North Dakota Law Review

Volume 43 | Number 2 Article 11

1967

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Recommended Citation

Martoche, Sal (1967) "Automobiles - What Law Governs - An Abrogation of Lex Loci Delecti in Conflict of Laws," *North Dakota Law Review*: Vol. 43 : No. 2 , Article 11.
Available at: https://commons.und.edu/ndlr/vol43/iss2/11

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Skeptics might criticize the statute for being too liberal, claiming the offender can use the provision as a shield. This, however, is not necessarily true. With the exception of an atrocious offense such as murder, the average youthful offender commits a relatively minor infraction that would warrant only a nominal fine if committed by an adult. In all too many circumstances, a parent pays the fine and the child learns little, if anything, from the experience in court. On the other hand, if the same child must face the juvenile authorities, the Juvenile Commissioner, in the presence of the parents, has the necessary power[36] to make the meaning of responsibility better known to the child, the one needing it the most.

Idealistically a law should provide for all possible circumstances, but reality shows that none do. Both methods discussed for treating youthful offenders have merit, but the one employing the age at the time of the offense is preferable. Specifically, the approach provides a greater guarantee of justice by devaluating a delay in proceedings until the accused reaches the statutory age at which he can be tried as an adult criminal. If the alleged offense is so grave that juvenile law would be inappropriate, a hearing to determine whether or not to waive the authority of the juvenile court, can be resorted to. In the main, such an action will not be required. It is unrealistic to wait until a youth reaches a certain age and then bring charges against him as an adult for an offense which was committed as a juvenile.

JOHN C. GOLDEN

AUTOMOBILES—WHAT LAW GOVERNS—AN ABROGATION OF LEX LOCI DELECTI IN CONFLICT OF LAWS—While the plaintiff and defendant were on a temporary pleasure trip to South Dakota they were involved in an automobile accident which resulted in plaintiff sustaining serious and permanent injuries, incurred when the defendant negligently drove his vehicle off the road. At the time of the accident both young men were residents of the state of Minnesota. A motion by the defendant to obtain a summary judgment based apparently on the doctrine of *lex loci delecti*,[1] had been denied and on appeal the Minnesota Supreme Court, affirming the dismissal,

35. See State v. Jackman, 93 N.W.2d. 425 (N.D. 1958).
36. N.D. CENT. CODE § 27-16-02 (1960).
1. RESTATEMENT, CONFLICT OF LAWS, § 384 (1934) "(1) If a cause of action in tort is created at the place of the wrong, a cause of action will be recognized in other states. (2) If no cause of action is created at the place of the wrong, no recovery in tort can be had in any other state."

held that the law of the domicile of the parties and not that of the place of the tort applied. As a result the plaintiff was not barred from recovery by the South Dakota guest statute,[2] but instead was allowed recovery under the common law doctrine to which Minnesota adheres, permitting recovery for ordinary negligence. *Kopp v Rechtzigel*, 141 N.W.2d 526 (Minn. 1966)

The instant case is one more step in an historic reversal of the heretofore established rule of conflicts that *lex loci delecti* governs the applicable law in such situations.[3] This same court had stated earlier in *Schmidt v Driscoll Hotel*[4] that the doctrine of *lex loci delecti* would not be applied where an opposite result would be more in conformity with the principles of equity and justice.[5] In the instant case the court applied the reasoning of a companion case[6] in which it was indicated that the same deliberation that had motivated the rejection of "the place of the tort" doctrine in the *Schmidt* case would be applicable to automobile negligence cases.[7]

The policy considerations behind the enactment of guest statutes were discussed at great length by Judge Knutson of the Minnesota Court in *Phelps v Benson*[8] but it was noted in the instant case that regardless of how valid these arguments may be they have not prompted the adoption of a guest statute by the legislature of this state. The court makes the assertion that by rejecting the South Dakota guest statute as a bar to recovery, it is simply giving effect to the long-standing public policy governing the rights and liabilities of its citizens. In actuality the court appears to be attempting to pour new wine into old bottles,[9] that is to explain new results in

2. S. D. CODE (1939) § 44.0362: "No person transported by the owner or operator of a motor vehicle as his guest without compensation for such transportation shall have cause of action for damages against such owner or operator for injury, death, or loss in case of accident "

3. See generally, Baade, *New Trends in the Conflict of Laws*, 28 LAW AND CONTEMP. PROB. 673 (1963) Cavers, Cheatham, Currie, Ehrenzweig, Leflar, Reese, *Comments on Babcock v. Jackson, a Recent Development in Conflict of Laws*, 63 COLUM. L. REV. 1212 (1963) Gorfinkel, *Conflict of Laws — a Survey of Past and Contemporary Theory*, 16 HASTINGS L. J. 21 (1964). (Hereinafter cited as Gorfinkel).

