Florida Law Review

Volume 19 | Issue 4 Article 8

March 1967

Conflict of Laws, Torts: Florida Abandons Lex Loci Delicti

Leslie Wayne Burke

CONFLICT OF LAWS, TORTS: FLORIDA AND *LEX LOCI DELICTI*

Hopkins v. Lockheed Aircraft Corp., No. 35,203 (Fla. Sup. Ct., Feb. 1, 1967)

Plaintiff, individually and as executrix of her husband's estate, filed separate actions for wrongful death in a federal district court against Northwest Airlines, Inc. and Lockheed Aircraft Corp. Decedent, a Florida resident, purchased a round-trip ticket in Florida from Northwest Airlines and was killed when the airplane crashed in Illinois. Plaintiff settled out of court with Northwest for 32,500 dollars. The trial judge then entered summary judgment for the other defendant, Lockheed, on the ground that plaintiff was barred from any further recovery because the Illinois Wrongful Death Statute limits recovery to 30,000 dollars.[1] Plaintiff contended on appeal that the Illinois Wrongful Death Statute was not controlling; that the Florida Wrongful Death Statute, which contains no limitation of recovery, was applicable.[2] The Fifth Circuit Court of Appeals[3] was unable to determine if the Florida courts would apply the Illinois limitation of recovery and certified the following question to the Florida Supreme Court: "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?"[4] The Florida Supreme Court HELD, Florida's courts would refuse to apply the Illinois 30,000 dollar limitation of damages and, under the facts given in the certificate, would apply no limitation of damages. Justices Drew and Thomas dissented.

The traditional solution of conflict of laws problems has been to apply the rule of *lex loci delicti,* which requires that the place where the wrong was committed supplies the applicable substantive law.[5] The theory of "vested rights" is the basis of this choice-of-law formula controlling multi-state tort actions, that is, a right to recover for a tort is created by the law of the jurisdiction where the injury occurred and depends on that jurisdiction's law for its existence and extent.[6] It was the rule adopted by the *First Restatement of Conflict of Laws.*[7] The advantages of the rule of *lex loci delicti* are uniformity, certainty, and ease of application.[8] Despite these advantages the rule has been

1. ILL. REV. STAT. ch. 70, §§1-2 (1963).
2. FLA. STAT. §768.01 (1965).
3. Hopkins v. Lockheed Aircraft Corp., 358 F.2d 347 (5th Cir. 1966).
4. No. 35,203 (Fla. Sup. Ct., Feb. 1, 1967).
5. Astor Elec. Serv., Inc. v. Cabrera, 62 So. 2d 759 (Fla. 1952).
6. See 2 BEALE, CONFLICT OF LAWS §377.2 (1935).
7. See RESTATEMENT, CONFLICT OF LAWS §378 (1934).
8. Sparks, *Babcock v. Jackson — A Practicing Attorney's Reflections Upon the*

subjected to much attack.[9] The main criticisms of the rule are that the place of the wrong is often purely fortuitous and that the rule fails to consider legitimate interests of any state other than the state where the wrong was committed.[10] Another criticism is that the traditional rule fails to consider that some "conflicts" may be illusory because one or more of the states involved lacks a legitimate interest in the outcome.[11] Also, the need for uniformity and predictability of result, so that the parties may control their actions accordingly, is nonexistent in cases involving unintentional torts.[12]

In the past few years many courts have appeared dissatisfied with the rule of *lex loci delicti.* Many of these courts have not chosen to abolish the rule, but rather to formulate exceptions[13] or to circumvent it by treating substantive matters as procedural, thereby bringing them under the law of the forum.[14] Several courts, however, have discarded the rule and adopted a more flexible standard that allows them to examine the policies and interests underlying the issue in question in order to determine which state's substantive law to apply.[15] This "grouping of contacts" or "center of gravity" approach is similar to the modern approach to choice-of-laws situations in contract law.[16] The present draft of the *Second Restatement of Conflict of Laws* also abandons the old rule and adopts the following rule: "The local law of the state which has the most significant relationship with the occurrence and with the parties determines their rights and liabilities in tort."[17]

Opinion and Its Implications, 31 INS. COUNSEL J. 428 (1964).

