Buffalo Law Review

Volume 11 | Number 1 Article 29

10-1-1961

Conflicts of Law—Public Policy Did Not Bar Application of Foreign Law in Contract Action

Buffalo Law Review Board

of the Massachusetts legislature. The conflict between the theory of this statute and the public policy of New York which occurs on the question of damages is then considerably more fundamental than the decision of the Court indicates. The effect of impressing the *lex loci delicti* with the public policy of the forum is to substantially reconstruct the Massachusetts statute from its very foundations.

Another policy consideration is the effect, of the forum changing the applicable law, on the parties. Declining to enforce a right created by foreign law, however great the resulting inconvenience, in theory does not amount to a deprivation of the right as the plaintiff may still have recourse to the foreign court. The converse situation, expansion of a right derived from foreign law, is quite a different matter, in view of the correlative broadening of the defendant's liability. The same set of operative facts should not give rise to different degrees and bases of liability depending solely on the forum in which liability is judicially determined.

A possible alternative to the *Kilberg* dilemma would be legislation providing for a cause of action in contract, similar to the plaintiff's second count here, with the damages being unlimited. Other alternatives are federal legislation or uniform state laws governing recovery for injuries resulting in death received in an airplane crash. The basic problem, however, is not one for judicial solution.

The *Kilberg* decision upholds the state's public policy of prohibiting the imposition of limits on recovery of damages in wrongful death actions. However, by disregarding the Massachusetts Act's provision as to damages and in its place applying New York's public policy, the Court is inviting forum-shopping and defeating the objective of conflict of laws rules, uniformity of result.[40]

P. W. D.

PUBLIC POLICY DID NOT BAR APPLICATION OF FOREIGN LAW IN CONTRACT ACTION

In *Haag v. Barnes*,[41] an action for support against the putative father of an illegitimate child, the defense was an agreement between the parties for support of the child, fully performed, and in which plaintiff relinquished the right to bring any action for support. Since the agreement was not court approved as required by New York law,[42] it would not bar the suit under the internal law of New York. The agreement was made in Illinois, however, where both parties resided at the time, and it specifically provided that it should be

40. Goodrich, supra note 1, § 4.
41. 9 N.Y.2d 554, 216 N.Y.S.2d 65 (1961).
42. N.Y. Dom. Rel. Law § 121 and New York City Criminal Courts Act § 63 provide: An agreement or compromise made by the mother . . . shall be binding only when the court shall have determined that adequate provision has been made.

interpreted, construed and governed by the laws of that state. Under Illinois law, the agreement amounted to an absolute bar to suit.[43]

The traditional rule is that the law governing a contract must be determined by the intent of the parties.[44] The intent of the parties is no longer conclusive, however, and the courts will look to the law of the place having the most significant contacts with the matter in dispute.[45] Under both tests the Court of Appeals held that Illinois law was applicable.

In considering plaintiff's argument that public policy required the application of New York law, the Court stated that the issue is not whether the New York statute reflects a different public policy from that of the Illinois law, but whether enforcement of the contract under Illinois law represents an affront to our public policy.[46] Moreover, it found that the agreement did in fact satisfy the public policy of New York.

Bd.

FOREIGN DIVORCE ACTION NOT ENJOINED IF DECREE NOT ENTITLED TO FULL FAITH AND CREDIT

In *Arpels v. Arpels*,[47] plaintiff sought to enjoin her husband from prosecuting a divorce action, based on alleged adultery, instituted by him in France. Special Term granted a temporary injunction,[48] but the Appellate Division reversed and dismissed the complaint.[49] The Court of Appeals affirmed. The Court noted that the power to enjoin a person from resorting to a foreign court is a power used sparingly inasmuch as it represents a challenge to the dignity and authority of the tribunal. Thus, it is employed only if there is a danger of fraud or gross wrong being perpetrated on the foreign court. The power is further restricted in the case of a foreign divorce action where, even if a serious impropriety would result from prosecution of the action, an injunction will issue only if the ensuing decree would be entitled to full faith and credit.[50]

The Court found that there was no danger of fraud on the foreign court since there was good reason to believe that the French court had jurisdiction to hear the suit and render a binding judgment under French law. Even if there was a possibility of fraud, however, plaintiff still would be unsuccessful. It is well-established that a divorce decree, valid under the laws of one of the states of the union, must be accorded full faith and credit by a sister state.[51]

43. Ill. Rev. Stat. ch. 106¾, § 65.
44. Wilson v. Lewiston Mill Co., 150 N.Y. 314, 44 N.E. 959 (1896); Stumpf v. Hallahan, 101 App. Div. 383, 91 N.Y. Supp. 1062 (1905), aff'd, 185 N.Y. 550, 77 N.E. 1196 (1906).
45. Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954); Rubin v. Irving Trust Co., 305 N.Y. 288, 113 N.E.2d 424 (1953).
46. Cf. Loucks v. Standard Oil Co. of New York, 224 N.Y. 99, 120 N.E. 198 (1918).
47. 8 N.Y.2d 338, 207 N.Y.S.2d 663 (1960).
48. 17 Misc. 2d 471, 187 N.Y.S.2d 100 (Sup. Ct. 1959).
49. 9 A.D.2d 336, 193 N.Y.S.2d 754 (1st Dep't 1959).
50. See, Rosenbaum v. Rosenbaum, 309 N.Y. 371, 130 N.E.2d 902 (1955); Garvin v. Garvin, 302 N.Y. 96, 96 N.E.2d 721 (1951).
51. Williams v. State of North Carolina, 317 U.S. 287 (1942); Garvin v. Garvin, supra note 50.