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Conflict of Laws--Torts: Significant Relationships v. Lex Loci Delecti--Florida Enters the Modern Era

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CONFLICT OF LAWS – TORTS: SIGNIFICANT RELATIONSHIPS V. *LEX LOCI DELICTI* – FLORIDA ENTERS THE MODERN ERA

Bishop v. Florida Specialty Paint Co., 389 So. 2d 999 (Fla. 1980)

Petitioners were flying roundtrip from Florida to North Carolina as guest passengers[1] when their plane crashed in South Carolina.[2] The parties were all Florida residents, and their sole contact with South Carolina resulted from the unforeseen crash.[3] Petitioners subsequently brought a personal injury action in Florida.[4] At trial, respondents argued that the substantive law of South Carolina applied and that petitioners had failed to show the degree of misconduct[5] required by the South Carolina guest statute.[6] Holding that all substantive issues were determined under the law where the injury occurred, the trial court granted respondents' motion for summary judgment.[7] Affirming on appeal,[8] the district court denied appellants' request to apply a different choice-of-law doctrine in deferrence to overwhelming Florida precedent to the contrary.[9] On certification,[10] the Florida supreme court departed from prior decisions and

1. 389 So. 2d 999, 1000 (Fla. 1980). Althea, William, and Patti Bishop were nonpaying guest passengers on an aircraft trip from Jacksonville, Florida, to Beech Mountain, North Carolina, on July 4, 1975. Petitioners' Brief on the Merits at 4-5, 389 So. 2d 999 (Fla. 1980).

2. In the vicinity of Columbia, South Carolina, the pilot noticed problems with the engine. The plane subsequently crashed near Winnsboro Airport, South Carolina. Petitioners' Brief on the Merits at 4, 389 So. 2d 999 (Fla. 1980).

3. Petitioners and MacRae were residents of Jacksonville, Florida. Florida Specialty Paint was located in Jacksonville, Florida. *Id.* at 4-5. The District Court of Appeal specifically noted that the sole connection between the parties and South Carolina was the crash. Bishop v. Florida Specialty Paint Co., 377 So. 2d 767, 768 (Fla. 1st D.C.A. 1979).

4. Petitioners' Brief on the Merits at 2, 389 So. 2d 999 (Fla. 1980). Originally petitioners filed a complaint naming several individuals and corporations as defendants in the Circuit Court of Duval County in April of 1977. Negligence, strict liability and breach of warranty were also alleged as theories of recovery. Althea and Patti Bishop sustained injury. MacRae was pilot of the plane and president of Florida Specialty Paint. *Id.* at 4.

5. The respondents affirmatively pled the South Carolina aviation guest statute, and moved for summary judgment after discovery manifested no intentional or reckless conduct by MacRae. *Id.* at 2-3.

6. S.C. CODE §55-1-10 (1976) provides in part: "no person transported by the owner or operator of an aircraft as his guest without payment for such transportation shall have a cause of action for damages against such aircraft, its owner or operator for injury, death or loss in case of accident unless such accident shall have been intentional . . . or with reckless disregard of the rights of others." Petitioner conceded that he could not meet this standard. 389 So. 2d at 1000. *But see* Ramey v. Ramey, 273 S.C. 680, 258 S.E.2d 883 (1979) (similarly worded automobile guest statute violated equal protection provision of the United States Constitution because the statute required a nonpaying guest to prove more than simple negligence).

7. The trial court applied *lex loci delicti*, the traditional choice-of-law rule. 389 So. 2d at 1000 (Fla. 1980).

8. The petitioners' appeal questioned the application of *lex loci delicti* without advocating specific alternative methods to determine the choice-of-law problem. Initial Brief for Appellants at 7, 377 So. 2d 767 (Fla. 2d D.C.A. 1979). The petitioner simply sought nonapplication of *lex loci delicti*. Appellees' Answer Brief at 2, 377 So. 2d 767.

9. The district court deemed the matter as one of great public interest, but was compelled to affirm. 377 So. 2d 767, 768.

10. Pursuant to FLA. CONST. art. v, §3(b)(3), the district court certified the following

HELD, the substantive law applicable to personal injury actions was determined by the significant relationships test of the Restatement (Second) of Conflict of Laws.[11]

American jurisdictions traditionally decided choice-of-law problems in tort actions by applying the law of the place where the wrong occurred.[12] Commonly referred to as *lex loci delicti*,[13] this rule was universally accepted because it promoted uniformity and predictability of results,[14] and was simple to ap-

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question: "Does the *lex loci delicti* rule govern the rights and liabilities of the parties in tort actions, precluding consideration by the Florida courts of other relevant considerations, such as the policies and purposes underlying the conflicting laws of a foreign jurisdiction where the tort occurred, and the relationship of the occurrence and of the parties to such policies and purposes?" 377 So. 2d 767, 768.

11. 389 So. 2d at 1001. RESTATEMENT (SECOND) OF CONFLICT OF LAWS S145 (1971) provides: "(1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under principles stated in §6. (2) Contacts to be taken into account in applying the principles of §6 to determine the law applicable to an issue include: (a) the place where the injury occurred, (b) the place where the conduct causing the injury occurred, (c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and (d) the place where the relationship, if any, between the parties is centered. These contacts are to be evaluated according to their relative importance with respect to the particular issue."

RESTATEMENT (SECOND) OF CONFLICT OF LAWS §146 (1971) states: "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 principles stated in §6 to the occurrence and the parties, in which event the local law of the other state will be applied."

