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Willis L.M. Reese

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American Trends in Private International Law: Academic and Judicial Manipulation of Choice of Law Rules in Tort Cases

*Willis L.M. Reese**

In the United States, as in other common-law countries, the principal sources of law are statutes and court decisions. Relatively few statutes are directed to private international law with the result that in this area the role of court decisions is predominant. Nevertheless, in the United States, academic writers have probably had greater influence on the courts in private international law than in any other legal area. Starting with Justice Story,[1] the writers, by and large, were the first to enter the field and to discuss its problems. Even today, it is the writers, rather than the courts, who attempt to provide what might be described as integrated approaches to the subject. The courts are liberal in citing the works of writers in their opinions on private international law, and undoubtedly writers have at least been partly responsible for the marked shifts that have on occasion taken place in judicial approaches. For this reason, it seems appropriate to examine initially the views of some of the principal American writers on choice of law. This is the part of private international law that will serve as the focus of this Article.

The views of the writers will be discussed in the light of *Neumeier v. Kuehner*,[2] a recent decision by the New York Court of Appeals. The facts of the case and the two opinions supporting the result reached by six of the seven member court will first be stated. The attempt will then be made to describe how this case would have been decided by Professor Beale, the Reporter of the first *Restatement of Conflict of Laws*, and by some of the principal current writers on the subject. These latter writers will be grouped into three categories—(1) those who favor ad hoc decisions based exclusively on the potentially applicable local law rules of the states

* Charles Evans Hughes Professor of Law and Director, Parker School of Foreign and Comparative Law, Columbia University; Reporter, RESTATEMENT (SECOND) OF CONFLICT OF LAWS. LL.B., Yale University, 1938.

1. Initially published in 1834 and re-edited by the author in 1841, Story's *Commentaries on the Conflict of Laws* was the first comprehensive treatment in English on the subject. The book subsequently went through a large number of editions.

2. 31 N.Y.2d 121, 286 N.E.2d 454, 335 N.Y.S.2d 64 (1972).

having contacts with the case; (2) those who favor ad hoc decisions but who believe that they should be based in part upon multistate values; and (3) those who believe that while the eventual goal should be the development of choice of law rules, broad principles should first be developed to aid the courts in reaching their decisions. Once this has been done, the remaining portion of this Article will be devoted to a brief discussion of the actual state of American law in important areas of choice of law.

I. NEUMEIER V. KUEHNER

Neumeier involved an action for the wrongful death of an Ontario domiciliary who was killed in Ontario when the automobile in which he was riding as a guest-passenger collided with a train. The fatal trip began and was to end in Ontario, but the driver, who was also the owner of the automobile, was domiciled in New York. The question before the court was whether the rights of the guest-passenger against the owner-driver should be determined by Ontario law or by New York law. Under the law of Ontario, the owner-driver would be liable to the guest-passenger only for gross negligence while he would be liable for simple negligence under the law of New York. The court by a vote of six to one found that Ontario law was applicable. The case is particularly interesting in view of those that preceded it. Starting with *Babcock v. Jackson*[3] and ending with *Tooker v. Lopez,*[4] the New York Court of Appeals had, with one exception,[5] applied New York law to permit recovery by a New York guest-passenger against a New York driver even if the state where the accident occurred had enacted a guest-passenger statute. These decisions were largely based on what is popularly known as interest analysis; they held in essence that the purpose of the New York rule permitting a guest-passenger to recover on grounds of simple negligence would be furthered by its application to the facts of these cases whereas application of the guest-passenger statute of the state of accident would further its underlying purposes only tangentially, if at all. These decisions did, however, give rise to rather basic differences among members of the court and created much uncertainty as to how future cases would be decided. For these reasons, in his concurring opinion in *Tooker,* Chief

3. 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S. 743 (1963). For a more detailed discussion of *Babcock*, see Cavers, Cheatham, Currie, Ehrenzweig, Leflar & Reese, *Comments on* Babcock v. Jackson, *A Recent Development in Conflict of Laws,* 63 COLUM. L. REV. 1212 (1963).

4. 24 N.Y.2d 569, 249 N.E.2d 394, 301 N.Y.S.2d 519 (1969); *see* Reese, *Choice of Laws: Rules or Approach,* 57 CORNELL L. REV. 315 (1972).

5. Dym v. Gordon, 16 N.Y.2d 120, 209 N.E.2d 792, 262 N.Y.S.2d 463 (1965).

Judge Fuld expressed the view that in the area of guest statutes the time had come for the court to proceed "to the next stage in the evolution of the law—the formulation of a few rules of general applicability, promising a fair level of predictability."[6] He then set forth the following suggested rules:

> 1. When the guest-passenger and the host-driver are domiciled in the same state, and the car is there registered, the law of that state should control and determine the standard of care which the host owes to his guest.
> 2. When the driver's conduct occurred in the state of his domicile and that state does not cast him in liability for that conduct, he should not be held liable by reason of the fact that liability would be imposed upon him under the tort law of the victim's domicile. Conversely, when the guest was injured in the state of his own domicile and its law permits recovery, the driver who has come into the state should not—in the absence of special circumstances—be permitted to interpose the law of his state as a defense.
> 3. In other situations, when the passenger and the driver are domiciled in different states, the rule is necessarily less categorical. Normally, the applicable rule of decision will be that of the state where the accident occurred but not if it can be shown that displacing the normally applicable rule will advance the relevant substantive law purposes without impairing the smooth working of the multi-state system or producing great uncertainty for litigants. . . .[7]

Chief Judge Fuld spoke alone in *Tooker*, but in *Neumeier* his suggested rules won the support of four other members of his court. Accordingly, by reason of the third rule, the Ontario guest-passenger statute was held applicable because failure to apply this statute would not serve any New York purpose and would "produce a great uncertainty for litigants" by encouraging forum-shopping. Judge Breitel wrote a concurring opinion in which he expressed doubt that the time had come to lay down detailed rules of choice of law in the guest-passenger area, stating simply that "plaintiff has failed . . . to establish that the relationship to [New York] was sufficient to displace the normal rule that the *lex loci delictus* should be applied."[8]

II. THE WRITERS

A. Professor Beale

It is clear that Professor Beale,[9] the Reporter of the first *Restatement*, would have agreed with the holding of the court that the law of Ontario should be applied. Beale was an exponent of the

6. 24 N.Y.2d at 584, 249 N.E.2d at 403, 301 N.Y.S.2d at 532 (Fuld, C.J., concurring).
7. *Id.* at 585, 249 N.E.2d at 404, 301 N.Y.S.2d at 532-33.
8. 31 N.Y.2d at 131-32, 286 N.E.2d at 460, 335 N.Y.S.2d at 64 (Breitel, J., concurring).
9. Professor Beale's three-volume treatise on the Conflict of Laws was published in 1935. *See* J. BEALE, A TREATISE ON THE CONFLICT OF LAWS (1935).

vested rights theory which held that, although no law can have any force beyond the boundaries of the state of its enactment, a court will enforce rights that have vested elsewhere. According to this theory, the problem in a choice of law case is to locate the state where a right has vested, or, more specifically, where the last act has occurred that was necessary to bring a legal right into existence. In tort, this is the state where the plaintiff suffered the injury, for no tort claim can arise until there has been injury.[10] Since in *Neumeier* the injury occurred in Ontario, it is clear that Professor Beale would have thought the Ontario guest-passenger statute applicable.