9. See COOK, LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS 311-46 (1942); Morris, *The Proper Law of a Tort,* 64 HARV. L. REV. 881 (1951).

10. See Cheatham, *American Theories of Conflict of Laws: Their Role and Utility,* 58 HARV. L. REV. 361 (1945); Currie, *Survival of Actions: Adjudication Versus Automation in the Conflict of Laws,* 10 STAN. L. REV. 205, 239-41 (1957).

11. Traynor, *Is This Conflict Really Necessary?,* 37 TEXAS L. REV. 657 (1959).

12. Reese, *Comments on Babcock v. Jackson—A Recent Development in Conflict of Laws,* 63 COLUM. L. REV. 1251, 1254 (1963).

13. *E.g.,* Haumschild v. Continental Cas. Co., 7 Wis. 2d 130, 95 N.W.2d 814 (1959) (family law exception).

14. *E.g.,* Grant v. McAuliffe, 41 Cal. 2d 859, 264 P.2d 944 (1953); Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961).

15. Johnson v. Johnson, 216 A.2d 781 (N.H. 1966); Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963); Griffith v. United Air Lines, Inc., 416 Pa. 1, 203 A.2d 796 (1964); Wilcox v. Wilcox, 26 Wis. 2d 617, 133 N.W.2d 408 (1965). The Delaware Supreme Court, however, has refused to adopt a policy-centered analysis without legislative approval. Friday v. Smoot, 211 A.2d 594 (Del. 1965).

16. See Confederation Life Ass'n v. Ugalde, 151 So. 2d 315 (3d D.C.A. Fla. 1963); Auten v. Auten, 308 N.Y. 155, 124 N.E.2d 99 (1954).

17. RESTATEMENT (SECOND), CONFLICT OF LAWS §379(1) (Tent. Draft No. 9, 1964).

In *Hopkins* the Florida Supreme Court joined the few courts that have abandoned the traditional rule. The court reasoned that all foreign law is applied in Florida according to the judicial principle of comity; that the *lex loci delicti* rule for applying foreign tort law is a subservient part of the general principle; and that judicial comity does not require a court to enforce statutory policies of another state to the prejudice of its own citizens or when they are repugnant to its own public policy. The court recognized that the theoretical basis of *lex loci delicti* is no longer acceptable, and that the rule often yields unjust results. The court noted that there is no compelling Florida precedent that requires application of the rule.[18] The court then concluded that adoption of a more flexible rule would not do any real violence to the principle of stare decisis in Florida and that it would yield more just results. Justices Drew and Thomas dissented contending that the new rule offers no advantages that would compel them to discard the old rule.

The standard that the supreme court now adopts for solving choice-of-laws problems in unintentional tort cases is broad. It analyzes "the policies underlying and the purpose of the conflicting laws and of the relationship of the occurrence and of the parties to such policies and purpose."[19] The court failed to give any specific guidelines concerning how this rule will be applied in the future, and they failed to disclose how they analyzed the particular fact setting in *Hopkins*.[20] In *Griffith v. United Air Lines, Inc.*[21] the Pennsylvania Supreme Court adopted the "grouping of contacts" or "center of gravity" approach and analyzed a fact setting on "all fours" with *Hopkins*:[22]

> The Pennsylvania court reasoned that the purposes of the Colorado limitation of damages recoverable in a wrongful death action is to prevent Colorado's courts from speculating about the amount of damages and to protect Colorado defendants from burdensome judgments. The purpose behind the lack of a damage limitation in Pennsylvania is to adequately compensate

18. All but one Florida case announcing the rule of *lex loci delicti* lacked an actual conflict of applicable substantive law. DeSalvo v. Curry, 160 Fla. 7, 33 So. 2d 215 (1948); Myrick v. Griffin, 146 Fla. 148, 200 So. 383 (1941); Young v. Garcia, 172 So. 2d 243 (3d D.C.A. Fla. 1965); Meyer v. Pitzele, 122 So. 2d 228 (3d D.C.A. Fla. 1960). In Astor Elec. Serv., Inc., v. Cabrera, 62 So. 2d 759 (Fla. 1952), there was an actual conflict but Florida was both the forum state and the place of the wrong.