RESTATEMENT (SECOND) OF CONFLICT OF LAWS §6 (1971) provides: "(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 (g) ease in the determination and application of the law to be applied."

12. RESTATEMENT OF CONFLICT OF LAWS §§377, 378 (1934). "The prevailing American view has been that the law of the place of the injurious effect of the defendant's conduct determines liability." G. STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 181 (3d ed. 1963). If the defendant acted in one state and the harm occurred to the plaintiff in another state, the law of the place of harm was applied. *See, e.g.*, Doody v. John Sexton & Co., 411 F.2d 1119 (1st Cir. 1969) (fraudulent statements made in one state and relied upon in another); Hunter v. Derby Foods, Inc., 110 F.2d 970 (2d Cir. 1940) (unwholesome canned food caused injury in a state different from the place of canning); Dallas v. Whitney, 118 W.Va. 106, 188 S.E. 766 (1936) (blasting across state lines). Other courts, however, occasionally departed from the standard rule and applied the law of the state in which the defendant had acted. *See, e.g.*, Telecommunications, Eng'r Sales & Serv. Co. v. Southern Tel. Supply Co., 518 F.2d 392 (6th Cir. 1975) (interference with contract, applied law of the place where employee contacted); Vrooman v. Beech Aircraft Corp., 183 F.2d 479 (10th Cir. 1950) (court regarded recovery as controlled by the law of the place where airplane was negligently repaired); Caldwell v. Gorr, 175 La. 601, 143 So. 387 (1932) (erection of dam resulted in flooding).

13. *See, e.g.*, R. LEFLAR, AMERICAN CONFLICTS LAW §132 (3rd ed. 1977).

14. *See* R. WEINTRAUB, COMMENTARY ON THE CONFLICTS OF LAWS 266 (2d ed. 1980). *See*

ply.[15] Many courts and commentators, however, became increasingly disenchanted with the traditional approach.[16]

Initial criticisms of *lex loci delicti* were directed to its basic underpinnings in the vested rights doctrine.[17] The vested rights doctrine theorized that a person's rights were inherently based upon the laws where the individual was located, and from this premise evolved the place of wrong rule.[18] Thus, an individual simply looked to the location where a wrong occurred to ascertain his rights and liabilities arising from the accident.[19]

The theory of vested rights, however, was discredited by courts and commentators because territorial concerns were not always relevant to choice-of-law problems.[20] Similarly, the *lex loci delicti* analysis was criticized for its failure to consider any circumstances besides the location of the action.[21] Thus, the rule completely ignored a state's interest in incidents which occurred outside its border. Consequently, most scholarly critics characterized *lex loci delicti* as an incomplete and unfair analysis founded upon an outdated vested rights theory.[22]

As a result of disfavor with the traditional test, several courts declined to apply *lex loci delicti* when its application would yield harsh results.[23] This was

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generally Ehrenzweig, *A Counter-Revolution in Conflicts of Law? From Beale to Cavers*, 80 HARV. L. REV. 377, 379 (1966).

15. *See, e.g.*, Ingersoll v. Klein, 46 Ill. 2d 42, 44, 262 N.E.2d 593, 594 (1970). For a further discussion of the traditional virtues of *lex loci delicti*, see Neuhaus, *Legal Certainty Versus Equity in the Conflict of Laws*, 28 LAW & CONTEMP. PROB. 795 (1963).

16. *See, e.g.*, Richards v. United States, 369 U.S. 1, 12 (1962) (Court noted a tendency of some states to depart from the traditional rule); Fabricius v. Horgen, 257 Iowa 268, 271, 132 N.W.2d 410, 413 (1965). For a critique of the traditional rule, see Morris, *The Proper Law of a Tort*, 64 HARV. L. REV. 881 (1951).

17. J. BEALE, A TREATISE ON CONFLICTS OF LAW §337.2 (1935).

18. *See* Slater v. Mexican Nat'l Ry. Co., 194 U.S. 120, 126 (1904) (Justice Holmes discussed the obligations of law arising from the place of the act). The vested rights view of Holmes is discussed in Reiblich, *The Conflict of Laws Philosophy of Mr. Justice Holmes*, 28 GEO. L.J. 1 (1939).

19. *See, e.g.*, Zelinger v. State Sand & Gravel Co., 38 Wis. 2d 98, 100, 156 N.W.2d 466, 468 (1968) (cause of action created in state of tort, and capacity to sue or raise defenses came from vested rights created within that state).

20. *See, e.g.*, Rheinstein, *The Place of Wrong: A Study in the Method of Case Law*, 19 TUL. L. REV. 4, 29 (1944). The traditional rule fulfills its purposes so long as the place of wrong corresponds with the place where the action occurred. However, accidents often occur in random locations. Thus, the rule is inappropriate in many situations. *Id.*

21. *See* Reese, *Conflict of Law and the Restatement Second*, 28 LAW & CONTEMP. PROB. 679, 680 (1963). The variety of choice-of-law problems presented in any single field of law cannot be adequately analyzed by reference of a single consideration. *Id.*

22. *See, e.g.*, Griffith v. United Air Lines, Inc., 416 Pa. 1, 6, 11, 203 A.2d 796, 801, 806 (1964). Criticisms of the traditional approach centered on its simplistic and inflexible rules, which were derived from an outmoded vested rights theory, and frequently could not solve complex choice-of-law problems. *Id.*

