**Louisiana Law Review**

Volume 19 | Number 2
*The Work of the Louisiana Supreme Court for the 1957-1958 Term*
*February 1959*

# Civil Code and Related Subjects: Conflict of Laws

Joseph Dainow

# CONFLICT OF LAWS

*Joseph Dainow**

The validity of a residuary legacy to an out-of-state religious organization was contested in *Succession of Fisher*.[1] This involved the issues of conflict of laws concerning the legal capacity of a Massachusetts church to receive the legacy, as well as its legal capacity to appear in the Louisiana suit. The court answered all the questions in the affirmative on the basis of the "spirit of comity" existing between the states, since this did not "violate the positive law or public policy" of our own state. The evaluation of a judicial decision may be with reference to the actual result or the method used to reach it. The court's purpose is to decide cases and it is naturally most concerned with the result; the present comments are directed at the method.

Conflict of laws is a relatively new area of the law, and it is by nature a relatively complicated one. During the past half-century, there has been considerable progress which is overlooked by a reversion to "comity" as the basis of decision. The vague and unlimited concept of comity has been more and more replaced by specific rules of conflict of laws for the determination of the choice of law in particular situations.

In the present case the Louisiana rule of conflict of laws for the legal capacity of a church to receive a legacy appears to be that this question shall be decided in accordance with the law of the place of its domicile or incorporation. The question of the Massachusetts church's legal capacity to appear in a Louisiana suit is apparently determined by the same Louisiana choice-of-law rule.

It is a general rule of conflict of laws, everywhere, that as a corrective in exceptional cases, the court will apply its own law if the logical application of the forum's choice-of-law rule in a particular case would produce a result which is so obnoxious and repugnant as to violate local public policy.

This *modus decidendi* is not at all the same as relying on "comity insofar as not contrary to positive law or public policy." As it stands, this proposition could cover the whole field of

*Professor of Law, Louisiana State University.

1. 235 La. 263, 103 So.2d 276 (1958).

choice-of-law in conflicts cases — and constitute all the learning that is necessary to be a master of the subject. In the first place, comity is useless as a reference to the foreign law to be considered when the facts of the case contain elements that are connected with more than one other jurisdiction. Secondly, it puts the whole range of legal problems on the basis of a solitary rule, whereas even 25 years ago the Restatement on Conflict of Laws had over 600 sections. Finally, the use of the comity concept results in confusion of analysis where clarity is so much needed.[2]

At the same time, the opinion refers to the specific Louisiana conflicts rules that wills of immovable property are governed by the *lex rei sitae*, and wills of movable property by the law of the testator's domicile. In the present case, both the situs and the domicile were in Louisiana, but in other situations the characterization of the property would necessarily be very important. When that happens, will the nature of the property interest be determined in accordance with the law of the forum, the law of the situs, or by comity?

2. *Cf.* Brinson v. Brinson, 233 La. 417, 96 So.2d 653 (1957); *The Work of the Louisiana Supreme Court for the 1956-1957 Term — Conflict of Laws*, 18 LOUISIANA LAW REVIEW 60, 62 (1957). See Dainow, *Policy Problems in Conflicts Cases*, 35 TEX. L. REV. 759 (1957).