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Conflict of Laws—Choice of Law—Assumpsit—Torts.—Griffith v. United Airlines, Inc.

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CASE NOTES

Conflict of Laws—Choice of Law—Assumpsit—Torts.—*Griffith v. United Airlines, Inc.*¹—In 1961 Hambrecht, a Pennsylvania domiciliary, purchased a United Airlines ticket for a round-trip flight from Philadelphia to Phoenix, Ariz. On the flight to Phoenix, the airliner crashed in Denver, Colo., instantly killing Hambrecht. In 1962, pursuant to the Pennsylvania Survival Act of 1949,² which permits recovery for loss of prospective earnings by a decedent's estate, Griffith, Hambrecht's executor, sued United Airlines in assumpsit, alleging United's breach of contract for safe carriage.³ The Court of Common Pleas sustained the suit in assumpsit against United applying the Colorado law of damages. Colorado does not permit recovery for loss of future earnings,⁴ but Pennsylvania does.⁵ The court granted the plaintiff leave to amend his cause of action to conform to the Colorado law. The plaintiff did not amend his cause of action and the suit was dismissed. From an order of dismissal the case was appealed to the Pennsylvania Supreme Court. **HELD:** Remanded for computation of damages in light of the applicable Pennsylvania law. Pennsylvania, the forum state, had a significant interest in the outcome of the case while Colorado, the place of injury, had little, if any, interest in the outcome.

Although the cause of action was in assumpsit, the court on appeal stated:

[T]he recovery sought is clearly a tort recovery—damages to decedent's estate as a result of decedent's negligently caused death. The principles which will govern defendant's liability are principles of negligence, not of contract. . . . [A]n action for simple breach of contract would not and could not justify a substantial recovery by plaintiff. . . . The choice of law will be the same whether the action is labeled trespass or assumpsit.⁶

By this decision, Pennsylvania joins those jurisdictions which favor the "contacts,"⁷ "center of gravity,"⁸ or "significant relationships"⁹ theories governing conflict of laws, thus repudiating the inexorable vested rights or place of injury rules expounded by the original Restatement of Conflicts (1934).¹⁰

Under the vested rights or place of injury rule, the law of the place

¹ 203 A.2d 796 (Pa. 1964).

² Pa. Stat. Ann. tit. 20, § 320.003 (1950).

³ Griffith simultaneously sued certain employees of United for negligence. The Court of Common Pleas dismissed the suit against the employees. *Griffith v. United Airlines*, supra note 1, at 799.

⁴ Colo. Rev. Stat. Ann. § 152-1-9 (Supp. 1960).

⁵ See *Skoda v. West Penn Power Co.*, 411 Pa. 323, 191 A.2d 822 (1963).

⁶ *Griffith v. United Airlines*, supra note 1, at 800. Plaintiff's counsel admitted that the suit in assumpsit was used only to avoid the effect of the Colorado (tort) limitation.

⁷ See *W. H. Barber Co. v. Hughes*, 223 Ind. 570, 586, 63 N.E.2d 417, 423 (1945).

⁸ *Ibid.*

⁹ Restatement (Second), Conflict of Laws, § 379(1) (Tentative Draft No. 9, 1964).

¹⁰ Restatement, Conflict of Laws, §§ 377, 378 (1934).

where the injury occurred was automatically applied and it determined the outcome of the case. The vested rights approach is well illustrated by *Alabama Great Southern R.R. v. Carroll*.¹¹ There, an Alabama resident, employed by the defendant Alabama corporation, working under a contract made in Alabama, was injured in Mississippi because of a defective coupling connection on the defendant's train. Recovery was available under Alabama law, but not under Mississippi law. The Alabama court denied recovery to the injured plaintiff holding "there can be no recovery in one State for injuries to the person sustained in another unless the infliction of the injuries is actionable under the law of the State in which they were received."¹² This approach to the choice of applicable tort law was incorporated into the 1934 Restatement of the Law, Conflict of Laws, which provided, at Section 377: "The place of wrong is in the state where the last event necessary to make an actor liable for an alleged tort takes place."¹³ And at Section 378: "The law of the place of wrong determines whether a person has sustained a legal injury."¹⁴

Much criticism has been directed at the vested rights rule because its application does not consider the interests of states other than the one where the tort occurred.¹⁵

Prior to the instant case, many decisions drawn from different areas of tort law have changed or avoided the rule that only the law of the place of injury or impact can determine liability in interstate tort situations. Thus, in *Gordon v. Parker*,¹⁶ a cause of action for alienation of affections was upheld in a jurisdiction other than the place of marital domicile even though the cause of action was abolished in the marital domicile. *Alaska Packers Ass'n v. Industrial Acc. Comm'n of Cal.*¹⁷ held that a state where a contract of employment was entered into could apply its own law to an out-of-state injury. In *Grant v. McAuliffe*¹⁸ a fatal auto accident in Arizona was held not a bar to a cause of action in California. The reason was that the forum state, California, construed the survival of the action as a question related to the administration of the decedent's estate rather than to a normal wrongful death action which would have been barred in the state where the injury occurred. The Minnesota court in *Schmidt v. Driscoll Hotel*,¹⁹ applied its dramshop act to provide a remedy for a Minnesota plaintiff against a Minnesota liquor seller who illegally sold liquor in Minnesota which resulted in an automobile accident in Wisconsin. Finally, in *Haumschild v. Continental Cas. Co.*,²⁰ and *Thompson v. Thompson*,²¹ the marital domicile and not the

¹¹ 97 Ala. 126, 11 So. 803 (1892).