23. *E.g.*, Sigelman v. Cunard White Star, Ltd., 221 F.2d 189, 206 (2d Cir. 1960) (Frank, J. dissenting). "I grant that, in this context, I am stressing the need to do justice in particular instances. I do so unashamedly." *Id. See* R. LEFLAR, *supra* note 13, §89. "What has been called the result-selective principle in choice-of-law . . . has been too clear in its persistent manifestations to be denied." *Id.*

substantially accomplished through the escape device of characterization.[24] In essence, the court would characterize a tort claim as an action in contract, family law, or other field of law, thereby escaping any inequity that rigid application of *lex loci delicti* might occasion.[25]

The Florida supreme court initially applied the *lex loci delicti* doctrine in the 1941 case of *Myrick v. Griffin*.[26] In *Myrick*, plaintiff brought a negligence suit in Florida as the result of an Alabama automobile accident. Although the accident occurred only several miles outside the Florida border and the parties were all Florida residents, the court applied Alabama's substantive law. Moreover, the court stated that the place of wrong was its sole consideration in determining the appropriate law.[27] Thus, Florida adhered to strict use of *lex loci delicti*.

In 1952, the Florida supreme court reaffirmed the application of *lex loci delicti* in *Astor Electrical Service v. Cabrera*.[28] While vacationing in Florida, two married Puerto Rican residents were involved in an automobile accident. Puerto Rican law would have imputed the husband's negligence to his wife. Nonetheless, the court applied Florida law, holding that the place of the tort determined the applicable substantive law. Accordingly, the court affirmed the wife's recovery against her husband.[29]

After *Astor*, the *lex loci delicti* rule seemed firmly established in Florida. In fact, Florida applied the place of wrong rule without controversy until

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24. *See, e.g.*, Kilberg v. Northeast Airlines, 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961). In *Kilberg*, the plaintiff contended that New York wrongful death law applied to an action emanating from an airplane crash in Massachusettes. The New York Court of Appeals viewed the action as one in tort, but characterized the issue as procedural. Hence, the New York wrongful death statute was deemed the controlling law because *lex loci delicti* applied to substantive, but not procedural law. *Id.* at 37, 172 N.E.2d at 529, 211 N.Y.S.2d at 136. *Kilberg* relied on Wooden v. Western N.Y. & Pa. R.R., 126 N.Y. 10, 26 N.E. 1050 (1891) (leading case holding that limitation on damages for wrongful death is procedural). *Compare* Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526, 271 N.Y.S.2d 133 (1961) (survival action concerned administration of the deceased's estate and, thus, the issue was procedural) *with* Grant v. McAuliffe, 41 Cal. 2d 859, 264 P.2d 944 (1953) (characterized the matter of survival as involving distribution of decedent's personal estate, which was an action in trust). *See generally* Lorenzen, *The Qualification, Classification, or Characterization Problem in the Conflict of Laws*, 50 YALE L.J. 743 (1940); Morse, *Characterization: Shadow or Substance*, 49 COLUM. L. REV. 1027 (1949).

25. *See, e.g.*, Emery v. Emery, 45 Cal. 2d 421, 289 P.2d 218 (1955) (Justice Traynor discussed tort action in terms of family law principles); Levy v. Danieles U-Drive Auto Renting Co., 108 Conn. 333, 143 A. 163 (1928) (applied Connecticut statute to a Massachusettes tort by characterizing the case as one in contract).

26. 146 Fla. 148, 200 So. 383 (1941). The respondent raised several issues of negligence. Initially, the court had to determine whether the issues should be resolved in light of Florida or Alabama law.

27. *Id.* at 151, 200 So. at 382. The court did not discuss the close proximity of the wrong to Florida or the parties relationships with Florida.

28. 62 So. 2d 759 (Fla. 1952).

29. The complaint alleged that the wife suffered damages as a result of the husband's negligence. The husband's contention would have imputed his negligence to his wife under community property principles. *Id.* at 761. Florida law, however, did not recognize this community property relationship. *Id.*

1967.[30] Florida's reluctance to abolish this common law rule persisted, notwithstanding other jurisdictions' circumvention of the rule through characterization.[31] However, as other jurisdictions moved from characterization to complete abandonment of the rule,[32] Florida's position became increasingly untenable.[33]

In the landmark case of *Babcock v. Jackson*, the New York Court of Appeals abandoned artificial classification as an approach to choice of law problems.[34] *Babcock* concerned an automobile accident which occurred in Ontario. The New York passenger sued her New York host for damages resulting from the latter's negligence.[35] The issue confronting the court was whether to apply the place of wrong rule or, instead, to adopt a flexible alternative.[36] The court

30. *See, e.g.*, Hopkins v. Lockheed Aircraft Corp., 201 So. 2d 743 (Fla. 1967) (Florida applied Illinois' limitation on damages to suit arising from Illinois airplane crash); Meyer v. Pitzele, 122 So. 2d 228 (Fla. 3d D.C.A. 1960) (where court applied Indiana law to accident occurring there).

31. See note 24 *supra*. *Cf.* W. COOK, THE LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS, 166 (1942) (characterization employed to apply forum's substantive law but reject its procedural law).

