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Conflict of Laws Lex Locus Delicti -- Dicta

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CONFLICT OF LAWS
LEX LOCUS DELICTI — DICTA

Plaintiff brought a tort action in the Federal District Court of Rhode Island for injuries sustained in Mississippi while using a defective emery wheel purchased by his employer from the Komp Equipment Company. The emery wheel had been manufactured in Rhode Island by the defendant, a domestic corporation. The district court had looked to the law of Rhode Island and was referred to the *lex locus delicti*. Based on existing Mississippi law, which did not recognize liability in absence of privity of contract, the court found for the defendant. *Held*, reversed, recent unequivocal dicta in the law of Mississippi, indicating that the rule on which the district court relied would no longer be followed, is controlling. *Mason v. American Emery Wheel Works*, 241 F.2d 906 (1st Cir. 1957).

"Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its legislature in a statute or by its highest court in a decision is not a matter of federal concern."[1] With these words the "*Erie Era*" began. In furtherance of this momentous decision, the Supreme Court held in subsequent decisions[2] that in the absence of pronouncements by the highest state tribunals or other persuasive data, the federal courts were to apply rulings of intermediate state courts. The effect of these decisions has been to chain federal court judges to intermediate state court authority and thus, in the words of a recognized authority, has done much to evaporate the "source of wisdom by which justice is determined."[3] However, recent federal court opinions point to the fact that they are becoming more independent of these lower state courts in the absence of higher court rulings.[4]

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1. Erie R. R. v. Tomkins, 304 U. S. 64 (1938). The purpose of the doctrine is to enable citizens seeking justice in a federal court sitting within a particular state to receive the same remedy, on matters of substantive law, as if he had entered suit in one of the state courts.

2. Fidelity Union Trust Co. v. Field, 311 U.S. 169 (1940). The New Jersey Court of Chancery, an intermediate state court, was considered an "organ" of the State and in the absence of any decisions by the State's highest tribunal its pronouncement was to be taken as the law. *Accord*, West v. American Tel. & Tel. Co., 311 U.S. 223 (1940); Six Companies of California v. Joint Highway Dist. No. 13, 311 U.S. 180 (1940).

3. Corbin, *The Laws of The Several States*, 50 YALE L. J. 762 (1941).

4. King v. Order of United Commercial Travelers, 33 U.S. 153 (1948):
> " . . . A court of Common Pleas does not appear to have such importance and competence within South Carolina's own judicial system that its decisions would be taken as authoritative of that State's 'law'. . . . A federal court adjudicating a matter of state law in a diversity suit is 'in effect, only another court of the State'; it would be incongruous indeed to hold the federal court bound by a decision which would not be binding on any state court."

Accord, Bershire Land Co. v. Federal Security Co., 199 F.2d 438 (3rd Cir. 1952); Cooper v. American Airlines Inc., 149 F.2d 355 (2d Cir. 1945). See also Note, 5 WASHINGTON & LEE L. REV. 139 (1948).

Distinct problems have arisen as a result of the general thesis that federal courts should find the law of the state as best they can.[5] The Supreme Court has, on occasion, sustained a lower court's refusal to try a case where there was an absence of authoritative pronouncement[6] but these cases may readily be distinguished from the better reasoned, general weight of authority, which is to decide, not avoid, the question.[7] Where the law of Florida was found to be in conflict over the right of a bondholder to enjoin the city from calling and retiring bonds without providing for payment of the deferred interest coupons, the Court said that the difficulties of ascertaining what the state courts may later determine the state law to be do not, in themselves, afford sufficient ground for a federal court to refuse to exercise its jurisdiction to declare a case which is properly brought to it for decision.[8]

Though the duty of federal courts is tolerably clear the problem of determining the law of the state is fraught with obstacles.[9] Where no state courts have ruled and there has been no legislative action, many courts proceed to ascertain and apply what they believe to be the law which a court authorized to speak the law of the particular state, would apply if called upon to adjudicate upon like circumstances.[10] In doing so, some courts consider the question in light of the common law of the state.[11] Others look to the *Restatements of Law*[12] while still others determine the question according to accepted canons in the light of decisions of courts of other

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5. Pierce v. Ford Motor Co., 190 F. 2d 910 (4th Cir. 1951). For a unique statutory provision which should eleviate this problem see FLA. STAT. § 25.031 (1957).