¹² *Id.* at 131, 11 So. at 805.

¹³ *Supra* note 10.

¹⁴ *Ibid.*

¹⁵ See the compilation of commentators criticizing the vested rights rule in Babcock v. Jackson: The Transition From the Lex Loci Delicti Rule to the Dominant Contacts Approach, 62 Mich. L. Rev. 1358, n.3 (1964).

¹⁶ 83 F. Supp. 40 (D. Mass. 1949).

¹⁷ 294 U.S. 532 (1935).

¹⁸ 41 Cal. 2d 859, 264 P.2d 944 (1953).

¹⁹ 249 Minn. 376, 82 N.W.2d 365 (1957).

²⁰ 7 Wis. 2d 130, 95 N.W.2d 814 (1959).

²¹ 193 A.2d 439 (N.H. 1963).

CASE NOTES

place of injury was held to determine the capacity of one spouse to sue the other for a personal tort. In each of the foregoing decisions, the courts rejected the rigid application of the law of the place of injury and applied instead the law of the place having the greatest interest or concern in the case.

The facts of the instant case resembled those in *Kilberg v. Northeast Airlines, Inc.*²² In *Kilberg*, a New York domiciliary boarded a Boston-bound airplane in New York City. The airplane crashed in Nantucket, Mass., killing the decedent. In the resulting suit against Northeast, the New York Court of Appeals held that, although the cause of action was brought under the then applicable Massachusetts wrongful death statute,²³ it need not apply the Massachusetts limitation on damages.²⁴ The court characterized damages as procedural, thus avoiding the effect of the Massachusetts statute limiting the amount of recovery for wrongful death. The New York court, however, contrary to the instant case, would not permit a suit in assumpsit for breach of contract when death resulted.²⁵

Although *Kilberg* generated much discussion,²⁶ its constitutionality was upheld in *Pearson v. Northeast Airlines, Inc.*²⁷ There the Second Circuit held that a state may develop its own conflict of law rules and need not give full faith and credit to all provisions of the wrongful death statute of the state where the injury occurred if it had substantial ties and "a legitimate constitutional interest in the application of its own rules of law."²⁸

After *Kilberg*, in *Babcock v. Jackson*,²⁹ the New York Court of Appeals reversed a lower court decision and permitted a New York domiciliary who was a guest-passenger to sue a New York driver for injuries suffered in an Ontario automobile accident, even though Ontario had a statute that precluded a guest-passenger from suing his host. Although a problem of international law could have arisen, it was avoided by the New York court which held that New York law, permitting suit by a guest-passenger against a host-driver, would be applied since New York was "the jurisdiction which has the strongest interest in the resolution of the particular issue presented."³⁰

While the court in the instant case drew heavily upon *Kilberg* and *Babcock*, it expanded the scope of these cases. In *Kilberg*, the New York court justified its decision by separating the impact of the Massachusetts

²² 9 N.Y.2d 34, 211 N.Y.S.2d 133, 172 N.E.2d 526 (1961).

²³ Mass. Gen. Laws Ann. ch. 229, § 2 (1958). For later amendments to the statute, see Mass. Gen. Laws Ann. ch. 229 § 2 (Supp. 1964).

²⁴ *Kilberg v. Northeast Airlines*, supra note 22, at 39, 211 N.Y.S.2d at 135, 172 N.E.2d at 527. It was against the public policy of New York to limit the amount of damages in a suit for wrongful death. N.Y. Const. art. 1, § 16 (1939).

²⁵ *Kilberg v. Northeast Airlines*, supra note 22, at 39, 211 N.Y.S. at 135, 172 N.E.2d at 527.

²⁶ For favorable comment on the New York court's characterization of damages as procedural, see 46 Cornell L.Q. 637 (1961); 74 Harv. L. Rev. 1652 (1961). Contra, 61 Colum. L. Rev. 1497 (1961); 49 Geo. L. J. 768 (1961); 36 N.Y.U.L. Rev. 723 (1961); 28 U. Chi. L. Rev. 733 (1961); 15 Vand. L. Rev. 271 (1961).

²⁷ 309 F.2d 553 (2d Cir. 1962), cert. denied, 372 U.S. 912 (1963). This was an action by the estate of another passenger in the *Kilberg* crash.

²⁸ Id. at 559.