32. *See, e.g.*, Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961). Under *Kilberg's* reasoning, a single airplane accident could potentially result in numerous actions with different jurisdictions applying various laws. *Id.* at 37, 172 N.E.2d at 529, 211 N.Y.S.2d at 136. Therefore, individuals injured in the same accident could receive different recoveries. The disparity between verdicts arising from the same incident raised due process questions, and jeopardized the trend toward flexible approaches to choice-of-law problems. However, the constitutional issues raised in *Kilberg* vanished after Pearson v. Northeast Airlines, 309 F.2d 553 (2d Cir. 1962). The *Pearson* case arose from the same Massachusetts accident discussed in *Kilberg*. Although the court questioned the propriety of applying New York law to a Massachusetts incident, it found *Kilberg* a legitimate, constitutionally permissible choice-of-law decision. *Id.* at 556. The *Pearson* court reasoned that a state with substantial ties to an incident has legitimate constitutional interests which allows application of its own law. *Id.* at 559. The *Pearson* court relied upon Richards v. United States, 369 U.S. 1 (1962), and Grant v. McAuliffe, 41 Cal. 2d 849, 264 P.2d 944 (1953) where Justice Traynor stated that, although the action was based on Arizona law, California law was applicable based on local contacts with the incident. For a extensive discussion of *Kilberg*, *see generally* Comment, *Lex Fori v. Lex Loci Delicti*, 15 RUTGERS L. REV. 620 (1961).

33. *Cf.* Richards v. United States, 369 U.S. 1 (1962) (decided constitutional issues raised by varying choice of law approaches). In *Richards*, the Court noted the states' trend towards rejection of *lex loci delicti* in situations where application was inappropriate or inflexible. Thus, where more than one state had sufficient contacts to an incident, the forum jurisdiction could analyze the interests of all the sister states involved, and constitutionally apply the case law of any state having a sufficient interest in the activity. *Id.* at 13-15, *C.f.* Home Ins. Co. v. Dick, 281 U.S. 397 (1930) (discussing due process limitations when selecting the proper statute of limitations). *See generally* Martin, *Constitutional Limitations on Choice of Law*, 61 CORNELL L. REV. 185 (1976); Weintraub, *Due Process and Full Faith and Credit Limitations on a State's Choice-of-Law*, 44 IOWA L. REV. 449 (1959).

34. 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963). The court referred to the "Center of Gravity" and "Grouping of Contacts" theories. These phrases, however, are merely synonyms for the significant relationships test. *See* Reese, *Chief Judge Fuld and the Choice of Law*, 71 COLUM. L. REV. 548, 551-58 (1971).

35. Babcock and the Jacksons, all New York residents, were friends on a trip to Ontario. Mr. Jackson drove the car which crashed after he lost control. Babcock sustained serious injury. 12 N.Y.2d at 474, 191 N.E.2d at 280, 240 N.Y.S.2d at 745.

36. *Id.* at 477, 191 N.E.2d at 280-81, 240 N.Y.S.2d at 746. The flexible alternative was described as a rule to "reflect consideration of other factors which are relevant to the purposes

noted that Ontario would not have granted the passenger relief under its guest statute, and that New York had a strong governmental interest in resolving the incident. Accordingly, the court applied New York law and adopted the significant relationships test because it recognized that states can have significant interests in events occurring outside their borders.[37]

Following *Babcock*, Florida attempted to recede from the traditional test. The 1967 case of *Hopkins v. Lockheed Aircraft*[38] arose when a Florida citizen was killed in an Illinois airplane crash.[39] On certification,[40] the Florida supreme court refused to acknowledge Illinois' damages limitation on wrongful death actions. Justice Roberts, writing for the majority, explained that judicial comity did not require Florida to apply the Illinois statute because it was repugnant to Florida public policy.[41] Additionally, the court found Florida's contacts with the accident more significant than Illinois', the latter's contacts resulting merely from the airplane's accidental crash in Illinois. In considering these matters relevant to its choice-of-law decision, the court abandoned strict use of *lex loci delicti* in favor of a more flexible rule.[42]

Florida's departure from *lex loci delicti* was shortlived, however. On rehearing of *Hopkins*,[43] Justice Drew, speaking for the new majority, characterized the action as sounding in contract rather than tort and found Justice

served by the enforcement or denial of the remedy." *Id.*, 191 N.E.2d at 280-81, 240 N.Y.S.2d at 746.

37. *Id.* at 481, 191 N.E.2d at 283, 240 N.Y.S.2d at 749. The court gave "controlling effect to the law of the jurisdiction which, because of its relationship or contact with the occurrence or the parties, has the greatest concern with the specific issue raised in the litigation." *Id.*, 191 N.E.2d at 283, 240 N.Y.S.2d at 749.

38. 201 So. 2d 743, *rev'd on rehearing*, 201 So. 2d 749 (Fla. 1967). Originally, the court decided in a five to two opinion, to adopt the *Babcock* approach and reject *lex loci delicti*. However, the court reversed itself four to three on rehearing.

39. *Hopkins* involved the crash of a commercial airplane in Illinois. The victim whose executrix brought suit was a Florida resident on a business trip. The aircraft was on a regularly scheduled trip from Milwaukee, Wisconsin, to Tampa, Florida, via Chicago, Illinois. *Id.* at 744.

40. *Id.* at 750. The certified question from the Fifth Circuit Court of Appeals was, "would the State Courts of Florida, for reasons of public policy or otherwise refuse to apply the Illinois limitation of damages in the above situation, and if so, would any limitation of damages apply?" 358 F.2d 347, 349 (5th Cir. 1966).

41. 201 So. 2d at 746. Florida courts had traditionally recognized policy considerations when applying foreign law to suits brought within the state. Judicial comity did not require courts to uphold foreign laws repugnant to Florida policy. *See* Hartford Accident & Indem. Co. v. City of Thomasville, 100 Fla. 748, 130 So. 7 (1930); Mott v. First Nat'l Bank, 98 Fla. 444, 124 So. 36 (1929); Herron v. Passailaigue, 92 Fla. 818, 110 So. 539 (1926).