4. 249 Minn. 376, 82 N.W.2d. 365 (1957). In this case the Minnesota Court provided a remedy for the damaged party that would not have been permitted if Wisconsin law (where the passenger was injured) were applied. Liability for the conduct of the people who were obviously intoxicated was placed upon the person who made the illegal liquor sale under a Minnesota "dram-shop" act. In this widely-cited opinion, the Restatement of Conflict of Laws §§ 377, 378 were expressly rejected because the Court felt that since all parties involved were Minnesota residents, the application of Minnesota law would give them protection the state intended they enjoy Section 377, the place of wrong in multi-state tort actions is the state where the tort event necessary to make an actor liable for a tort took place. Section 378, the law of the place of the wrong determines whether a person has sustained a legal injury.

5. *Id.* at 368.

6. Balts v. Balts, 142 N.W.2d. 66 (Minn. 1966). This case involved an action by a parent against a child for injuries sustained in a Wisconsin automobile accident.

7. *Id.* at 68.

8. 252 Minn. 457, 90 N.W.2d. 533 (1958).

9. Gorfinkel, *supra* note 3, at 39.

the framework of traditional methods. Anyone interested in understanding the real significance of this shift in emphasis must be extremely aware of the language being used to explain and justify these new results.[10]

The reasoning of the instant case follows closely that in the New York case of *Babcock v Jackson*[11] which has been referred to as "the most important conflicts case of the century "[12] In that landmark decision both plaintiff and defendant were New York state residents who had been driving together in Ontario, Canada, when the defendant's vehicle collided with a wall causing severe injury to the plaintiff. An action commenced in the New York Court, and in that fact situation, which closely parallels the one presented in the instant case, the New York Court of Appeals held that the law of the domicile, rather than that of the *loci delecti*, would be applied. In that case the court rejected the older rule because it found that the Ontario statute reflected that province's fear of collusion between persons that could be injurious to its insurers[13] and they further concluded that since Ontario's only contact with the incident was the chance occurrence of the accident, the imposition of liability on the defendant would not affect these insurers.[14] Notably, both the instant case and the *Babcock* case make clear the fact that they do not intend to interfere in any way with the legitimate interests of the foreign state and that their determinations in one area would not preclude the possibility of the application of the *lex loci delecti* in another area within the same case.[15] Motor vehicle regulation was singled out in both cases to exemplify this,[16] because each state has a legitimate interest in maintaining safety on its roads and this interest extends to all persons who drive within its jurisdiction.[17] Therefore, it can be concluded that while contact with the accident is not relevant to the legal consequences flowing from the host-guest relationship it may serve as the basis for some other issue involved in the same case. The theoretical basis for the *Babcock* decision was the so-called "center of gravity" or "grouping of contacts" doctrine.[18] Judge Fuld's opinion simply asked which state had the greater or more direct interest in the matter and then applied the law of that state.

It was favorably noted in the *Babcock* decision[19] that a recent

10. See generally Gorfinkel, *supra* note 3.
11. 12 N.Y.2d. 473, 191 N.E.2d. 279, 240 N.Y.S.2d. 743 (1963), *reversing* 17 App. Div.2d. 694, 230 N.Y.S.2d. 114 (1962).
12. *The Impact of Babcock v. Jackson on Conflict of Laws*, 52 VA. L. REV. 302 (1966).
13. Babcock v. Jackson, *supra* note 11 at 284.
14. *Ibid.*
15. Babcock v. Jackson, *supra* note 11.
16. *Ibid.*
17. Kopp v. Rechtzigel, 141 N.W.2d. 526 (Minn. 1966).

draft of the Restatement, Second, adopted the most significant relationship rule.[20] The Restatement, Second, also set down the rules to be used in determining what contact would be considered most important in deciding which state had the most significant relationship.[21] There are four contacts enumerated to act as guides for the forum in determining this relationship:

(1) the place where the injury occurred;
(2) the place where the contact occurred;
(3) the domicile, nationality, place of corporation and place of business of the parties;
(4) the place where the relationship, if any, between the parties is centered.[22]

The relative importance of each of these contacts is to be determined by the specific character of the tort, the issue and the policy behind the tort rules involved.[23] The only drawback to this position is that the contacts are purportedly ranked in order of their importance[24] and this would then be merely a sophisticated restatement of the rule of *lex loci delecti*, not as the exclusive factor, but as the most important one in the grouping of contacts.[25]