B. Writers Who Favor ad hoc Decisions Based Exclusively on the Potentially Applicable Local Law Rules

Professor Brainerd Currie[11] can aptly be described as the father of modern "government interest analysis" theory. He advocated the abandonment of all choice of law rules and believed that multistate cases could best be decided by the interpretation and construction of the potentially applicable local law rules of the states having contacts with the case. In his view, a court should first inquire whether the underlying purposes or policies of each local law rule would be furthered by its application in the particular case. If that were so in the case of only one rule, then that was the rule which should be applied, on the ground that the state having this rule was the only interested state. If at first glance, however, it appeared that the policies underlying two or more rules would be served by their application, the court should reconsider and determine whether a "more moderate and restrained interpretation" of the policy underlying each rule would avoid the conflict. If it would not, and the forum was one of the interested states, the court should apply the law of the forum. This would be so even if the court believed that some other state had a greater interest in the decision of the case. In Currie's view, the weighing of state interests is not a proper judicial function, and a court cannot properly sacrifice "the legitimate interest of its own state" by applying another's law. Currie had extreme difficulty with the situation in which the forum was disinterested and the conflicting interests of two or more other states could not be reconciled by a "restrained and enlightened" interpretation of the policies underlying their respective laws. He advocated that, when faced with such a situation, a court

10. This is the position taken in the original *Restatement*. *See* RESTATEMENT OF CONFLICT OF LAWS § 377 (1934).

11. Most of Professor Currie's articles on the conflict of laws are collected in B. CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS (1963).

should first seek to determine whether it could not properly dismiss the case on the ground of *forum non conveniens.* If that were not feasible, a possible solution would be for the court to apply its own law if this law happened to correspond with that of one of the interested states.[12]

Under Currie's approach, decisions must necessarily be ad hoc. In each case, the only dispositive factors are the policies underlying the potentially applicable local law rules of the states having contacts with the case. It is, of course, entirely possible that different policies would on occasion be responsible for identically worded rules. An example is the typical guest-passenger statute which might have been intended to protect insurance companies against collusion on the part of driver and guest, or to protect the driver against the ingratitude of the guest, or to make it more likely that the occupants of other cars involved in the accident could obtain full recovery against the negligent drivers.[13]

A possible weakness in the Currie approach is that it is too narrowly based. He focuses only on the policies underlying the potentially applicable rules of the states having contacts with the case. Yet it is clear that in any system of law a single rule rarely stands isolated from the rest. To the contrary, the policy responsible for a given rule will often be intertwined with other, perhaps more general, policies and these other policies should also be consulted in determining the extent to which the rule should be given extraterritorial application. Suppose, for example, that state X has a spendthrift law and that A, an X spendthrift, goes to state Y where he contracts a debt. Suppose further that Y has no spendthrift law and that suit to enforce the debt is brought in X. Looking only at the policy that directly underlies the X spendthrift law —to protect X spendthrifts—it would follow that an X court, if engaging in interest analysis, should hold that A is not liable on the debt. Suppose, however, that X has another more general policy that residents of other states should be encouraged to contract with residents of X. In the light of this latter policy, the X court might well hold that the X spendthrift statute should not be given extraterritorial application in order to protect an X resident who goes to another state to contract a debt. If so, a court of some other state would be sorely misled if it were to look only to the policy which directly underlies the X spendthrift statute in order to determine

12. A succinct statement of Currie's views is set forth in W. REESE & M. ROSENBERG, CASES AND MATERIALS ON CONFLICT OF LAWS 469-70 (7th ed. 1978).

13. See, for example, the purposes attributed to the Colorado guest-passenger statute in the majority opinion in *Dym v. Gordon,* 16 N.Y.2d 120, 209 N.E.2d 792, 262 N.Y.S.2d 463 (1965).

that statute's range of application. A difficulty, of course, is that while it may often be hard to determine the exact policy (or policies) that directly underlies a rule, it will be harder still to ascertain with what other policies the first is intertwined.[14]

Another possible weakness in Currie's position is his disregard of multistate values. He believed, as has been seen, that in arriving at its decision the forum should not consider such matters as what solution would be in the best interests of all concerned states or of the interstate or international systems in general. This notion that each state should think only of itself might well be thought inconsistent with the needs of what may be hoped to be an increasingly civilized world.

It would be easy to predict how Currie would have decided *Neumeier* if either the local law rules of New York and Ontario had been reversed or if a New York passenger had been involved. If New York, rather than Ontario, had had the guest-passenger statute, the purpose of this statute would clearly have been furthered by its application to protect either the New York driver or the New York insurance company. If, on the other hand, the guest-passenger had been domiciled in New York, the purpose of the New York rule permitting recovery against the driver on the basis of simple negligence would again clearly have been served by its application in favor of the passenger. With the facts and local law rules as they were, however, Currie would have been placed in a quandary, since it could be argued with some force that neither the purpose of the New York rule (to protect New York passengers) nor that of the Ontario statute (to protect either Ontario drivers or Ontario insurance companies) would be served by application of either rule or statute. On the basis of his earlier writings, it is believed that Currie would have favored application of the New York rule, on the ground that this rule had the "altruistic" purpose of protecting all guest-passengers, wherever they might be domiciled or injured, against the negligence of New York drivers.[15] Just how Currie would extract such a purpose from this rule is something he left largely unexplained. Currie would have buttressed his position further by the argument that application of the New York rule was required by the equal protection clause of the fourteenth amendment to the United States Constitution. According to this view, since the court would have applied the New York rule if the plaintiff had been a New Yorker, it would constitute improper discrimination for the court not to do the same in similar circumstances in

14. *See* Reese, *Chief Judge Fuld and Choice of Law*, 71 COLUM. L. REV. 548, 561-62 (1971).

