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Conflict of Laws - Illinois Supreme Court Rejects the Doctrine of *Lex Loci Delicti*

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CONFLICT OF LAWS—Illinois Supreme Court Rejects the Doctrine of Lex Loci Delicti.

Wayne Ingersoll was a guest in an automobile when the vehicle broke through thin ice on the Iowa side of the Mississippi River. Ingersoll, who drowned, and the driver of the automobile were Illinois residents.

Marie Ingersoll, Administrator of the Estate of Wayne Ingersoll, filed an action for wrongful death against Walter and William Klein in the Circuit Court of Carroll County, State of Illinois. The first two counts of the complaint, based on the Iowa Code,[1] alleged that the driver of the automobile, Walter Klein, drove recklessly while under the influence of alcohol. The second two counts of the complaint, again in accordance with the Iowa Code,[2] alleged that William Klein, as owner of the vehicle, was liable for damages.

Defendants requested an admission of facts and plaintiff admitted the following: (1) that the plaintiff and all those who would benefit from the law suit resided in Illinois; (2) that the deceased, Wayne Ingersoll, met his death by drowning in the Mississippi River; and (3) that the decased, Wayne Ingersoll, at the time of his death and immediately prior thereto was a resident of Illinois.[3]

Defendants moved to strike and dismiss the complaint for failure to state a cause of action, claiming that Illinois law was applicable while Iowa law was pleaded. The motion to dismiss was granted. The plaintiff elected to stand on her complaint as amended.[4]

Plaintiff appealed, contending, inter alia, that there was error in determining which state's law was applicable.

The Appellate Court for the Second District affirmed the Circuit Court decision.[5] The Illinois Supreme Court, after granting leave to appeal, also affirmed, concluding that due to the arbitrary nature of the

1. Chap. 321, 494, IOWA CODE. "The owner or operator of a motor vehicle shall not be liable for any damages to any passenger or person riding in said motor vehicle as a guest or by invitation and not for hire unless damage is caused as a result of the driver of said motor vehicle being under the influence of intoxicating liquor or because of the reckless operation by him of said motor vehicle."

2. Chap. 321, 493, Iowa Code, "In all cases where damage is done by any car by reason of the negligence of the driver, and driver with the consent of the owner, the owner of the car shall be liable for such damage."

3. 106 Ill. App. 2d 330 (1969).

4. Id. at p. 335. Plaintiff substituted the personal representative of the defendant William Klein as a defendant in the suit.

5. Id. at p. 330.

doctrine of lex loci delicti a 'most significant contacts' rule best served the interests of the state and the parties involved in a multi-state tort action. Therefore, the trial court rightly dismissed the complaint for not stating a cause of action, since Illinois law was applicable.[6]

The significance of the decision in *Ingersoll v. Klein* lies in the clear rejecton of lex loci delicti[7] as a basis for solving multi-state tort actions in Illinois. The plaintiff, out of necessity, based his complaint on Iowa law.[8] Consequently, he had to argue that the right to recover was determined by the law of the place where the tort was committed. Lex loci delicti had been well established in Illinois,[9] and although there had been some confusion recently,[10] no court, until *Ingersoll*, had declined to apply this rule to a guest-host tort liability situation.[11]

Lex loci delicti had been reaffirmed as the Illinois rule for multi-state tort actions in the leading case of *Marchlik v. Coronet Insurance Co.*[12] In *Marchlik*, an automobile accident occurred in Wisconsin between a Wisconsin resident and a Michigan resident driving a car registered in Wisconsin. The guest of the Michigan driver, the plaintiff, sued the insurance company under the authority of Wisconsin's "direct action" statute. The insurance policy had been issued in Illinois and the suit was filed in Illinois. The Illinois Supreme Court, after stating its general adherence to the rule of lex loci delicti, refused enforcement of Wisconsin's substantive law because it was contrary to Illinois public policy. The court stated, "[T]he lex loci delictus or law of the place of the wrong generally governs where the substantive rights of the parties will be affected."[13]

Wartell v. Formusa,[14] a 1966 decision, had been the only clear qualification of lex loci delicti by the Illinois Supreme Court. This case involved two Illinois residents, a husband and wife, who suffered an automobile accident in Florida. The wife sued the husband in Illinois for

