws of her domicile likewise terminate her right to survival? The wife may then find herself without a remedy, and once again matrimonial law is found in its familiar state of frustration. In order to solve this problem, it would be beneficial if the National Conference of Commissioners on Uniform State Laws recommended legislation to insure uniform survival of support in the form of an amendment to the URESA.

Since the present language of the URESA affords the husband an opportunity to forum shop, the Commissioners would also do well to amend section seven to give the courts—not the obligee—the power of election in order that they may exercise discretion in applying either the law of the jurisdiction where the obligee resided when the failure of support commenced or the law of their own jurisdiction.[61]

JOSEPH E. ELROD III

Criminal Procedure—Search and Seizure—The Permissible Scope of a Frisk

> Antagonism between the police and the judiciary is perhaps an inevitable outcome . . . of the different interests residing in the police as a specialized agency and the judiciary as a representative of wider community interests. Constitutional guarantees of due process of law do make the working life and conditions of the police more diffi-

[58] R.I. GEN. LAWS ANN. § 15-11-13 (1956). *See* note 54 *supra.*

[59] For a list of the states which adopted the 1952 amendment see 9C UNIFORM LAWS ANN. (Supp. 1967).

[60] See note 31 *supra.*

[61] This solution has been suggested previously. *See* Note, 44 TEXAS L. REV. 814, 818-19 (1966).