15. *See* B. CURRIE, *supra* note 11, at 488-95 (1963).

favor of a nonresident.[16]

Professor Albert Ehrenzweig, a prolific writer, is hard to classify.[17] In general, he favored ad hoc decisions in the absence of what he called "true rules" of choice of law. It is not believed that he ever attempted to provide a complete list of such rules, but examples of them are what he termed the "rule of validation" in the case of nonadhesive contracts and application of the law of the *lex situs* in the case of the transfer of interests in land. On the other hand, he did not believe that rights and liabilities in tort should be governed by the law of the place of injury and clearly would not classify this as a true rule. In the absence of a true rule, Ehrenzweig believed that the solution of a choice of law problem should be found in the potentially applicable local law rule of the forum. If the purpose of this rule would be served by its application, this is the rule that should be applied. In other circumstances, the forum rule should still be consulted to determine what foreign rule to apply. Just how a local law rule of the forum could cast light upon this latter question is something that Ehrenzweig did not adequately explain.[18]

In the case of negligently caused injuries, Ehrenzweig was prepared to recognize an exception to the normal application of forum law but was not entirely consistent as to what the exact nature of this exception should be. In general, he suggested that a defendant could be held liable under any law whose applicability he had reason to foresee and against the risk of whose application he therefore had reason to insure.[19] In the case of automobile accidents, however, Ehrenzweig at one time suggested a far narrower rule—that the defendant's liability should be determined under the law of the state where the automobile was "principally garaged."[20] It seems clear, at any rate, that in *Neumeier* Ehrenzweig would have advocated that the defendant be held liable by application of the law of New York.

Mention should here be made of Professor Robert Sedler, a prodigious writer. He is essentially a follower of the Currie doctrine but is inclined on occasion to make broad and sweeping statements. For example, he says that in a tort action the forum should apply its own law to out-of-state accidents provided that such ap-

16. *Id.* at 536-45. For a similar argument, see Judge Bergan's dissent in *Neumeier v. Kuehner*, 31 N.Y.2d at 136, 286 N.E.2d at 460, 335 N.Y.S.2d at 73-74.

17. Ehrenzweig's one-volume treatise, CONFLICT OF LAWS, was published in 1962.

18. A succinct statement of Ehrenzweig's views is set forth in W. REESE & M. ROSENBERG, *supra* note 12, at 472-73.

19. A. EHRENZWEIG, CONFLICT OF LAWS 555 (1962).

20. *Id.* at 518.

plication benefits a local resident and would not be unfair to the defendant.[21] It would seem that in Sedler's view, application of forum law could hardly, if ever, be unfair to a defendant who is insured against liability. Since, in such a case, the insurance company will pay, it can be argued that the defendant-insured has no real concern with the question of what law should be applied to determine his liability. Furthermore, Sedler says the insurance company can have little cause for complaint whatever may be the law applied, because insurance rates are set on the basis of broad experience and a company's financial condition will not appreciably be affected by the law applied in an individual case.[22] Faithful adherence to the Sedler approach would inevitably result in an increase in insurance rates throughout the country as a whole. It would also lead to a situation in which courts are concerned with local interests only and in which sharp distinctions are made between persons otherwise similarly situated, on the basis of their residence or domicile. Such an approach would inevitably lead to increased interstate and international fragmentation and would seem quite inconsistent with the needs of a world which one may hope is growing together rather than falling apart.

Perhaps somewhat inconsistently, Sedler disagrees with the result reached in *Neumeier.* Since in this situation the New York courts would have applied their own law in favor of a local plaintiff, Sedler believes that in the interests of evenhandedness they should have applied the same law for the benefit of a nonresident. Indeed, he goes so far as to suggest that this result might be required by the equal protection clause of the fourteenth amendment to the United States Constitution.[23]

C. *Writers Who Favor ad hoc Decisions Based in Part Upon Multistate Considerations*

A writer who has been much cited by the courts is Professor Robert Leflar.[24] He recommended that the courts should base their decisions on the following five "choice-influencing considerations":

21. Sedler, *Judicial Jurisdiction and Choice of Law: The Consequences of* Shaffer v. Heitner, 63 IOWA L. REV. 1031, 1038 (1978); Sedler, *Rules of Choice of Law Versus Choice-of-Law Rules: Judicial Method in Conflicts Torts Cases,* 44 TENN. L. REV. 975, 1036-37 (1977).

22. Sedler, *Judicial Jurisdiction and Choice of Law: The Consequences of* Shaffer v. Heitner, *supra* note 21, at 1038; Sedler, *Rules of Choice of Law Versus Choice-of-Law Rules: Judicial Method in Conflicts Torts Cases, supra* note 21, at 986.

23. Sedler, *Interstate Accidents and the Unprovided for Case: Reflections on* Neumeier v. Kuehner, 1 HOFSTRA L. REV. 125 (1973); Sedler, *The Territorial Imperative: Automobile Accidents and the Significance of a State Line,* 9 DUQ. L. REV. 392 (1971).

24. Professor Leflar's treatise, *American Conflicts Law,* is now in its third edition.

(1) predictability of results, (2) maintenance of interstate and international order, (3) simplification of the judicial task, (4) advancement of the forum government's interests, and (5) application of the better rule of law.[25] Leflar clearly favors ad hoc decisions. He never tells the courts what decision to reach but rather what factors they should consider in deciding a case. Moreover, he does not suggest that application of his considerations will eventually lead to the development of actual rules of choice of law. In contrast to Currie and Ehrenzweig, however, Leflar believes that consideration should be given to multistate values, such as how the decision could best be shaped to further interstate or international values.

"Application of the better rule of law" is undoubtedly the factor on Leflar's list that raises the most problems. As intended by Leflar and as interpreted by the courts, this factor calls for an evaluation of the respective merits of the potentially applicable local law rules of the states concerned. Not surprisingly, the courts in giving weight to this factor have determined, almost invariably, that their own local law rule was the "better" and should therefore be applied.[26] Such added inducement to a court's natural tendency to apply its own local law seems highly unfortunate. On the other hand, this factor might play a useful role if it could be reinterpreted to mean that the "better rule" is the local law rule of any one of the states concerned that is best designed to further the basic policy underlying the substantive field involved.[27]

How a New York court, using Leflar's "choice-influencing considerations," would have decided *Neumeier* is hard to predict. The first, third, and fourth of his "considerations" would seem to point to the application of Ontario law. The second—maintenance of interstate and international order—would surely point as much to Ontario as to New York. Nevertheless, it is suspected that the court would have been led by the siren sound of the "better rule" to apply New York law.