42. Justice Roberts', writing for the majority, found that the rationale supporting *lex loci delicti* did not apply to unintentional torts where the place of wrong was mere happenstance. 201 So. 2d at 745. The decision also noted that one Florida case prior to *Hopkins* had solved a choice-of-law problem with the significant relationships test. Confederation Life Ass'n v. Ugalde, 151 So. 2d 315 (Fla. 3d D.C.A. 1963). For a discussion of the original *Hopkins* decision see Comment, *Conflict of Laws, Torts: Florida and Lex Loci Delicti*, 19 U. FLA. L. REV. 730 (1967).

43. 201 So. 2d at 749. The rehearing of *Hopkins* was required because Justice Thornal misunderstood the issue. Justice Thornal believed that a right to any action was subject to the limitations of the laws of the place of injury. *Id.* at 752.

Roberts' prior discussion of *lex loci delicti* irrelevant.[44] Hence, the court resurrected Florida's traditional reliance on vested rights analysis and reintroduced the place of wrong as the appropriate choice-of-law test.[45]

The Florida supreme court was again faced with a choice-of-law action in the 1974 case of *Gillen v. United Services Automobile Association.*[46] *Gillen* involved a Florida automobile accident caused by an uninsured motorist's negligence.[47] The appellant's insurer refused to honor the policy because the place of contract, New Hampshire, allowed contractual provisions that precluded the appellant from receiving indemnification. Appellant contended that Florida public policy disallowed the restrictive provisions, and that Florida law applied because Florida had the most significant relationship with the transaction.

Similar to *Hopkins*, the *Gillen* court characterized the transaction as contractual, thereby deeming discussion of tort choice-of-law doctrine unnecessary. The court, however, specifically stated that it neither rejected nor accepted *lex loci delicti* as an appropriate test for choice-of-law problems.[48] This equivocation invited further litigation concerning the place of wrong test.

The instant case settled this issue by adopting the significant relationships test as set forth in the Restatement (Second) of Conflict of Laws.[49] The Florida

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44. *Id.* at 749-52. Justice Drew found no justification for abandoning *lex loci delicti.* Instead, the court decided that individual case-by-case decisions would eventually clarify and justify application of another standard.

45. Courts applied *lex loci delicti* without question after *Hopkins. E.g.*, Beasley v. Fairchild Hiller Corp., 401 F.2d 593, 596 (5th Cir. 1968) (Florida court applied Louisiana law to a Louisiana helicopter crash); Griffin v. Seaboard Coast Line R.R. Co., 307 F. Supp. 741, 742 (S.D. Fla. 1969) (Florida court applying Alabama law to an Alabama train mishap); Messinger v. Tom, 203 So. 2d 357, 358 (Fla. 2d D.C.A. 1967) (Florida court applied North Carolina law where an automobile carrying Florida residents roundtrip between Florida and North Carolina crashed in North Carolina).

The Florida supreme court subsequently heard a tort choice-of-law action in 1972. Colhoun v. Greyhound Lines, Inc., 265 So. 2d 18 (Fla. 1972). *Colhoun* centered on application of Florida law to a Tennessee bus accident. The trip originated in Florida, the defendant was a common carrier doing business in Florida, and the plaintiff was a Florida resident. *Id.* at 19. The court, however, found the Tennessee statute of limitations applicable because "A cause of action sounding in tort arises in the jurisdiction where the last act necessary to establish liability occurred." *Id.* at 21. The wording was similar to the RESTATEMENT OF CONFLICT OF LAWS §377 (1934). For a discussion of foreign statutes of limitations applied in Florida tort cases *see* Ester, *Borrowing Statutes of Limitations and Conflict of Laws*, 15 U. FLA. L. REV. 33, 47-48 (1962).

46. 300 So. 2d 3 (Fla. 1974).

47. *Id.* at 5. The petitioners held two insurance policies with the respondent. Petitioners then moved to Florida, and subsequently, were involved in an automobile accident in which Mr. Gillen was killed. The respondent contended that an other insurance clause in the policy relieved them from obligatory payments. *Id.*

48. *Id.* at 6. Petitioners urged the court to adopt the significant relationships test. *Id.*

49. 389 So. 2d at 1001. The court did not discuss alternative approaches to choice-of-law problems, although several have been proposed. Professor Cavers' method emphasized the need for courts to analyze the purposes behind competing laws in order to make an appropriate choice. For a more detailed discussion of his theory, *see* D. CAVERS, THE CHOICE-OF-LAW PROCESS (1965). Similarly, Currie developed a choice-of-law analysis known as governmental interest. Currie would analyze the legislative purpose behind the competing laws and apply

supreme court noted the need for flexibility in determining applicable law, and recognized that many factors, including the relevant policies of other interested states, were proper considerations in analyzing a choice-of-law problem.[50] Thus, the strict application of *lex loci delicti* was considered an incomplete analysis because it focused only on the place of injury in determining a choice-of-law question.[51]

The court's departure from the rigid rule of *lex loci delicti* was prompted by its determination that the deficiencies of the traditional test outweighed its benefits. In describing the advantages of *lex loci delicti*, the court included the promotion of a consistent approach to all tort actions, and the availability of an objective standard based simply on the location of the wrong.[52]

Nevertheless, the instant court's analysis of the facts revealed the inadequacy of the traditional test.[53] The court acknowledged that the plane trip began and was to end in Florida, the parties were all Florida residents, and the host-guest relationship arose in Florida. Nonetheless, Florida's choice-of-law principles would have required application of South Carolina law, although the only contact with that state was the happenstance of the plane crash.[54] The traditional test, therefore, compelled the court to give dispositive weight to an irrelevant consideration.