19. No. 35,203 (Fla. Sup. Ct., Feb. 1, 1967).

20. *Id.*

21. 416 Pa. 1, 203 A.2d 796 (1964).

22. Insert "Florida" for "Pennsylvania," "Illinois" for "Colorado," and "California" for "Delaware" to see the relationship of the Pennsylvania court's reasoning to *Hopkins*.

plaintiffs for their losses. Since the plaintiff is a Pennsylvania resident and the relationship was entered into in Pennsylvania and the defendant is a Delaware corporation, Colorado has no legitimate interest in the outcome.

The Florida Supreme Court probably analyzed the purposes of the conflicting laws and the relationship of the parties and occurrences to them in a similar manner. The Florida court further said that the facts given in the certificate did not indicate that any third state had a more significant relationship to the parties than did Florida.

While this new standard was easy to apply to the facts in *Hopkins*, there will be cases with more complex fact situations in the future. New York, the first state to adopt the new standard, has had some difficulty applying it to more complex fact situations.[23] Future difficulty will stem not only from more complex fact situations but also from a lack of agreement among scholars as to the relevance of specific contacts,[24] whether contacts should be weighted quantitatively or qualitatively,[25] and as to which state's law should apply when the contacts are evenly balanced.[26] Courts also disagree about the scope of the new standard.[27] In short, the scope of the standard announced by *Hopkins* will have to be determined by further litigation. Nevertheless, this decision is another step in the development of a judicial system that considers the legitimate interests of all parties, even though time-consuming and difficult, rather than one that blindly

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

24. Currie would have the forum apply its own law when involved in a case of real conflict. See Currie, *On the Displacement of the Law of the Forum*, 58 COLUM. L. REV. 964 (1958); Currie, *Survival of Actions: Adjudication Versus Automation in the Conflict of Laws*, 10 STAN. L. REV. 205 (1958). Ehrenzweig agrees except that he places much emphasis on insurance. See Ehrenzweig, *Guest Statutes in the Conflict of Laws—Towards a Theory of Enterprise Liability Under "Foreseeable and Insurable Laws"* (pts. 1-3), 69 YALE L.J. 595, 795, 979 (1960); Ehrenzweig, *The Lex Fori—Basic Rule in the Conflict of Laws*, 58 MICH. L. REV. 637 (1960). Baxter would choose the law of the jurisdiction whose policy would be most impaired if its law were not applied. See Baxter, *Choice of Law and the Federal System*, 16 STAN. L. REV. 1 (1963). Weintraub places emphasis on the element of unfair surprise of the defendant. See Weintraub, *A Method for Solving Conflict Problems—Torts*, 48 CORNELL L.Q. 215 (1963).

25. See Note, *New York and the Conflict of Laws: A Retreat*, 18 STAN. L. REV. 699, 703 (1966).

26. See Weintraub, *supra* note 24, at 249-51; Note, *Wilcox v. Wilcox (Wis.) 133 N.W.2d 408: The Beginning of a New Approach to Conflict of Laws in Tort Cases*, 1966 WIS. L. REV. 913.

27. *Compare* Griffith v. United Air Lines, Inc., 416 Pa. 1, 203 A.2d 796 (1964) *and* Wilcox v. Wilcox, 26 Wis. 2d 617, 133 N.W.2d 408 (1965), *with* Dym v. Gordon, 16 N.Y.2d 120, 209 N.E.2d 792, 262 N.Y.S.2d 463 (1965).