The Leflar approach has been adopted in a fair number of states—in part, it is supposed, because of its relative simplicity and obvious flexibility.[28] How often the courts are actually guided by the "considerations" in arriving at their conclusions is, however, another matter. A reading of the cases suggests that frequently the

25. R. LEFLAR, AMERICAN CONFLICTS LAW 195 (3d ed. 1977).

26. An exceptional case in which the court applied a foreign law on the ground that it was better than its own is *Frummer v. Hilton Hotels Int'l, Inc.*, 60 Misc. 2d 840, 304 N.Y.S.2d 335 (Sup. Ct. 1969).

27. For further discussion of this point, see text accompanying note 44 *infra*.

28. *See, e.g.*, Schneider v. Niehols, 280 Minn. 139, 158 N.W.2d 254 (1968); Clark v. Clark, 107 N.H. 351, 222 A.2d 205 (1966); Conklin v. Horner, 38 Wis. 2d 468, 157 N.W.2d 579 (1968).

courts first determine how to decide the case and then deal with the "considerations" in a way that will permit them to arrive at the preordained conclusion. To some extent, the courts undoubtedly operate in the same manner in all fields of the law. But it is suspected that the flexibility of the Leflar approach, particularly in its emphasis upon the better rule of law, makes it particularly subject to judicial manipulation.

Professors Arthur von Mehren and Donald Trautman are also advocates of ad hoc decisions.[29] Their suggested approach is essentially as follows: the forum should first identify the states having contacts with the case. It should next inquire how the courts of each of these states would have decided the case if it had come before them for decision. If all these courts would have applied the law of the same state, the forum should follow suit. If, however, these courts would have reached different results, the forum should usually seek to apply the rule of the state which has the greatest interest in the decision of the issue at hand. Factors the forum should consider in determining the state of the applicable law include the relative strength of the policy, or policies, underlying the potentially applicable local law rules of the states involved; the status of these rules in relation to current trends in the law (the fact that a given rule represents an outmoded point of view would be a reason for not applying it); other relevant policies of the concerned states, such as those underlying the involved field of substantive law; administrability; and effectiveness. Also to be considered are multistate policies relating to effective and harmonious intercourse and relations between and among communities. These policies include reciprocity, the advancement or promotion of multistate activity, and evenhandedness.

It will have been noted that in contrast to Professor Currie, Professors von Mehren and Trautman believe that a weighing of state interests is a proper judicial function and that the forum should apply the law of another state in preference to its own in situations where the other state has a greater interest in the decision of the issue at hand. Moreover, in further contrast to Professor Currie, they would have the forum consider not only the policies underlying the potentially applicable local law rules of the interested states but also other relevant policies of those states as well as policies concerned with the needs of the interstate or international systems. In short, they may be said to have pushed policy analysis to its logical and ultimate conclusion. They have not, as has Professor Currie, simplified their task by disregarding obvi-

29. *See* A. VON MEHREN & D. TRAUTMAN, THE LAW OF MULTISTATE PROBLEMS (1965).

ously relevant policies. Further, their approach would tend to promote interstate and international harmony by requiring the forum to consider the interests of other states besides its own. It follows, almost of necessity, that the approach they advocate is the most complicated, the most refined, the most carefully developed, and the most time-consuming of all.

Clearly, Professors von Mehren and Trautman are correct in saying that if state interests are to be weighed, it is the courts that should weigh them. Such a weighing must be done in light of the facts and of the potentially applicable local law rules involved in the individual case. Only a court can perform such a function. Obviously, a legislature could not do so, since of necessity a legislature must legislate on a general plane and cannot deal with the small yet significant differences that distinguish one case from another. It is, moreover, difficult to see how a weighing of relative state interests can properly be avoided. The alternative, as Professor Currie was frank to admit, is that each state should apply its own local rule provided that any policy underlying that rule would be served by its application. This could only result in undisciplined forum-shopping which would be particularly unfortunate at the present time in view of the ever-expanding notions of a state's jurisdiction to try in its courts cases involving foreign facts.

The von Mehren-Trautman approach may become clearer when directed to the situation presented in *Neumeier.* According to their view, the New York forum, having first determined that only New York and Ontario had relevant contacts, would next inquire what law the Ontario courts would have applied in deciding the case if it had come before them for decision. Assuming that it was determined that the Ontario courts would have applied their own law as that of the place of injury, the New York forum would next consult a number of factors in its search for the law that could most appropriately be applied. It would note that whereas in general both New York and Ontario favor the award of compensation for negligently inflicted injuries, Ontario has created a special exception to this general policy in the case of a guest-passenger. If, however, the purpose of Ontario's gnest-passenger rule would not be served by its application in the instant case, the common policy of awarding compensation should be given effect and the New York rule applied. This would be so if the purpose of the Ontario rule was to protect insurance companies against collusion between drivers and guests, since this purpose would hardly be served by application of the rule in a case, such as *Neumeier,* where the defen-

dant's policy was issued outside of Ontario. This would also be so if the Ontario rule was intended to protect drivers against the ingratitude of their guests, since in this case the defendant driver was a New Yorker. If, however, the rule was directed against ingratitude on the part of the guest, its purpose would be furthered by its application, since in *Neumeier* the guest-passenger was domiciled in Ontario. Only in this last situation could the result reached by the New York court be justified, and even here it would be of doubtful validity if the policy behind the Ontario guest-passenger statute was weak or, at least, of diminishing strength.[30]

The virtues and the defects of the von Mehren-Trautman approach become apparent in what has been said above. Its virtues are that it is logical, that it is complete in that it does not ignore important policies, and that it pushes policy analysis to its ultimate conclusion. On the other hand, it might well require more time and effort on the part of both judges and lawyers than choice of law questions deserve. Worse still, it frequently poses unanswerable questions. For example, it is difficult to determine whether the policy underlying a particular rule is strong or weak;[31] it is to be feared that, perhaps unconsciously, a judge will permit his subjective liking or dislike for a rule to influence his judgment on whether it is firmly based. In addition, while it will frequently be impossible to determine the exact nature of the policy basis for a rule, under the von Mehren-Trautman approach this may be crucial to a correct choice of law decision. So, according to them, a New York court in the *Neumeier* case might be justified in applying the Ontario guest-passenger statute if the purpose of that statute is to prevent ingratitude on the part of the guest but not if it is designed to protect the driver against the guest's ingratitude.[32] It is to be questioned whether one could ever with any confidence place a statutory policy on one or the other side of so fine a distinction.