Unwilling to apply South Carolina law, the court joined the modern trend and adopted the significant relationships test.[55] The Florida judiciary could now consider relevant factors other than the place of injury when analyzing choice-of-law problems in tort cases.[56] The significant relationships test permits rational analysis of all relevant circumstances rather than mechanical application of the traditional standard.[57]

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the forum's law whenever it is interested. *See* Currie, *Comments on* Babcock v. Jackson, 63 COLUM. L. REV. 1233, 1242-43 (1963); Currie, *The Disinterested Third State*, 28 LAW & CONTEMP. PROB. 754 (1963). In addition, Leflar proposed a wide open discussion of choice-influencing considerations which judges would employ in deciding choice-of-law problems. *See* Leflar, *Choice-Influencing Considerations in Conflicts Law*, 41 N.Y.U. L. REV. 267 (1966). Finally, Rheinstein based his choice-of-law theory upon an individual's justified expectations. *See* Rheinstein, *supra* note 20, at 17-31.

50. 389 So. 2d at 1001. The court cited to factors listed in the RESTATEMENT (SECOND) OF CONFLICT OF LAWS §6 (1971). See note 11 *supra*. The reporter for the RESTATEMENT (SECOND) OF CONFLICT OF LAWS, Professor Reese, asserted that the significant relationships test should be fluid rather than hard and fast. Reese, *supra* note 21, at 681.

51. 389 So. 2d at 1001.

52. *Id. See* Respondents' Brief on the Merits at 3-4, 389 So. 2d 999 (Fla. 1980) (consistency, stability, and objectivity are advocated as virtues of *lex loci delicti*). *See also* Lescard v. Keel, 211 So. 2d 868 (Fla. 2d D.C.A. 1968) (emphasized advantages of *lex loci delicti*).

53. 389 So. 2d at 1000. The court merely listed the contacts of the parties with South Carolina and Florida. The court found only one contact between South Carolina and the parties involved in the action — the location of the crash. *Id.*

54. *Id.* Although the court did not expressly cite the reason for the application of South Carolina law, *lex loci delicti* obviously supplied the basis for the decision.

55. *Id.* at 1001. The court noted that twenty-six other jurisdictions had rejected the place of injury rule.

56. The court had previously acknowledged its ability to reject foreign law on the basis of public policy reasons. See note 45 *supra*.

57. RESTATEMENT (SECOND) OF CONFLICT OF LAWS 513 (1971). The significant relationships

Nevertheless, the *lex loci delicti* doctrine was not completely abandoned, as the court stressed that the significant relationships test incorporated the place of injury rule.[58] The court emphasized that the Restatement generally applies the local law of the state where the injury occurred, unless another state has a more significant relationship. Underscoring the continued relevance of the traditional test, the court noted that the place of injury would be the decisive consideration in most cases.[59]

Furthermore, the opinion emphasized that the *lex loci delicti* features of uniformity and predictability of results are incorporated into the general principles of the significant relationships test.[60] From this the court concluded that the significant relationships test was merely a slight departure from the traditional rule. Consequently, *lex loci delicti* has retained much of its previous vitality.[61]

Although the instant court believed that the significant relationships test would yield a different choice of law in only unusual cases, the decision may generate a greater volume of multistate tort litigation. Modern transportation and communication has increased opportunities for interstate interaction, as well as the likelihood of injury in remote and insignificant places.[62] Recovery for these injuries may be sought in Florida. If Florida has sufficient contacts and affords greater remedies or lesser liabilities than the place of injury, it will be an attractive and available forum for these lawsuits.[63]

Additionally, the instant case may create inconsistent trial court results.[64] The instant decision appeared to anticipate this anomaly when it specified that uniformity of result, a *lex loci delicti* rationale, had been incorporated into the significant relationships test.[65] However, the Restatement (Second) of Con-

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test reflected an increased judicial willingness to consider basic policies and values underlying choice-of-law alternatives.

58. 389 So. 2d at 1001. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §145, Comment d (1971) (with only rare exceptions, the law of the state where conduct and injury occurred will be applied to determine whether minimum standards of acceptable conduct are satisfied).

59. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §146, Comment d (1971) specifically provides, "[i]n the majority of instances, the actor's conduct, which may consist either of action or non-action, and the personal injury will occur in the same state. In such instances, the local law of this state will usually be applied. . . ."

60. 389 So. 2d at 1001.

61. *Id.* Many commentators have referred to the significant relationships test as a unification of many choice-of-law methods. *E.g.*, Jeunger, *Choice of Law in Interstate Torts*, 118 PA. L. REV. 202, 204 (1969).

62. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §413 (1971). The move to significant relationships reflected a change in national life. State boundaries became less significant with the increased mobility of society and the increased tendency of business to conduct affairs across state lines. *See also* Westbrook, *A Survey and Evaluation of Competing Choice-of-Law Methodologies: The Case for Eclecticism*, 40 MO. L. REV. 407, 446-47 (1975).

63. *Cf.* R. LEFLAR, *supra* note 13, §119 (3d ed. 1977) (less mechanical choice-of-law methods produced an ideal situation for mass private litigation). *See also* A. EHRENSCHWEIG, PRIVATE INTERNATIONAL LAW §29 (2d ed. 1973).