²⁹ 12 N.Y.2d 473, 240 N.Y.S.2d 743, 191 N.E.2d 279 (1963).

³⁰ Id. at 484, 240 N.Y.S.2d at 752, 191 N.E.2d at 285.

wrongful death statute limitation on the amount of recovery from the cause of action upon which the suit was premised. In the instant case, the Pennsylvania court did not distinguish between the cause of action and the amount of recovery, but merely held that a cause of action in assumpsit for negligent breach of contract would support a recovery for a tortious death according to Pennsylvania law.⁸¹ Thus, in Pennsylvania, it now appears that a plaintiff may sue in assumpsit or trespass for a wrongful death occurring outside the state.

In *Babcock*, both the injured guest-plaintiff and host-defendant were domiciliaries of New York while in the instant case the defendant, United Airlines, was not a Pennsylvania corporation but merely doing business there. *Babcock* also involved a suit in tort while the instant case was a suit in assumpsit. The New York court in *Babcock* noted that the defendant host-driver's automobile was "garaged, licensed and undoubtedly insured in New York,"⁸² while in the instant case the defendant's airplane was only the instrumentality through which the business of transporting passengers was conducted. Compared to *Babcock* the contacts of the defendant United Airlines to Pennsylvania were minimal in the instant case while the contacts of the plaintiff's to the forum state were approximately the same in both cases.

The decision of the court in the instant case follows the view expounded by the latest Restatement of Conflict of Laws.⁸³ The pertinent provisions of the Restatement are Sections 379 and 379a which provide:

Section 379

- (1) 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.
- (2) Important contacts that the forum will consider in determining the state of most significant relationship include:
 - (a) the place where the injury occurred,
 - (b) the place where the conduct occurred,
 - (c) the domicil, 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.
- (3) In determining the relative importance of the contacts, the forum will consider the issues, the character of the tort, and the relevant purposes of the tort rules of the interested states.⁸⁴

Section 379a, continues:

In an action for personal injury the local law of the state where the injury occurred determines the rights and liabilities of the

⁸¹ Griffith v. United Airlines, supra note 1, at 800.

⁸² Babcock v. Jackson, supra note 29, at 482, 240 N.Y.S.2d at 750, 191 N.E.2d at 284.

⁸³ Restatement (Second), Conflict of Laws (Tentative Draft No. 9, 1964).

⁸⁴ Id. § 379.

parties, unless some other state has a more significant relationship with the occurrence and the parties as to the particular issue involved, in which event the local law of the latter state will govern.⁸⁶

In the instant case, Pennsylvania was interested to the extent that the decedent was a Pennsylvania domiciliary, the airplane ticket was purchased in Pennsylvania, and the flight began and was eventually to end in Pennsylvania. Also because the decedent's family lived in Pennsylvania, compensation for their loss will have an effect on Pennsylvania. Colorado, on the other hand, where the death occurred, had no other relationship to either the decedent or the defendant airline. This decision thus aligns Pennsylvania with the rapidly growing number of jurisdictions which apply the newer rule based on "contacts," "center of gravity" or "significant relationships" to their choice of law problems in conflict of laws.

This newer rule of "contacts," although arguably a cause of "forum shopping" in which a plaintiff could attempt to sue in that jurisdiction in which he will receive the largest recovery, merely authorizes the forum state to apply its own law in a choice of law situation when it has a significant relationship or interest in the outcome of the action. In the instant case, a more equitable result was attained using the newer "contacts" rule than would have been attained if the place of injury rule had been applied by the Pennsylvania court.

FRANCIS FRASIER

Constitutional Law—Impairment of Obligation of Contract—Impairment by Change of Remedies—Impairment by Exercise of State's Police Power.—*Canal Nat'l Bank v. School Administrative Dist. No. 3.*¹—The Canal National Bank was the holder of bonds issued by a school administrative district (SAD) which was comprised of eleven Maine towns. Under existing statutes,² the bonds were secured by (1) the power of the SAD to tax the eleven towns and (2) the right of the bank to levy on all personalty of the residents and on all realty within the eleven-town district. Subsequent to the issuance of the bonds, the state legislature enacted a statute,³ removing three of the eleven towns from the SAD and reorganizing the SAD to comprise the eight remaining towns. Under this statute, the bonds were to be secured by (1) the power of the SAD to tax the remaining eight towns, (2) the right of the bank to levy directly on the property of the eight towns, and (3) a contingent liability imposed on the three withdrawn towns if payment in full was not made by levy on all the assets of the reorganized SAD. The bank brought suit for a declaratory judgment. The lower court rendered a decision in favor of the bank; and on appeal to the

⁸⁶ *Id.* § 379a.

¹ 203 A.2d 734 (Me. 1964).

² Me. Rev. Stat. Ann. ch. 41, § 111-K to L; ch. 90A, § 23; ch. 118, § 32 (Supp. 1963); Me. Rev. Stat. Ann. ch. 118, §§ 30-1.

³ Me. Priv. & Sp. Laws 1963, ch. 175.