A further, and still more basic, problem is that it will frequently be impossible to tell whether the purpose of a rule is derived in part from territorial considerations. For example, if the purpose of the Ontario statute is to protect drivers against the ingratitude of their guests, it does not necessarily follow, as von Mehren and Trautman assume, that it is intended solely for the protection of Ontario residents. Instead, it seems equally possible that it is intended to protect all drivers who are involved in accidents in

30. These points are made in Trautman, *Rule or Reason in Choice of Law: A Comment on* Neumeier, 1 VT. L. REV. 1, 18-19 (1976).

31. *See* Trautman, *Two Views on* Kell v. Henderson: *A Comment*, 67 COLUM. L. REV. 465 (1967).

32. *See* Trautman, *supra* note 30.

Ontario. Presumably legislators, like the rest of us, frequently think in territorial terms and would wish their enactments to have evenhanded application to events occurring within the borders of their state. Unfortunately, there will rarely be any sure indication whether a legislature enacted a statute with territorial considerations in mind or with the intention of having it apply exclusively to local residents. Indeed, it seems quite possible that on numerous occasions an enacting legislature will have given no thought to this sort of distinction. As a result, a court wedded to policy analysis will often be searching for a statutory purpose that either does not exist or else cannot accurately be ascertained. In such circumstances, the court will naturally be inclined first to determine how it wishes to decide the case and then to ascribe such a purpose to a statute as will permit it to arrive at the desired result. In other words, a so-called policy analysis may often be a sham.[33]

The above criticisms can justly be directed at policy analysis in general. They have been set forth at this point only because von Mehren and Trautman deal with the role of policy more conscientiously, more logically, and more thoroughly than any other authors. This is to their credit. It follows naturally, however, that their writings make particularly evident the difficulties involved in the approach they advocate.

It will have been noted that, with the exception of Professor Beale, all of the writers discussed to date would disapprove of the result reached in *Neumeier*. One cannot help but wonder, therefore, whether they are not all under the influence of a largely unexpressed principle—that the plaintiff should prevail in a personal injury action provided he would do so under the law of a state having a reasonable contact with the parties and the occurrence. In support of such a principle, one could point to the fact that compensation for injuries is one of the prime objectives of tort law and might now be thought more readily attainable by reason of the prevalence of liability insurance.[34] It is unfortunate that this principle, if indeed it has been influential, has not been discussed more explicitly. To have done so would have made easier the task of properly evaluating the writings involved.

Mention should here also be made of Professor von Mehren in another context. In recent articles,[35] he has suggested that for the

33. *See* Reese, *supra* note 14.

34. W. PROSSER, HANDBOOK OF THE LAW OF TORTS 6 (4th ed. 1971).

35. Von Mehren, *Choice of Law and the Problem of Justice*, 41 LAW & CONTEMP. PROB., Spring, 1977, at 27; Von Mehren, *Special Substantive Rules for Multistate Problems: Their Role and Significance in Contemporary Choice of Law Methodology*, 88 HARV. L. REV. 347 (1974).

sake of interstate and international harmony the courts should seek to compromise conflicting state interests by means of special judge-made rules designed to meet the needs of the particular case. He therefore suggests that a possible solution to the problem posed by *Neumeier,* where the plaintiff would receive full recovery under the law of New York but none at all under that of Ontario, would be to grant the plaintiff recovery of half his damages. So far as is known, there is no judicial precedent for such a suggestion, and almost certainly the courts would not feel empowered to follow it without express legislative authorization. No such authorization is likely to be forthcoming, with the result that this von Mehren suggestion is likely to be only of academic interest. There may also be doubt of its merit. Clearly, it is ingenious, but one may question whether so violent a departure from past practices would be desirable. It would obviously lead to great uncertainty and to much litigation. One may also question the wisdom of giving the court unbridled power to fashion rules in choice of law cases that are different from any found in the law of the interested states.

D. Writers Who Favor the Development of Rules and of Broad Principles Designed to Aid the Courts in Arriving at Their Decisions

Professor David Cavers is undoubtedly the foremost American writer who falls within this category.[36] In company with the great majority of his compatriots, he believes that choice of the applicable law should depend upon the particular issue and that this choice should be between rules rather than between jurisdictions. In other words, he disapproves in general of what he describes as "jurisdiction-selecting rules," for example, that rights in tort are governed by the law of the state of injury and that the validity of a contract depends upon the law of the place of contracting. In Cavers' view, rules of this sort if literally applied involve the courts in a "blind-fold process," because they lead to the identification of the state of the applicable law without consideration first having been given to how the case would be decided under that state's relevant local law rule.

From this point on, Cavers differs radically from the writers who have been discussed above. He believes in the importance of territorialism, specifically that in deciding a choice of law question consideration should be given not only to the policies underlying

36. *See* D. CAVERS, THE CHOICE-OF-LAW PROCESS (1965). *See also* his Hague Lectures, entitled *Contemporary Conflicts Law in American Perspective,* HAGUE ACADEMY OF INTERNATIONAL LAW, 2 Recueil des Cours 77-308 (1970).

the relevant local law rules of the concerned states but also to the place or places to which the parties are related or where the significant events took place. He furthermore disapproves of making decisions of choice of law questions depend exclusively upon the construction and interpretation of local law rules. In part, this is because it will not always be possible to identify the actual policy or policies that a particular rule was designed to effectuate. In addition, Cavers recognizes that courts have much to do and must decide many questions in addition to those concerned with choice of law. Hence, to the extent possible, the courts should be spared the onerous and time-consuming task of ferreting out in each choice of law case that comes before them the policies that underlie the relevant local law rules of the concerned states. The ideal solution would, of course, be the development of actual rules of choice of law. But Cavers disapproves of the broad jurisdiction-selecting rules that are currently on the books and believes it unlikely that more satisfactory rules can be developed in the appreciable future. For the lengthy period that must elapse before new rules can be put into effect, Cavers advocates that the courts should formulate and rely on what he describes as "principles of preference." These are principles that will point to a satisfactory solution of the majority of choice of law questions falling within their scope but, since they lack the binding quality of rules, can freely be abandoned to fit the needs of an exceptional case. The first principle of preference suggested by Cavers reads as follows:

> Where the liability laws of the state of injury set a higher standard of conduct or of financial protection against injury than do the laws of the state where the person causing the injury has acted or had his home, the laws of the state of injury should determine the standard and the protection applicable to the case, at least where the person injured was not so related to the person causing the injury that the question should be relegated to the law governing their relationship.[37]

The territorial emphasis of this rule is apparent. It applies only when the state of injury has the higher standard of conduct or of protection. This state is the one most deeply concerned with the maintenance of order within its territory. There is therefore good reason why its more stringent tort rules should be applied for their deterrent effect when the defendant acted within the state and usually also when, although the defendant acted without the state, he had reason to foresee that his conduct might cause injury in the state. A further justification for the application of the more stringent tort rules of the state of injury is that this state has an obvious

37. D. CAVERS, *supra* note 36, at 139.

interest in having persons injured within its territory obtain what in its view is adequate compensation. A third argument in support of the principle, although this point was not made by Cavers, is that it seems just that, except perhaps in unusual circumstances, a person should receive at least the measure of protection accorded by the state where he suffered injury.

One situation that gave Cavers pause is that in which the defendant acts outside the state of injury pursuant to a privilege accorded him by the law of the state in which his conduct took place. To apply the more stringent tort rule of the state of injury in this situation would presumably conflict with the interests of the state that had accorded the privilege and might also be unfair to the defendant. This may be a situation, in Cavers' opinion, in which a court would choose not to apply the principle of preference and instead would hold the defendant not liable by application of the law of the state of conduct.

Another significant point is that application of Cavers' principles of preference does not entail ascertainment of the policies underlying the relevant local law rules of the concerned states. In other words, these principles make it possible for a court to decide a question of choice of law expeditiously and with no greater effort than that involved in the application of ordinary rules of law. In addition, a court that applies these principles will be spared the need of deciding each choice of law case on an individual, ad hoc basis. These are tremendous advantages. It should finally be remembered that these principles are merely guides. A court is free to depart from them to suit the needs of the exceptional case.

The principal difficulty with Cavers' principles is that they are hard to formulate. He himself suggested only seven—five in tort, one in contracts, and one in conveyances. Presumably Cavers devoted much time and effort to devising these seven principles, and yet they fall far short of covering all the choice of law problems that can arise in these three fields. One cannot help but wonder, therefore, whether it is realistic to expect the courts to formulate principles covering at least most of the reaches of choice of law.

Cavers, it is clear, would have approved of the result reached in *Neumeier*. His second principle of preference is that "the liability laws of the state in which the defendant acted and caused an injury" should in general be applied to determine the extent of any "financial protection" to which the plaintiff may be entitled.[38]

The *Restatement (Second) of Conflict of Laws* will be considered at this point. To the regret of the draftsmen, it proved impos-

38. *Id.* at 146.

sible to state many hard and fast rules of choice of law. Instead, resort was had to what can be described as principles of preference, although of a different sort than those advocated by Cavers. The essential difference is that whereas Cavers' principles are based in part upon the content of a state's relevant local law rules, the formulations of the *Restatement,* subject to some exceptions, depend exclusively upon territorial contacts. So, by way of example, section 146 provides:

> In an action for a personal injury, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship under the principle stated in § 6 to the occurrence and the parties, in which event the local law of the other state will be applied.

Like Cavers, this section gives an important role to territorialism. It also provides the courts with a guide, by stating that application of the local law of the state of injury will usually be appropriate. This law can be applied without further ado unless, for some reason, the court suspects that some other state may be what the *Restatement* describes as a state of "more significant relationship." In such a case, the court is instructed to consult the choice of law principles set forth in section 6, which reads as follows:

> Choice-of-Law Principles
>
> (1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.
> (2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include
> (a) the needs of the interstate and international systems,
> (b) the relevant policies of the forum,
> (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
> (d) the protection of justified expectations,
> (e) the basic policies underlying the particular field of law,
> (f) certainty, predictability and uniformity of result, and
> (e) ease in the determination and application of the law to be applied.

Section 6 has both strengths and attendant weaknesses. Its strengths are that it lists the principal values that are of importance in choice of law. Its weaknesses stem directly from these strengths. In all but the simplest cases, the values stated are likely to point in different directions such that the court will be required to determine which values are of greatest importance for the purpose at hand. In other words, section 6 is eclectic in that it places emphasis upon a number of policies or values. For example, in contrast to Professor Currie, who advocates a simple approach, section 6 does not tell the courts what path to follow. This is because, ac-

cording to the *Restatement,* there is no one true path; there are a number of relevant values and the weight that should be accorded each value is likely to vary somewhat from area to area within choice of law. These difficulties in application are mitigated somewhat by the facts that the formulations of the *Restatement* almost invariably provide, as in the case of section 146, that the law of a designated state will usually be applicable. As a result, only in a minority of situations will there be need to resort to section 6.

The *Restatement* attempts to provide as much guidance as it is believed the current state of the authorities will permit. Hard-and-fast rules of choice of law are stated in the few situations in which this was deemed possible.[39] Elsewhere formulations of varying degrees of specificity are employed.[40] Nevertheless, it cannot be denied that the principal weakness of the *Restatement* is the relatively little guidance that it affords. Properly viewed, it is a transitional document. It was written during a time of change and chaos when there was little indication of the direction that would be taken by future developments in choice of law. This situation persists and is likely to continue during the appreciable future. It is hoped that in due course new rules will be developed or at least that a consensus will emerge with respect to the approach to be taken to choice of law. That will be the time for work on a third *Restatement* to commence.

A court wedded to the *Restatement* would clearly reach the same result as was attained in *Neumeier.* Section 146 provides that usually the law of the state where injury occurred should be applied to determine the rights and liabilities of the parties. Moreover, it is stated in Comment *d* to this section that application of the law of the state of injury is most likely to be appropriate in situations in which the defendant's conduct also occurred in this state.

III. THE CASES

In view of the relatively lengthy treatment that has been accorded the writers, discussion of court decisions must be brief. The great majority of recent choice of law cases involved actions to recover for personal injuries and, with some exceptions, the law chosen was favorable to the plaintiff. This fact inevitably raises the

39. *See, e.g.,* RESTATEMENT (SECOND) OF CONFLICT OF LAWS (1971) § 206, which states categorically that the law of the place of performance will be applied to determine issues relating to the details of performance of a contract.