64. *See* Richard v. United States, 369 U.S. 1, 12-15 (1962). The Court acknowledged that trial results vary when applying choice-of-law methods other than *lex loci delicti*. *Id.*

65. 389 So. 2d at 1001. This court also noted certainty and predictability of results as major principles incorporated into the significant relationships test. *Id.*

flict of Laws deemphasized the importance of uniform results in tort actions.[66] As a result, victims of a single major accident may receive inconsistent recoveries, depending upon which states' law the significant relationships test finds applicable.[67] Courts should avoid these non-uniform results for several reasons. Disparate verdicts among the parties are inimical to historical notions of fair play and justice.[68] Additionally, the prospect of a better recovery in another jurisdiction will tempt many litigants to forum shop.[69]

Departure from the objective place of injury rule, however, enables the courts to subjectively consider choice-of-law principles in the context of the facts surrounding an incident.[70] This flexibility facilitates equitable results through rational analysis rather than the mechanical territorial analysis of *Myrick*.[71] Public policy considerations as well as the happenstance of locality are considered in a choice-of-law test that confronts all relevant criteria.[72]

The instant case, however, failed to undertake the complete analysis[73] called for by the significant relationships test. While the court quantitatively noted the parties' contacts, it neglected to evaluate these contacts in conjunction with

66. RESTATEMENT (SECOND) CONFLICTS OF LAW §145, Comment b (1971). The values of certainty, predictability, and uniformity of result are of lesser importance in torts than in other areas of law.

67. *See, e.g.*, Babcock v. Jackson, 12 N.Y.2d 473, 476, 191 N.E.2d 279, 282 240 N.Y.S.2d 743, 746 (1963). (The court noted the disparity and inequity which could occur by rejecting *lex loci delicti*).

68. *Cf.* International Shoe Co. v. Washington, 326 U.S. 310 (1945) (in an *in personam* jurisdiction case the term "fair play and substantial justice" stated a police power standard addressing the practicalities of the situation and deemphasizing mechanical rules).

69. *Cf.* Tennessee Coal, Iron & R.R. v. George, 233 U.S. 354 (1914) (provision in Alabama personal injury action not respected by Georgia court).

70. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §145, Comment b (1971). The comment essentially sets forth the basic philosophy behind the significant relationships analysis. *See generally* Ehrenschweig, *The "Most Significant Relationship" in the Conflicts Law of Torts—Law and Reason Versus the Restatement Second*, 28 LAW & CONTEMP. PROB. 700 (1963).

71. Myrick v. Grifin, 146 Fla. 148, 200 So. 383 (1941). *See* Colhoun v. Greyhound Lines Inc., 265 So. 2d 18 (Fla. 1972). See note 45 *supra*.

72. *See* R. LEFLAR, *supra* note 13, §136 (significant relationship test is a blend of relevant factors and competing governmental interests). *See also* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §413 (1971).

73. The process of applying the relevant choice-of-law considerations to the particular case focuses on selecting the law that will best achieve justice between the parties and will further the governmental interests. *See* Ehrenzweig, *"False Conflicts" and the "Better Rule:" Threat and Promise in Multi-state Tort Law*, 53 VA. L. REV. 847 (1967). This analysis has been summarized to include: (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. *See* Leflar, *supra* note 49. A few jurisdictions have followed Leflar's method. *See* Clark v. Clark, 107 N.H. 351, 222 A.2d 205 (1966) (quoting significant relationships test but using choice-influencing considerations as absic guidelines); Heath v. Zellmer, 35 Wis. 2d 578, 151 N.W.2d 664 (1967) (citing precedent but applying choice-influencing test). *But see* Comment, *Conflict of Laws: Pennsylvania Repudiates Place of Injury Rule*, 1965 DUKE L.J. 623, 631-32. The significant relationships test substitutes a policy approach for the place of injury rule. Such an approach, however, repudiates the entire concept of choice-of-law rules because the court is unlikely to concern itself with evaluating all objective contacts to subjective issues. Instead, the courts will merely give one contact the greatest weight. *Id.*

choice-of-law principles.[74] In particular, the court failed to analyze the policy underlying the South Carolina guest statute.[75]

The choice-of-law process requires that a court do more than merely count or quantitatively weigh these contacts. Instead, the significant relationships test dictates a qualitative assessment of objective contacts under choice-of-law principles.[76] The instant court should have carried its analysis to its logical conclusion by following guidelines provided in the Restatement. Evidence showing contacts with a jurisdiction other than the place of injury necessitates a full significant relationships inquiry. The instant decision will have little affect on traditional practices unless this inquiry in undertaken.[77]

Although the court failed to complete its analysis, the decision correctly marked the important function of the place of injury in the significant relationships inquiry. Most personal injury actions will continue to be decided by the law of the place of injury.[78] Only in cases involving substantial out-of-state contacts will the significant relationships test require application of another jurisdiction's law. Furthermore, the test presumes that the place of injury's law will apply even in these multi-state instances.[79] Generally, courts should

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74. 389 So. 2d at 999, 1001. The court merely counted the contacts and did not discuss the considerations listed in section 6 of the RESTATEMENT (SECOND) OF CONFLICT OF LAWS (1971). *Id.* The court should not have arrived at a most significant relationship determination without thoroughly analyzing all relevant policy considerations. Otherwise, the determination may rest solely on the place of injury. *See* Currie, *Comments on* Babcock v. Jackson, *A Recent Development in Conflict of Laws*, 63 COLUM. L. REV. 1233, 1234-35 (1963).