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6. — Ill. 2nd —, 262 N.E.2d 593, 597 (1970).
7. "Lex Loci Delictus. The law of the place where the crime or wrong took place. More fully expressed by the words lex loci delicti commisse (law of the place where a tort is committed), usually written more briefly as lex loci delicti, or sometimes, simply lex delicti." Black's Law Dictionary, Revised Fourth Edition, p. 1056.
8. A guest is not allowed to sue his host in Illinois, unless there is willful and wanton misconduct by the Host. ILL. REV. STAT. 1967, Ch. 95½, Sec. 9-201.
9. *See e.g.* Marchlick v. Coronet Insurance Co., 40 Ill. 2d 327 (1968).
10. Graham v. General U.S. Grant Post No. 2663, 97 Ill. App. 2d 139, 239 N.E.2d 856 (1968) *aff'd* in part, *rev'd* in part on other grounds, 43 Ill. 2d 1, 248 N.E.2d 657 (1969).
11. *See* note 9, *supra.*
12. 40 Ill. 327.
13. *Id.* at p. 330.
14. 34 Ill. 2d 57, 213 N.E.2d 544 (1966).

injuries she had sustained. The court declined to apply Florida law to the issue of whether or not a wife could sue a husband. Instead, the court applied Illinois law, holding:

> The law of the place of the wrong should of course determine whether or not a tort has in fact been committed, but the distinct question of whether one spouse can maintain an action in tort against the other spouse is clearly a matter which should be governed by the law of the domicile of the persons involved.[15]

The qualification of the place of the injury rule in *Wartell* had been limited to interspousal immunity suits until 1968, when the Appellate Court decided *Graham v. General U.S. Grant Post No. 2665.*[16] The case involved a suit in Illinois by an Illinois resident for an injury sustained in Wisconsin when an allegedly intoxicated Illinois resident collided with the plaintiff's automobile. The plaintiff sued the Illinois liquor store which had sold the alcoholic beverages to the defendant. The issues presented were whether Illinois law was applicable to the case and whether the Illinois Dram Shop Act applied extraterritorily. In determining whether Illinois law was applicable, the court conducted a thorough review of modern approaches to conflicts problems[17] and concluded that it was most desirable to "[A]dopt [the] . . . concept of of the effect of abandoning the mechanical rule of thumb application of the lex loci delicti rule."[18]

The court began its analysis by stating the rationale underlying the rule of lex loci delicti, which was "Its mechanical simplicity, with the assumed predictability of results as a corollary . . ."[19] Then the court, citing from leading cases,[20] explained that lex loci delicti fails to take account of policy considerations in evaluating the significance of circumstances having a foreign situs, and ignores the interest which jurisdictions other than that where the tort occurred may have in the resolution of particular issues. As a conseqence of the often harsh, unjust results that the lex loci delicti rule provides, the court turned to § 379 of the Restatement (Second) Conflict Of Laws (1969)[21] and Cheatham & Reese's summary of policy factors affecting choice of law rules.[22] Cheatham & Reese's policy factors are:

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15. 34 Ill. 2d 57, 59.
16. 97 Ill. App. 2d 139.
17. Id. at p. 148.
18. Id. at p. 155.
19. Id. at p. 149.
20. Babcock v. Jackson, 12 N.Y.2d 473, 240 N.Y.S.2d 743, 191 N.E.2d 279 (1963); Griffith v. United Airlines, Inc., 416 Pa. 1, 203 A.2d 796 (1964).
21. Infra p. 233.
22. 52 COL. L. REV. 959 (1952).

> (1) The needs of the interstate and international systems; (2) A court should apply its own local law unless there is a good reason for not doing so; (3) A court should seek to effectuate the purpose of its relevant local law rule in determining a question of choice of law; (4) Certainty, predictability, uniformity of result; (5) Protection of justified expectations; (6) Application of the law of the state of dominant interest; (7) Ease in determination of applicable law; convenience of the court; (8) The fundamental policy underlying the broad local law field involved; (9) Justice in the individual case."[23]

The court concluded that each decision involving a conflicts problem must "forthrightly assert the basic factors underlying its rationale."[24] Unlike the lex loci delicti which is a mechanical application of simple principles, the court asserted that the factors involved in that case were the welfare and protection of Illinois citizens, the regulation of the evils attendant to the liquor traffic, and the redress of injury or loss of support arising therefrom.[25] Since these factors were concerned with Illinois citizens and Illinois liquor traffic, the court reasoned it had to give extraterritorial effect to Illinois' Dram Shop Act and apply it to the facts of that case. The court felt "[T]he location of any injury caused by the intoxication, either within or without the state . . . [was] . . . irrelevant."[26]

Upon further appeal, the Illinois Supreme Court reversed the Appellate Court's decision in *Graham*.[27] In passing on the question of extraterritoriality, the court refused to extend the effect of the Illinois Dram Shop Act to an accident which had occurred in Wisconsin. The reversal was based on this issue. The court did not stop at this point, however, it went on to cite *Wartell* and stated:

> A number of Courts, including this Court, have approved and adopted the "center of gravity" rule in common-law tort actions brought by one member of a family against another where the injury occurred in a state other than the family's domicile.[28]

It appears that since the court reasoned that the act was not to be given extraterritorial effect, the present status of the lex loci delicti rule in Illinois was not directly relevant. This left the status of the lex loci delicti rule unclear. Had the court meant to affirm strict lex loci delicti, it should have logically dismissed the suit because Illinois law

23. *Id.*
24. 97 Ill. App. 2d at 153.
25. *Id.* at p. 159.
26. *Id.* at p. 148.
27. 43 Ill. 2d 1.
28. *Id.* at p. 5.

would not apply to an accident in Wisconsin. Yet the court reached the question of the extraterritoriality of the statute, and this implied that the Illinois law might be applicable if the Legislature had intended it to have extraterritorial effect.

The Illinois Supreme Court resolved this uncertainty by rejecting lex loci delicti in dispensing with Marie Ingersoll's appeal.

This rejection of the classical doctrine has fostered a new approach to multi-state tort actions in Illinois. In the past, the Illinois Supreme Court had accepted the position that foreign law created the right of action which followed the injured party to the forum of his selection. The party was said to have a vested right in the cause of action.[29] The forum state had an obligation to protect that right unless public policy forbad protection. Consequently, under the theory of lex loci delicti, the state where the accident took place had the only legitimate interest in occurrences within its borders.

Today, the more modern approach is to also consider the interests of jurisdictions *other than* the state where the accident occurred.[30] This is evidenced by the often cited case of *Babcock v. Jackson*[31] which involved two New York citizens in a one car accident in Ontario. The New York Court of Appeals allowed the guest to sue the host in spite of Ontario's prohibition against such suits, saying:

> Justice, fairness and "the best practical result" [citation omitted] may best be achieved by giving controlling effect to the law of the jurisdiction which, because of its relationship or contact with the occurrence of the parties, has the greatest concern with the specific issue raised in the litigation.[32]

This approach recognizes the position that a state can have a legitimate interest in occurrences outside of its jurisdiction. Thus, the rejection of the traditional rule is based on this recognition of diverse interests. As a result, the modern approach to choice of law is more than a search for a better reasoned rule. It is a change in basic theory, since courts applying the modern approach no longer recognize the validity of the vested rights theory.

In *Ingersoll*, the Illinois Supreme Court concurred with this analysis. It stated that there are many choice influencing considerations, only one

29. Cuba v. Crosby, 222 U.S. 473, 478-79 (1912), Babcock v. Jackson, 12 N.Y.2d 473, 240 N.Y.S.2d 743, 191 N.E.2d 279 (1962). Beale, Conflict of Laws, Sec. 51. *See*, Chicago & E.I.R. Co. v. Ririse, 178 Ill. 132, 52 N.E. 951 (1899).
30. 29 A.L.R.3d 603, 623.
31. Babcock v. Jackson, 12 N.Y.2d 473, 240 N.Y.S.2d 743, 191 N.E.2d 279 (1962).
32. *Id.* at p. 481.

of which is the place of the tort.[33] Consequently, following *Ingersoll*, the choice of applicable law will include consideration of the contacts of all states having a relationship with the occurrence.[34]

The court dismissed the traditional rule by summarily referring to the standard justifications for the place of the tort rule (predictability of outcome, ease of applicability, symmetry, and discouragement of forum shopping)[35] as benefits a court could derive from applying the law of Alaska, as the law of our coldest state.[36] In addition to being superficial, the justifications often turned out to be pure fiction. Many courts were often very liberal in using one of the several exceptions that became part of the traditional rule.[37] The result was that lex loci delicti was neither easy to apply nor predictable in outcome. The reaction of the court was to state "[A] most significant contracts rule best serves the interests of the State and the parties involved in a multi-state tort action."[38] The nucleus of this idea, was adopted by the court from Section 379, RESTATEMENT (SECOND) CONFLICT OF LAWS (1969), which considers the interests of all states having a relationship with the tort. This section states:

> (1) The local law which has the most significant relationship with the occurrence and with the parties determines their rights and liabilities in tort.
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> (2) Important contacts that the forum will consider in determining the state of the most significant relationship include: (a) the place were the injury occurred. (b) the place where the conduct occurred. (c) the domicile, nationality, place of incorporation and place of business of the parties (d) the place where the relationship of the parties is centered.
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> (3) In determining the relative importance of the contacts, the forum will consider the issues, the character of the tort, and the relevant purposes of the tort rules of the interested States.[39]

