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Conflict of Laws Under the Federal Tort Claims Act

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termination of a State to extend the area of non-discrimination beyond that which the Constitution itself exacts.[14]

Thus, although some will probably consider that these statutes go too far in infringing on an individual's constitutional contract and property rights,[15] it is felt that these laws will be upheld as non-violative of the Fourteenth Amendment's Due Process Clause.

Aside from the constitutional question, these statutes also raise a social question. It is one thing to tell an owner of an 120 unit apartment building to refrain from discriminating. But it is altogether different to require a person living in his own home who desires to rent out a room not to discriminate. However, all the statutes enacted so far have considered this social aspect, and have restricted the application of their statute.[16] From a social standpoint such a classification seems desirable.[17]

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Conflict of Laws Under the Federal Tort Claims Act—A wrongful death action was brought against the United States in a Federal District Court in Oklahoma by the personal representative of passengers killed when an airplane, owned by the American Airlines, crashed in Missouri while enroute from Tulsa, Oklahoma, to New York City.[1] The petitioners had already received a $15,000 settlement from the Airlines, the maximum amount recoverable under the Missouri Wrongful Death Act.[2] They sought additional amounts from the United States under the Oklahoma Wrongful Death Act[3] which contains no limitation on the amount a single person may recover from a tortfeasor.

[14] *Supra* note 12, Frankfurter, J. concurring at 98.

[15] See dissent of Justice Kirk in reported case.

[16] The broadest law enacted is the ordinance of New York City which applies to all housing except the rental of one of the apartments in a two family home where the other apartment is occupied by the owner.

[17] These classifications raise the further question of equal protection of the laws. To meet the constitutional requirements of the Fourteenth Amendment, a statute must apply to all persons in the same category equally, and the classification must be made on a reasonable basis. However there appear to be a number of valid legislative reasons for such a classification which would meet the equal protection of the laws requirements; the policing of thousands of small activities would be administratively impossible, the legislature could feel the main problem area concerns those who deal in housing as a business and not those who do it merely incidentally, or the practical reason that to obtain proof of alleged discrimination, a pattern of discrimination must usually be observed, which isn't available in the one room renter.

[1] Suit was brought on the theory that the Government, through the Civil Aviation Agency, had negligently failed to enforce the terms of the Civil Aeronautics Act and the regulations thereunder which prohibited the practices then being used by American Airlines in the overhaul depot of Tulsa, Oklahoma. Under 49 U.S.C. §1425, the Administrator of the Federal Aviation Agency is charged with the responsibility of enforcing rules and regulations controlling inspection, maintenance, overhaul and repair of all equipment used in air transportation.

[2] MO. REV. STAT. §537.090 (1949). Subsequent to the origination of these actions the Missouri Code was amended to provide for maximum damages of $25,000. MO. REV. STAT. §537.090 (1959).

[3] OKLA. STAT., Tet. 12, §§1051-1054 (1951).

The Oklahoma District Court noted that if Oklahoma law was applicable under the Federal Tort Claims Act, then the whole law of Oklahoma, including its conflict of laws rule was applicable thereunder. The District Court would not apply Oklahoma's internal negligence law, for under the operation of the conflict of laws rule of that state[4] an Oklahoma court would apply the law of the state where the negligence had its operative effect, that is, the place where the injury occurred. Thus the Oklahoma District Court had to apply the law of Missouri and thereby deny the petitioner's further recovery. On appeal, the Court of Appeals for the Tenth Circuit affirmed the judgment by a divided vote.[5]

The Circuit Courts appeared to be in hopeless conflict as to what law a Federal District Court should apply in an action brought under the Federal Tort Claims Act[6] where an act of negligence occurred in one state and resulted in an injury and death in another state. Three different views were taken. Under one view the internal law of the place where the negligence occurred was controlling.[7] If the Oklahoma District Court had taken this approach it would have had to apply the internal negligence law of Oklahoma and disregard Oklahoma's conflict of laws rule. Under the second view the whole law of the place where the negligence occurred controlled.[8] This was the view taken by the Oklahoma District Court, which view denied the petitioners further recovery since whole law includes application of both internal law and conflict of laws rules. Under the third view the internal law of the place where the operative effect of the negligence took place was the proper law to apply.[9] If the Oklahoma District Court had followed this approach it would have had to apply the internal negligence law of Missouri as the operative effect of the negligence occurred in that state.

The Supreme Court affirmed the Tenth Circuit's decision. *Richards*

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[4] Gochenour v. St. Louis-San Francisco R. Co., 205 Okla. 594, 239 P. 2d 769 (1952).

[5] Richards v. United States, 285 F. 2d 521 (1960).

[6] The Provisions of the Tort Claims Act are now found in Titles 28, §§1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, and 2671-2680. The principal provision of the Federal Tort Claims Act is Section 1346b, reading in pertinent parts:

"... the district courts ... shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages ... for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

[7] Voytas v. United States, 256 F. 2d 786 (1958); Eastern Airlines v. Union Trust Co., 221 F. 2d 62 (1955); *Richards v. U.S., supra* note 5, at 525, 526 (dissenting opinion).