6. Spector Motor Service v. McLaughlin, 323 U.S. 103 (1944). Where plaintiff's operation of two truck terminals within the state was neither dependent upon nor derived from the state and the power of the state to levy an excise thereon had not been determined the Court said: ". . . . We ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable. . . ."; *cf.* Thompson v. Magnolia Petroleum Co., 309 U.S. 478 (1940). For criticism of the Magnolia case see Note, 53 HARV. L. REV. 1394 (1940).

7. McClellan v. Carland, 217 U.S. 268 (1910); Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821); Daily v. Parker, 152 F.2d 174 (7th Cir. 1945); Yoder v. Nu-Enamel Corp., 117 F.2d 488 (8th Cir. 1941). See also Fitzgerald, *The Celebrated Case of Daily v. Parker*, 15 U. KAN. CITY L. REV. 120 (1947).

8. Meredith v. Winter Haven, 320 U.S. 228 (1943).

9. For a case in which a federal circuit court exceeded its implied authority to sit as another court of the state see, Moore v. Illinois Central R.R., 312 U.S. 630 (1941). In this case the federal district court adhered to a Mississippi Supreme Court ruling that the contract in question was written and the time within which the appellant could sue was six years rather than three as provided for oral contracts. The circuit court reversed on the ground that the law was erroneously pronounced by the Mississippi court. Standing as a court of the state and aware that the Mississippi Supreme Court had authority to reverse itself the circuit court felt it could do so for it. The Supreme Court reasoned that the circuit court was in error in absence of any change brought about by the Mississippi Legislature or Mississippi Supreme Court and upheld the federal district court. See also HART & WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 628-30 (1953).

10. Rayonier Inc. v. Bryan, 249 F.2d 405 (5th Cir. 1957), Jackman v. Equitable Life Assurance Soc'y of United States, 145 F.2d 945 (3d Cir. 1941).

11. New England Mut. Life Ins. Co. v. Mitchell, 118 F.2d 414 (4th Cir. 1941).

12. Trowbridge v. Abrasive Co. of Philadelphia, 190 F.2d 825 (3d Cir. 1951); Anderson v. Linton 178 F.2d 304 (7th Cir. 1949).

states.[13] Where dicta is all that is left in the judicial well from which the federal courts must dip, there is a split of authority with most courts reasoning that if it be clear and unequivocal it will be acceptable as other persuasive data.[14]

The case at hand is factually unique. The case of *Ford Motor Co. v. Myers*,[15] the then controlling decision, had not been overruled when the instant case arose. Notwithstanding this, Judge Magruder plucked "clear and unequivocal dicta" from a more recent Mississippi case[16] and presented it to the state as its new law. At first blush one might think this judicial arrogance, but upon review it will be noted that what was done was merely an extension of an already growing tendency.[17] In diversity cases the federal court must follow the conflict of laws rule prevailing in the state in which it sits.[18] The weight of authority in tort actions,[19] followed by Rhode Island,[20] is that the court must look to the locus of the tort. This the circuit court did and "dutifully" considering itself "in effect only another court of the State," found the law "as best it could" from existing "persuasive data." The Mississippi Supreme Court supplied the source of light; the circuit court merely turned the switch.[21]

Judge Hartigan, in his concurring opinion, framed the problem posed by the topic case when he said:

> ". . . [W]e present a difficult problem for the district judges when they must apply the Erie doctrine to situations wherein the considerations as between the conflicting holdings and dicta are not as clearly defined as they are here. The question of how clear dicta

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13. Burns Mortgage Co. v. Fried, 292 U.S. 487 (1934); Smith v. Pennsylvania Cent. Airlines Corp., 76 F.Supp. 940 (D.D.C. 1948).

14. Hawks v. Hamill, 288 U.S. 52 (1933); Home Royalty Ass'n. Inc. v. Stone, 199 F.2d 650 (10th Cir. 1952), (dictum clear and unequivocal); Standard Acc. Ins. Co. v. Roberts, 132 F.2d 794 (8th Cir. 1942); *accord*, Fleming v. Brown, 150 F.2d 801 (8th Cir. 1945); Handley v. Hope, 137 F.Supp 442 (W.D. Ark. 1956). *But cf.*, Stimson v. Tarrant, 132 F.2d 363 (9th Cir. 1943), (the court implied that had dictum not been based on a legal fiction it might have been binding); Powell v. Maryland Trust Co., 125 F.2d 260 (4th Cir. 1942), *cert denied*, 316 U.S. 711 (1942).