The Illinois Supreme Court has attempted to substitute a "significant contacts" rule contoured along the methodology suggested by the RESTATEMENT 2D, for the rule of lex loci delicti. Unfortunately, the court neglected explicit reference to section 379(3) which calls for consideration of "the issues, the character of the tort and the relevant purposes of the tort rules of the interested states." The result was that

33. 262 N.E.2d at 596.
34. *Id.* at p. 596.
35. 31 J.A.T.L.A. 534 (1965).
36. *Id.*
37. University of Chicago v. Dater, 227 Mich. 658, 220 N.W. 175 (1936), Levy v. Daniels' U-Drive Auto Renting Co., 108 Conn. 333, 143 A. 163 (1928).
38. 262 N.E.2d at 596.
39. Restatement (Second) Conflict of Laws § 379 (1969).

the court's approach apparently added together all the contacts related to the incident and determined which state had the most significant relationship. The court neither considered the disadvantages of allowing a guest to sue his host, nor analyzed the reasons for the existing guest-host statutes in Illinois and Iowa.

In order to be consistent with the modern approach and the RESTATEMENT 2D, it is necessary to consider each contact in light of an analysis of the relevant purposes of the tort rules of the interested states. When the court failed to apply this criterion to determine the relative importance of the various contacts, it merely substituted a contact counting test for the old place of the tort test and omitted the factor which saves the RESTATEMENT 2D and other modern approaches from being arbitrary.[40] Of course, on the facts of this case, such an analysis would have led to the same result which the court reached. Therefore, the court may merely have deemed this type of analysis unnecessary. Nevertheless, since the court was adopting an entirely new approach to conflict of laws problems in the tort area, it would have been desirable to indicate whether these factors are or are not to be relevant in future cases. Regardless of whether the court intended to follow the approach of the RESTATEMENT 2D, or intended to establish a new approach, it has, as previously indicated, in fact applied the law of the state with the 'most significant relationship' according to the terms of the RESTATEMENT 2D.

Had the Illinois Supreme Court used the section 379(3) analysis, it would have conducted an examination of the relevant purposes of the tort rules of the interested states. It could have considered that Illinois law:

> [E]vidences a desire to (a) prevent collusive suits between hosts and guests; (b) prevent the ingratitude of the guest who sues his kindly host (bites the hand that feeds him); (c) protect the host from being obligated for more than he bargained for (a judgment when only offered a ride); and (d) keep intact a fund (the host's assets) so it can be reached by other parties to the accident whose claims are assumed to have some vague moral priority over the claims of the gratuitous guest.[41]

Iowa law, on the other hand, would have imposed liability in the guest-host situation when intoxication is proven against the host.[42]

40. This statement presupposes that lex loci delicti was determined by one contact; namely, the state where the tort occurred.
41. Heath v. Zellmer, 35 Wis. 2d 590, 591, 151 N.W.2d 664, 669 (1967).
42. IOWA CODE, Ch. 321, 494.

Imposing liability on the host when intoxicated evidences a policy aimed at punishing the host to the extent that damages in a negligence action are punitive; at deterring further negligence by intoxicated persons on Iowa roads; and at providing funds to the injured guest so that state authorities, who have furnished medical services, will be compensated.[43]

Considering the *Ingersoll* factual situation in light of these relevant policies, the court would have determined which state had the more significant relationship. This analysis is the key to erasing fortuity in the adjudication of a multi-state tort action.

An application of the aforementioned analysis of policies shows that Illinois interests are more directly concerned since any collusive suit would be between its residents, and would include the determination of the liabilities of an Illinois based insurance company.[44] Iowa interests, however, are not significantly concerned since: (1) no state authorities furnished medical services, and (2) safety on Iowa roads was not threatened. Consequently, the court would have found that the interests of Illinois were more directly involved.

In recent decisions, the most important consideration for many courts has been to view accidents in light of the terms and purposes of the competing laws of the interested states.[45] Professor Ehrenzweig disagrees with this trend.[46] He submits that conflict of laws cases are usually concerned with private, not governmental or state interests.[47] He looks to the law of the forum for direction. From this starting point, he then examines the development of a common law of conflicts based on "consistent judicial practice"[48] which will provide exceptions to the basic rule. He expects this judicial practice to implement the consideration of private interests.