[8] Landon v. United States, 197 F. 2d 128 (1952); Richards v. United States, 285 F. 2d 521 (1960).

[9] Marshall v. United States, 230 F. 2d 183 (1956).

v. United States.[10] In arriving at its decision the Court was aided very little by the conflicting opinions of the lower courts. With the exception of a dissenting opinion by Justice Murray in the Tenth Circuit's determination of the case, the lower courts merely stated their respective positions on the Federal Tort Claims Act without setting forth any reason as to why or how they came to their decisions. Perhaps the lower courts looked for guidance to the legislative history of the Federal Tort Claims Act. But, as the Supreme Court pointed out, the legislative history of the Federal Tort Claims Act, although generally extensive, was not, except in a negative way, helpful in solving the problem of the law to be applied in a multistate tort action such as was presented by the facts of this case.[11] Congress did not consider choice-of-law problems during the long period that the legislation was being prepared for enactment.[12] Congress was mainly concerned with the problem presented when a government employee operating a government vehicle or otherwise acting within the scope of his employment injured another person. These situations usually occurred within the confines of a single state and rarely involved a conflict-of-laws question.[13]

Since the legislative history of the Act was of no aid, the Supreme Court had to ascertain the intent of Congress from the words of the Act itself. This presented two problems. First the Act states that the United States "would be liable to the claimant in accordance with the law of the place where the act or omission occurred."[14] Did the phrase "where the act or omission occurred" mean the place where the negligence first occurred or the place where the injury took place? In construing that phrase the Court determined that Congress could not have used any more precise language in enacting a rule which requires the federal courts in multistate tort actions to look to the law of the place where the act of negligence took place rather than to the law of the place where the negligent act had its operative effect. The Supreme Court made this determination despite the argument that during testimony before the House Committee on the Judiciary when the venue provision of the Tort Claims Act was being discussed,[15] the Assistant Attorney General

[10] 369 U.S. 1, 82 S.C. 585 (1962).

[11] *Hearings before House Committee in the Judiciary on H.R. 5373 and H.R. 6463,* 77th Cong., 2d sess. (1942); Rep. No. 1196, 77th Cong., 2nd Sess. (1942); H.R. Rep. No. 2245, 77 Cong., 2d Sess. (1942); No. 1287, 79th Cong., 1st Sess. (1945).

[12] E.g., 68 HARV. L. REV. 1455 (1955); 45 IOWA L. REV. 125 (1959); 6 N.Y.L.F. 484, 488-490 (1960).

[13] Knecht v. United States, 242 F. 2d 929 (1957); Irish v. United States, 225 F. 2d 3 (1955); Praylou v. United States, 208 F. 2d 291 (1953); Somerset Seafood Co. v. United States, 193 F. 2d 631 (1951); D'Anna v. United States, 181 F. 2d 335 (1950); Olson v. United States, 175 F. 2d 510 (1949); Irwin v. United States, 148 F. Supp. 25 (1957).

[14] *Supra* note 6.

[15] *Hearings before House Committee on H.R. 5373 and H.R. 6463,* 77th Cong., 2d Sess. 9, 30 (1942).

of the United States, stated that the venue provision allowed suit to be brought either where the claimant resides or where the injury took place. As the venue provisions of the Act also contains the words "where the act or omission occurred,"[16] the airlines contended that the law of the place where the injury occurred should control.[17] The Supreme Court, however, decided that the venue testimony bore no relation to the conflict of laws problem and that it should not detract from the Tort Claims Act the words Congress expressly employed.

The orthodox conflict of laws rule, with torts as with crimes, lends support to the argument that the place of injury or the place where the operative negligence took effect is controlling. The orthodox rule is that when an act operates across a state line, its legal characteristic as to choice of law and amount of damages is determined by the law of the place where it first takes harmful effect or produces the result complained of.[18] However, it again must be noted that the orthodox conflict of laws rule is not controlling in the face of express congressional legislation. Furthermore there has been a recent trend on the part of some states to depart from the orthodox conflicts rule.[19]

The final problem of interpretation which confronted the Supreme Court was the meaning of the words "law of the place."[20] The problem was whether the internal law of the place where the negligence occurred controlled or whether whole law (which includes conflict of laws rules) of the place where the negligence occurred controlled. If the internal substantive law controlled, then, of course, the Federal District Court of Oklahoma could not have applied the Oklahoma conflicts rule and referred to the law of Missouri. In that event it must be concluded that Congress under the Federal Tort Claims Act was enacting law independent of the states' conflict of laws rules. Justice Murray came to this conclusion in his dissenting opinion before the Tenth Circuit Court of Appeals.[21] He determined that if Congress did not intend to supersede the states conflict of laws rules, it could have simply conferred jurisdiction upon the courts to hear and decide claims for damages for death caused by the negligence of the United States "under

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[16] 28 U.S.C. 1402(b) (1948).

[17] *Supra* note 6.