40. *Compare id.* § 188 (a broad formulation dealing with the law governing the validity of contracts in general) *with id.* § 199 (providing that "[f]ormulations which meet the requirements of the place where the parties execute the contract will usually be acceptable").

question whether the courts were seeking to further what they believed to be a basic objective of tort law—that usually the plaintiff should be able to recover for personal injuries suffered at the hands of another. If this was in fact the case, it is regrettable that the courts did not frankly say so. Predictability of judicial decisions becomes difficult, as does the development of legal rules, when judges do not state fairly their reasons for arriving at a given result.

There are other grounds, however, for believing that a desire to apply a law favorable to the plaintiff was at least one of the factors underlying many of the recent choice of law decisions in the tort area. With some exceptions, the initial cases applying new approaches involved actions for personal injuries in situations in which there would be no liability under the law of the state of injury and in which consequently the court would have to take some other route in order to find for the plaintiff.[43] Moreover, it seems fair to say that at least the majority of the new approaches can readily be manipulated so as to lead to a recovery. Take, for example, a situation where by conduct in state *X* the defendant injures the plaintiff in state *Y* and that suit is brought in the latter state. If, in such a case, there would be liability under the law of *Y* but not of *X*, the court could justify application of *Y* law on the ground of this state's interest in providing compensation to those injured within its borders. If, on the other hand, the two laws are reversed and there would be liability under the law of *X* but not of *Y*, the court in *Y* could base application of *X* law on the theory that this would further *X*'s interest in deterring tortious conduct within its territory and would not impinge upon any interests of *Y*. If the *Y* court were to follow Professor Leflar's "choice-influencing considerations,"[44] it could apply whichever law (either *X* or *Y*) would grant recovery, on the ground that in so doing it was applying the better rule of law.

In their opinions, American courts frequently purport to give equal weight to two or more of the new approaches that have been

41. Two of the best-known cases where the law chosen in a personal injury action favored the defendant are *Neumeier v. Kuehner*, 31 N.Y.2d 121, 286 N.E.2d 454, 335 N.Y.S.2d 64 (1972) and *Cipolla v. Shaposka*, 439 Pa. 563, 267 A.2d 854 (1970).

42. *See* text accompanying note 34 *supra*.

43. *See, e.g.*, Grant v. McAuliffe, 41 Cal. 2d 859, 264 P.2d 944 (1953), *discussed in* Annot., 42 A.L.R.2d 1162 (1955); Schmidt v. Driscoll Hotel, Inc., 249 Minn. 376, 82 N.W.2d 365 (1957); Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963); Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961). *But cf.* Davenport v. Webb, 11 N.Y.2d 892, 183 N.E.2d 902, 230 N.Y.S.2d 17 (1962) (rejecting the procedural characterization employed in *Kilberg*).

44. Professor Leflar's approach is discussed in the text accompanying notes 24-28 *supra*.

discussed above.[45] A number of conclusions can be drawn from this phenomenon. One is that these approaches, although quite different in detail and underlying philosophy, will frequently lead to the same result. Another is that the approaches are extremely flexible in operation and allow a court wide latitude in reaching its decision. One can further conclude that the courts have been encouraged by the existence of these approaches to abandon their previously almost automatic application of the law of the place of injury. On the other hand, the majority of courts have not found it necessary to favor one approach over the rest. It seems quite probable that frequently the courts first decide, for reasons satisfactory to themselves, on the result they wish to reach and then refer in their opinions to one or more of the approaches in order to buttress a predetermined result.

Despite the apparent confusion, the cases do provide some measure of predictability. Usually, the defendant's complained-of conduct will have occurred in the state where he caused injury. If so, the law of this state will almost certainly be applied to determine whether this conduct was tortious.[46] Not surprisingly, prediction is more difficult in the more infrequent situation in which the defendant's act and the resulting injury occur in different states.[47] Actually, the majority of the recent tort cases have not been concerned with the tortious quality of the defendant's conduct but rather with the availability of some defense, such as a guest-passenger statute or one imposing a limit upon the amount of recovery. Statutes of this sort are currently in disfavor and many have recently been repealed or held unconstitutional.[48] Possibly for this reason, the courts have shown considerable ingenuity in finding reasons for not applying them. Still other issues were involved in some of the cases and here likewise the law ultimately chosen usually favored the plaintiff.[49] It should be pointed out, however, that a plaintiff will naturally try to bring suit in a state with a local law rule that is favorable to his interests. There is uncertainty therefore whether the results reached in the cases are primarily the product

45. This point is made in Leflar, *Choice of Law: A Well-Watered Plateau*, 41 LAW & CONTEMP. PROB., Spring, 1979, at 10.

46. No case is known where the law of some other state has been applied to determine the issue in this situation.

47. In this situation, the defendant has on occasion been held liable by application of the law of either the state of conduct or of the state of injury. *See, e.g.*, Bernhard v. Harrah's Club, 16 Cal. 3d 313, 546 P.2d 719, 128 Cal. Rptr. 215, *cert. denied*, 429 U.S. 858 (1976); Schmidt v. Driscoll Hotel, Inc., 249 Minn. 376, 82 N.W.2d 365 (1957).

48. *See* W. REESE & M. ROSENBERG, *supra* note 12, at 556.

49. *See, e.g.*, Turcotte v. Ford Motor Co., 494 F.2d 173 (1st Cir. 1974) (strict liability); Rosenthal v. Warren, 374 F. Supp. 522 (S.D.N.Y. 1974) (charitable immunity).

of a pro-plaintiff bias or of a tendency on the part of the courts to apply their own law in close cases.

IV. Other Areas of the Law

To date, other areas of the law have been relatively unscathed by most of the new approaches. In contracts, the courts pay heed to the fact that the basic policy underlying this field of the law is the protection of justified expectations. As a result, there is a distinct tendency to apply a law that will uphold the contract provided the parties are not of widely disparate bargaining power and the state of the validating law has substantial contacts with the transaction.[50] Likewise there is a growing consensus that the law chosen by the parties should be applied, subject to a limited number of exceptions that the courts are in the process of developing.[51]

Workers' compensation is another area in which the courts have looked to the basic policy underlying the field in shaping their choice of law rules. This policy is that while employees should receive compensation for all work-related injuries, the persons (normally the employers) who are required to pay such compensation should be excused from liability to the employees in tort. As a result, the courts have generally refused to hold a person liable in tort to an employee, even under their own law, if that person owes a workers' compensation obligation to the employee and is declared immune from tort liability by the law of a state having a substantial relationship to the case. This is similarly true even when the forum state, under whose law tort liability would be imposed, is without question the state of greatest interest.[52]

Marriage is likewise a field where the courts have looked to basic policy in deciding questions of choice of law. This policy is that in general the validity of marriages should be upheld. As a consequence, marriages have usually been declared valid if they comply with the requirements of the state of celebration.[53] On the other hand, marriages that do not comply with these requirements

50. *See* Leflar, *supra* note 45, at 24. *See also* Intercontinental Planning, Ltd. v. Daystrom, Inc., 24 N.Y.2d 372, 248 N.E.2d 576, 300 N.Y.S.2d 817 (1969), in which the court purported to follow interest analysis in deciding a choice of law question involving contracts.