Most courts have implicitly adopted the view which states:

> Even within the sphere of private law, [the rules] generally represent norms for the ordering of behavior, not merely for dispute settlement, and today public law objectives are coming increasingly to infiltrate private law.[49]

Some courts have used the RESTATEMENT 2D approach in order to adopt the theory that several states might have competing interests in

43. Conklin v. Horner, 38 Wis. 2d 468, 157 N.W.2d 579, 582 (1968).
44. *Id.* at p. 582.
45. Annot., 29 A.L.R.3d 603, 623.
46. Ehrenzweig, *Conflict of Laws*, § 122 (1962).
47. *Id.*
48. *Id.*
49. Cavers, *The Choice of Law Process* (1965).

one accident.[50] Other courts have used a governmental interest analysis approach.[51] The governmental interest theory, initially advanced by the late Brainard Currie, involves admittance "of the teachings of sociological jurisprudence into the conceptualistic precincts of conflict of laws."[52] Currie's theory proceeds on the basis that courts will as a matter of course apply the law of the forum. He then adds:

> When it is suggested that the law of a foreign state should furnish the rule of decision, the Court should, first of all, determine the governmental policy expressed in the law of the forum. It should then inquire whether the relation of the forum to the case is such as to provide a legitimate basis for the assertion of an interest in the application of that policy.
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> If necessary, the court should similarly determine the policy expressed by the foreign law, and whether the foreign state has an interest in the application of its policy.
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> If the court finds that the forum state has an interest in the application of its policy, it should apply the law of the forum, even though the foreign state also has an interest in the application of its contrary policy, and, a fortiori, it should apply the law of the forum if the foreign state has no such interest.[53]

One authority has noted that "[T]he contacts test [of the RESTATEMENT 2D] tends to become an [governmental] interest analysis when the significance of a contact is assessed in terms of the policies underlying such state's law."[54] Upon adopting the proposition that several states can have legitimate interests in the outcome of the accident, this similarity is inherent.

The governmental interest analysis approach was adopted in *Wilcox v. Wilcox*,[55] a case cited by the court in *Ingersoll* as authority for rejecting the place of the injury rule, but not used as a vehicle for suggesting a new approach to solving conflicts problems. The court in *Wilcox* stated that:

> [W]e believe that in order to determine the most significant relationship consideration should be given to the policies and interests of the forum state, the tort state, and of other states that may have an interest by virtue of the domicile of the parties or other relevant factors.[56]

50. Annot., 29 ALR 3d 603, 625-629.
51. *Id.* at pp. 629-631.
52. Brainard Currie, *Selected Essays on the Conflict of Laws*, p. 188 (1963).
53. *Id.* at pp. 188-189.
54. Cramton & Currie, *Conflict of Laws* p. 253.
55. 26 Wis. 2d 617, 133 N.W.2d 408 (1965).
56. *Id.* at p. 415.

The Wisconsin Supreme Court later adopted the approach proposed by Robert Leflar.[57] This method consists of using five major choice-influencing considerations: (1) predictability of results, (2) maintenance of interstate and international order, (3) simplification of the judicial task, (4) advancement of the forum's governmental interests and (5) application of the "Better Rule of Law"; which incorporates all or most of the factors which ordinarily influence choice-of-law decisions.[58]

This theory is not a rule, but rather a system of analyzing relevant considerations for making a choice of law. The advantage this method has over Currie's governmental interest analysis is that it offers a rational solution to a conflicts situation in which more than one state has a valid interest. Currie opts for application of the forum's law when there are true conflicting interests because he denies that one state may have a more valid, real interest than another.[59] Leflar offers the solution of chooosing the "Better Rule of Law" when two state's laws are in conflict; he states:

> [C]ourts have always taken the content of competing rules into account, but they have too often used characterization, renvoi, multiple-choice rules, or the like as manipulative devices to cover up what they were really doing, when there was no need at all for any cover up.[60]

Leflar's five major choice-influencing considerations encompass the governmental interest analysis of Currie, the "most significant relationship" of the RESTATEMENT 2D, and they add the final consideration of choosing the better law.

It would seem that Leflar's Choice-Influencing Considerations is the most realistic and rational method for making a choice of law. It may possibly be the theory that the Illinois court finally chooses when it completes its transition from the rule of lex loci delicti to a more modern approach. However, the next step will probably be a more thorough explication of the doctrine adopted in principle in *Ingersoll* and this, it seems, will tend toward the view of the RESTATEMENT 2D.

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57. Conklin v. Horner, 38 Wis. 2d 468, 157 N.W.2d 579 (1968).
58. 54 CALIF. L. REV. 1584, 1585-88 (1966).
59. B. Currie, *Selected Essays*, p. 190.
60. 54 CALIF. L. REV. 1588 (1966).