15. 151 Miss 73, 117 So. 362 (1928). A truck manufacturer was held not liable for death of a remote buyer resulting from negligent manufacturing in absence of privity of contract.

16. "Whatever the rule may have been originally, the principle seems now to be well established by the decisions of many courts that a person who has no direct contractual relations with a manufacturer may never the less recover from such manufacturer. . . .", dicta taken to be the law in the Mason case. E. I. Du Pont De Nemours & Co. v. Ladner, 221 Miss. 378, 73 So.2d 249 (1954).

17. Clark, *State Law in the Federal Courts; The Brooding Omnipresence of Erie v. Tompkins*, 55 YALE L. J. 267 (1946). See also 59 HARV. L.REV. 1299 (1946).

18. Klaxon v. Stentor Electric Mfg. Co., 313 U.S. 487 (1941). See also Moran v. Pittsburgh—Des Moines Steel Co., 166 F.2d 908 (3rd Cir. 1948) *cert denied*, 334 U.S. 846 (1948); Sampson v. Channell, 110 F.2d 754 (1st Cir. 1940), *cert denied*, 310 U.S. 650 (1940).

19. 15 C.J.S., *Conflict of Laws* § 12, 896 (1939).

20. Ewell v. Cardinal, 53 R.I. 469, 167 Atl. 533 (1933).

21. For two survey articles dealing with conflict of laws and a discussion of the problem presented by state law in the federal courts see, Stern, *Conflicts of Laws*, 8 MIAMI L.Q. 209, 231-35 (1954), 10 MIAMI L.Q. 257, 280-88 (1956).

must be to prevail over a prior controlling decision does not lend itself to easy solution."

It still remains the duty of federal courts, exercising due care and foresight, to meet the challenge. To stay decisions in the absence of state law[22] is to deny the litigants their due while burdening them with extra expense of prolonged litigation. Should a party suffer in a diversity case because a federal court is bound to prior court rulings and has to disregard more recent dicta of a clear, unequivocal and contrary nature?" . . . . [A]ll rules of the law are for courts to apply — yes; but all rules of law are also for the courts to change. . . . These changes and these applications should indeed not depend upon the accident of diversity. . . . The poor litigating parties should not be forgotten."[23]

The *Mason* decision is equitable, it is correct. "Conflict with the past is to be preferred over conflict with the future."[24]

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DISCRETIONARY FUNCTION EXCEPTION OF FEDERAL TORT CLAIMS ACT

A landowner brought action against the Government for damages caused by the construction and maintenance of flood dikes. The Federal Tort Claims Act[1] imposes liability upon the Government, ". . . where the United States, if a private person, would be liable to the claimant . . . ",[2] but excepts "Any claim based upon . . . , the exercise or performance or the failure to exercise or perform a *discretionary function* . . . , on the part of a federal agency or employee of the Government."[3] *Held*, that the construction and maintenance of the dikes involved the exercise of a *discretionary function*, and therefore was not actionable. *McGillic v. United States*, 153 F. Supp. 565 (D.N.D. 1957).

The Federal Tort Claims Act, enacted in 1946, waived the sovereign immunity[4] of the United States, with certain exceptions,[5] in tort actions.

22. Note, 59 YALE L.J. 978 (1950)
23 Corbin, *supra* note 4, at 772
24. *Id.* at 776

1. 28 U.S.C. §§ 1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, 2671-80 (Supp. IV 1956). The act was originally Title IV of The Legislative Reorganization Act of 1946, 60 STAT. 842.

2. 28 U.S.C. § 1346(b) (Supp. IV 1956).

3. 28 U.S.C. § 2680(a) (Supp. IV 1956).

4. Minnesota v. United States, 305 U.S. 382 (1938) (it is an established principle of jurisprudence in all civilized nations, resting on reasons of public policy, because of the inconvenience and danger which will follow from any different rule, that the sovereign cannot be sued without its consent and permission); see also 53 AM. JUR., *United States* § 127 (1945).