51. *See, e.g.*, Siegelman v. Cunard White Star, Ltd., 221 F.2d 189 (2d Cir. 1955); Southern Int'l Sales Co., Inc. v. Potter & Brumfield Div., 410 F. Supp. 1339 (S.D.N.Y. 1976); Restatement (Second) of Conflict of Laws § 187 (1971).

52. *See, e.g.*, Wilson v. Faull, 27 N.J. 105, 141 A.2d 768 (1958); Elston v. Industrial Lift Truck Co., 420 Pa. 97, 216 A.2d 318 (1966); Restatement (Second) of Conflicts of Laws § 184 (1971).

53. *See, e.g., In re* May's Estate, 305 N.Y. 486, 114 N.E.2d 4 (1953); Restatement (Second) of Conflicts of Laws § 283 (1971).

have frequently been upheld by application of the law of some other state.[54]

Trusts is an area in which the courts have quite obviously shaped their choice of law discussions in a way best designed to further the basic policy that underlies the field. This policy is that in general the justified expectations of the settlor should be protected. Thus in the case of *inter vivos* trusts the courts usually apply the law designated for this purpose by the settlor in the trust instrument.[55] In the case of testamentary trusts the courts, in the absence of a choice of law provision in the will itself, seek to uphold the validity of the trust by application of the law either of the state of the testator's last domicile or of the state where the trust is to be administered.[56]

Transfers of interests in chattels have to date been affected hardly, if at all, by the new approaches. The question of what law governs *inter vivos* transfers as between the immediate parties presents uncertainties in view of the tendency of the courts to look both to property (primarily the situs of the chattel) and to contract contacts in reaching their decisions.[57] Where, on the other hand, the controversy is between parties to different transactions involving a chattel—for example, an action by a secured creditor against a subsequent purchaser of the chattel from the debtor—the courts apply the law of the state where the chattel was at the time of the second transaction (in this case, the sale) in determining the respective rights of the parties.[58] This rule stems from the necessities of the case, since persons would be reluctant to enter transactions involving chattels if they could not rely upon application of the law of the state where the chattel was at the time in question to determine their rights against third persons. Questions involving succession to interests in chattels, whether by will or by intestacy, have been decided to date by application of the law of the state where the owner was domiciled at the time of his death. This has the advantage of insuring that an estate, insofar as it consists of movables, will be treated as a unit for succession purposes.

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54. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 283, Comment *i* (1971), and cases cited in the Reporter's Note to this section.

55. Shannon v. Irving Trust Co., 275 N.Y. 95, 9 N.E.2d 792 (1937); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 270 (1971).

56. Cross v. United States Trust Co., 131 N.Y. 330, 30 N.E. 125 (1892); *In re* Chappell, 124 Wash. 128, 213 P. 684 (1923); RESTATEMENT (SECOND) OF CONFLICTS OF LAWS § 269 (1971).

57. *See, e.g.*, Youssoupoff v. Widener, 246 N.Y. 174, 158 N.E. 64 (1927); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 244 (1971).

58. Cammell v. Sewell, 5 Hurl. & N. 728, 157 Eng. Rep. 1371 (1860); RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 245 (1971).

59. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 260-264 (1971).

Transfers of interests in land, whether *inter vivos* or by succession on death, have uniformly been held to be governed by the law that would be applied in the case at hand by the courts of the situs.[60] Usually these courts would apply their own local law. The rule has obvious merit where the state of the situs has the greatest interest in the determination of the case—for example, where the issue involves who can own land, the conditions under which land may be held, and the uses to which land can be put. In the case of other issues, some other state may on occasion be the one of dominant interest, but the rule has to date been applied in these latter situations as well. Justification for such application can perhaps be found in the needs of recording systems and in the interests of predictability, ease of application, and certainty of result.

Corporate law is another area in which there have been no recent changes in the applicable rule of choice of law. This rule, subject to one exception, is that the law of the state of incorporation will be applied to determine the rights and obligations *inter sese* of the corporation and its stockholders, officers, and directors.[61] The rule has the virtues of predictability, certainty of result, and ease of application. It also serves the obvious need of insuring that these rights and obligations should be governed by a single law. There will, of course, be situations in which a corporation is most closely connected with a state other than that of its incorporation. Yet, presumably because of the virtues noted above, there has been little tendency to depart from the rule except when the corporation has only an insignificant contact with the state of its incorporation and concentrates its activities in some other state. Here the law of the other state will be applied, and this constitutes the exception to the general rule.[62]

The ferment of new doctrines and ideas that is so apparent in the area of torts has as yet not taken hold in other fields of choice of law. Because of this ferment, however, there can be little doubt that the rules currently applied in these other fields will in due course be questioned. If these rules survive unchanged, it will be because of values that, although not deemed of paramount importance in the case of torts, are thought to be of greater significance elsewhere.

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60. *Id.* §§ 223-240 (1971).

61. *See, e.g.*, Hausman v. Buckley, 299 F.2d 696 (2d Cir.), *cert. denied*, 369 U.S. 885 (1962); RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 303-309 (1971). The rule, of course, will not be applied in situations where application of some other law is required by statute. *See, e.g.*, Western Airlines, Inc. v. Sobieski, 191 Cal. App. 2d 399, 12 Cal. Rptr. 719 (1961).

62. *See, e.g.*, Mansfield Hardwood Lumber Co. v. Johnson, 268 F.2d 317 (5th Cir. 1959); State v. Bechtel, 239 Iowa 1298, 31 N.W.2d 853 (1948), *cert. denied*, 337 U.S. 918 (1949); Latty, *Pseudo-Foreign Corporations*, 65 YALE L.J. 137 (1955).