75. See note 6 and accompanying text, *supra*. The court overlooked this important policy consideration which would have shown conclusively that Florida was the state with the most significant relationships. *See* RESTATEMENT (SECOND) OF CONFLICT OF LIWS §6, Comment f (1971). The court should strive to achieve the best possible accommodation of relevant policies between the forum and the state where the injury occurred. Cheatham & Reese, *Choice of the Applicable Law*, 52 COLUM. L. REV. 959, 959 (1952). The second most important policy consideration was the application of local law unless there was a good reason for not doing so. Petitioners argued vigorously that the public policies of both South Carolina and Florida found guest statutes repugnant. However, the Florida court made no mention of South Carolina public policy. *See also* Petitioners' Brief on the Merits at 6-14, 289 So. 2d 999 (Fla. 1980).

76. Professor Reese advocated a complex solution to choice of law problems. Cheatham & Reese, *supra* note 75, at 959. Reese, *supra* note 21, at 682. The choice-of-law principles in the significant relationships test are a modified version of the same policies which according to Reese, should be considered with other relevant factors in choosing applicable law. *See* Westbrook, *supra* note 62, at 433-36.

77. *See* Note, *The "Grouping of Contacts" Rule as a Basis for Resolving Conflicts of Law — Babcock's Unforeseen Legacy*, 20 RUT. L. REV. 572, 584 (1966). *But see* Reese, *Comments on* Babcock v. Jackson, *A Recent Development in Conflict of Laws*, 63 COLUM. L. REV. 1251, 1255 (1963). The significant relationships test was perhaps created solely to deal with rare cases where the conduct and injury occur in different states or the place of injury was merely happenstance. Thus, the place of injury is the dispositive contact in ordinary cases. However, such a presumption would give the test a more restricted scope than was contemplated by the RESTATEMENT (SECON) OF CONFLICT OF LAWS.

78. RESTATEMENT (SECON) OF CONFLICT OF LAWS §145 Comment e (1971). The place of injury plays an important role in the selection of applicable state law. Persons who cause injury in a state should not ordinarily escape its liability.

79. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §146, Comment e (1971). When conduct

apply the law of the place of injury unless this presumption is convincingly rebutted.[80]

In the instant decision, Justice England adopted a definite choice-of-law test with definitive guidelines.[81] Accordingly, the instant case established a new choice-of-law approach more firmly than the original *Hopkins* opinion.[82] The present case responds to the *Hopkins* dissent by providing verifiable and objective standards to analyze choice-of-law problems.

Although both the instant case and *Hopkins* involved airline disasters, the new test should be applied to circumstances involving other modes of interstate transportation.[83] For example, when Florida residents are injured in out of state automobile accidents, it may be more advantageous to apply Florida law because the parties will often have more significant contacts with Florida than with the state where the injury occurred.[84] The scope of the instant decision is unclear, however, because the court placed heavy emphasis on the place of injury. As a result, the court has impliedly approved a conservative, restrained approach to application of the significant relationships test.[85]

The instant decision is beneficial because it rejects the mechanical approach to solving choice-of-law problems. The court acknowledged that the law must

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and injury occur in different states, the local law of the state of injury will usually be applied. The state of injury will likely have its law applied if that state is also the victim's residence. This likelihood increases when the injury occurred in the course of an activity or a relationship centered in the home state. *Id.*

80. A recent decision following the instant case exemplified contacts which rebutted the usual choice of the law of the state of injury. *See* Futch v. Ryder Truck Rental, Inc., 391 So. 2d 808 (Fla. 5th D.C.A. 1980). Futch was injured in Maryland when he fell from his tractor trailor while checking for defects in a refrigeration unit. Futch contended that Florida had the most significant relationship to the injury because the tractor was hired, delivered, serviced and maintained in Florida. Therefore, any negligence by Ryder occurred in Florida. Furthermore, the place of injury was mere happenstance, as he could have fallen at any number of reststops on Interstate 95. Florida's interest in protecting its citizen was much greater than Maryland's interests. The court agreed and applied Florida law. *Id. See also* Decker v. Great Am. Ins. Co., 392 So. 2d 965 (Fla. 2d D.C.A. 1980).

81. The instant decision provides guidelines for solving choice-of-law problems. 389 So. 2d at 1001.

82. Hopkins v. Lockheed Aircraft Corp., 201 So. 2d 743, *rev'd on rehearing*, 201 So. 2d 749 (Fla. 1967). The *Hopkins* court recognized the irrelevance of the *lex loci delicti* doctrine, but lacked a definitive alternative approach after rejecting the traditional standard. THE RESTATEMENT (SECOND) OF CONFLICT OF LAWS (1971) was still in its tentative form. *Id.* at 746-48.

83. *See, e.g.*, Grant v. Bill Walker Pontiac-GMC, Inc., 523 F.2d 1301 (6th Cir. 1975) (applying Kentucky conflicts law in wrongful death case); Ingersoll v. Klein, 46 Ill. 2d 42, 262 N.E.2d 593 (1970) (Illinois law applied to drowning death in automobile accident on Iowa side of Mississippi River); Berghammer v. Smith, 185 N.W.2d 226 (Iowa 1971) (loss of consortium; Minnesota plaintiff sued Illinois defendant fater Iowa automobile accident).

84. *Cf.* Colhoun v. Greyhound Lines, Inc., 265 So. 2d 18 (Fla. 1972). The contacts with Florida were: (1) the trip originated in Florida, (2) the common carrier conducted business in Florida and (3) petitioner was a Florida resident. The sole Tennessee contact was its status as the place of petitioner's injury. *Id.* at 19-20.

85. 389 So. 2d at 1001. The court emphasized the relevance of *lex loci delicti* more than the RESTATEMENT (SECOND) OF CONFLICT OF LAWS (1971). The court apparently retained a preference for the place of injury if other criteria were not decisive.