[18] RESTATEMENT, CONFLICT OF LAWS, §377; Jeffrey v. Whitworth College, 128 F. Supp. 219 (1955). (Idaho injury during school picnic negligently arranged in Washington, Idaho's immunity of charitable corporations applied); Alabama G.S.R. Co. v. Carroll, 97 Ala. 126 (1892).

[19] 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 Casualty Co., 7 Wis. 2d 130, 95 N.W. 2d 814 (1959). See Currie, *Survival of Actions: Adjudications versus Automation in the Conflict of Laws,* 10 STAN. L. REV. 205 (1958). States had departed from the general conflicts rule in order to take into account the interests of the state having significant contact with the parties to the litigation.

[20] *Supra* note 6.

[21] *Supra* note 5, at 525, 526 (dissenting opinion).

circumstances where the United States, if a private person, would be liable to the claimant."[22] Murray's argument implied that if the Tort Claims Act just contained these words then any district court would apply the whole law including conflict of laws rules. However, when Congress added to these words the phrase, "in accordance with the law of the place where the act or omission occurred,"[23] Congress meant the internal law of the place where the negligence occurred, otherwise the addition of the phrase would have been superfluous.

The Supreme Court, on the other hand, resolved that "the law of the place" meant the whole law. In coming to this solution the court employed certain rules of construction. First of all, a section of a statute should not be read in isolation from the context of the whole act.[24] Secondly, the court must not be guided by a single sentence or number of a sentence, but should look to the provisions of the whole law, and to its object and policy.[25] The Supreme Court determined that if Congress intended a federal conflict of laws rule which would circumvent the states' conflict of law rules, it should have enacted one expressly.

> We should not assume that Congress intended to set the courts completely adrift from state law with regard to questions for which it has not provided a specific and definite answer in an act such as the Tort Claims Act which is so intimately related to state law.[26]

An additional argument could have been made by the Supreme Court to support the whole law interpretation of the Tort Claims Act. Some mention should have been made of the law employed where federal jurisdiction rests upon diversity of citizenship. In such cases a Federal District Court must apply the conflict of laws rules of the state in which the court is sitting,[27] that is to say, the Federal District Court applies the whole law. This rule is based upon the fact that diversity cases are very much related to state law. Since the Tort Claims Act is also "intimately related to state law," it should be presumed that Congress did not intend to impose a federal conflict of laws rule upon the states.

There should be no future problems in interpreting the language of the Federal Tort Claims Act in this regard. The words, "in accordance with the law of the place where the act or omission occurred" can only have one proper meaning. "Where the negligence occurred" means where the negligence occurred and not where the injury took place. "The

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[22] *Supra* note 6.
[23] *Ibid.*
[24] Labor Board v. Lyons Oil Co., 352 U.S. 282, 288 (1957); Cherokee Intermarriage Cases, 203 U.S. 76, 89 (1906); Panama Refining Co. v. Ryan, 293 U.S. 388, 439 (1935) (Cardozo J., dissenting).
[25] Mastro Plastics Corp. v. Labor Board, 350 U.S. 270, 286 (1955), quoting from United States v. Boisdore's Heirs. 8 How. 113, 122 (1849).
[26] *Supra* note 10, at 82 S.C. 585, 592.
[27] Klaxon Co. v. Stentor Co., 313 U.S. 487, 496 (1941).

law" means the whole law which encompasses conflict of law rules. Whenever the word law means something less than the whole law it does so only because it has been expressly delimited. Since Congress did not delimit the word law under the Tort Claims Act, the states' conflict of laws rules continue to operate under the Act.

DENNIS G. LINDNER

Securities: Liability of a Partner-Director for Short-Swing Profits—A partner of Lehman Bros., an investment firm having over one hundred partners, succeeded a fellow partner as a member of the board of directors of Tidewater Associated Oil Company, a corporation the stock of which was traded on a national exchange. During his tenure as a director of Tidewater, the investment firm of which he was a partner bought and sold 50,000 shares of stock in this corporation within a 6 month period at a profit of $98,686.77.

Plaintiff, a stockholder of Tidewater, sues on behalf of the company under section 16(b)[1] of the Securities Exchange Act of 1934 to recover with interest all the short swing profits[2] which the partnership derived while the co-defendant partner served as a director of Tidewater. On cross-appeals from a judgment dismissing the complaint against the partnership and allowing recovery against the partner-director for his proportionate share of the profits only, the decision was affirmed by the Court of Appeals and by the United States Supreme Court.[3]

The Securities Exchange Act was passed amidst widespread revelations of the use of undisclosed information by insiders who traded securities listed on national exchanges. Prior to passage of the Act speculation by insiders in the securities of their corporations was a widely

[1] "For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) within any period of less than six months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security purchased or of not repurchasing the security sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt and not comprehended within the purpose of this subsection." 15 U.S.C. §78p(b) (1952).

[2] ". . . that is profits earned within a six months' period by the purchase and sale of securities, . . ." Blau v. Lehman, 368 U.S. 403 (1962).

[3] Blau v. Lehman, 268 F. 2d 786 (1960); 368 U.S. 403 (1962).