The *Babcock* decision is fashioned in a way that allows for the consideration of a number of factors alien to the position of the Restatement, Second: where the trip originated, where it was to conclude, where the beneficiary of the insurance contract resided, where the vehicle was licensed, where it was garaged and, finally, where it was insured.[26] The advantage of this approach over the Restatement, Second (and the Restatement also) is that it allows each issue to be decided on its own merits and avoids the establishment of a formal set of contacts.[27] The biggest flaw in this philosophy is that it does not give enough direction to the lower courts to help them decide which contacts ought to dominate in a specific case.[28]

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18. Babcock v. Jackson, *supra* note 11 at 282. See also Auten v. Auten, 308 N.Y. 155, 124 N.E.2d. 99 (1954).
19. Babcock v. Jackson, *supra* note 11 at 283, 284.
20. RESTATEMENT, CONFLICT OF LAWS, § 379 (1). See also Introductory Note to Topic One of Chapter 9, p. 3 (Tentative Draft No. 8, 1963).
21. RESTATEMENT, CONFLICT OF LAWS, § 379 (A-K).
22. RESTATEMENT, CONFLICT OF LAWS, § 379 (2).
23. RESTATEMENT, CONFLICT OF LAWS, § 379 (3).
24. RESTATEMENT, CONFLICT OF LAWS, § 379 comment b.
25. *Conflict in the Conflict of Laws A Need for Uniformity*, 61 N.W.L. REV. 329 (1961). (Hereinafter cited as 61 N.W.L. REVIEW).
26. Babcock v. Jackson, 12 N.Y.2d. 473, 191 N.E.2d. 279, 240 N.Y.S.2d. 743 (1963) *reversing* 17 App. Div.2d 694, 230 N.Y.S.2d. 114 (1962).
27. 61 N.W.L. REV. 339.
28. Dym v. Gordon, 22 App. Div. 702, 245 N.Y.S.2d. 656 (1963), *aff'd* 16 N.Y.2d. 120, 209 N.E.2d. 792 (1965).

The choice of law theory in America has undergone a great deal of alteration[29] since Judge Story assumed that a forum adjudicating an occurrence arising out of an event rooted in a foreign jurisdiction would, as a matter of comity, look to and utilize the law of that foreign jurisdiction as the basis of its decision.[30] In those days a forum was expected, but not required, to look to foreign law [31] This view was championed and popularized by Mr Justice Holmes on the bench[32] and Professor Beale in academic circles,[33] and finally it became the dominant philosophy of the Restatement of Conflict Laws.[34] As a result of the reaction against this "vested rights" or *lex loci delecti* doctrine the "local law theory" emerged.[35] It emphasized the notion that no jurisdiction ever applies any law other than its own, and that it included in its own law certain doctrines directing the use of foreign law in certain instances.[36] There is little doubt that the "local law theory" provided the impetus necessary for jurists to seek out and find a new theory to replace the old vested rights principle, even though it was not itself equal to the task.

The courts have apparently found ways to avoid the application of *lex loci delecti* by claiming it to be contrary to their established public policy, by asserting things to be procedural which in actuality are substantive so that they would not be bound to apply the law of the foreign jurisdiction, or by reveling in a variety of fabrications and myths. It is surprising, however, that it has taken this long for the rule to be specifically renounced.

The rejection of *lex loci delecti* is far from universal, however, and this is the particular problem which confronts the conflicts area today Recently the Delaware Supreme Court handed down a decision in *Friday v Smoot*[37] which adhered strictly, if somewhat surprisingly, to the old rule. The court in that case conceded that Delaware had the more significant relationship with the occurrence but nevertheless applied *lex loci delecti*. In view of the increasingly

29. See generally, Cheatham, *American Theories of Conflict of Laws · Their Role and Utility*, 58 HARV. L. REV. 361 (1945). (Hereinafter cited as 58 HARV. L. REV.)

30. 58 HARV. L. REV. 363, Ehrenzweig, *American Conflicts Law in its Historical Perspective, Should the Restatement be "Continued,"* 103 U. PA. L. REV. 133, 135, (1954). See also EHRENZWEIG, CONFLICT OF LAWS (West St. Paul. 1959).

31. Gorfinkel, *supra* note 3, at 22.

32. See Slater v. Mexican R. R. 194 U.S. 120, 126 (1904), Mutual Life Insurance Co. v. Liebing 259 U.S. 209 (1922).

33. See 1 BEALE, CONFLICT OF LAWS (1935).

34. RESTATEMENT, CONFLICT OF LAWS §§ 59-70 (1934).

35. Gorfinkel, *supra* note 3, at 26.

36. *Id.* at 27.

37. 211 A.2d. 594 (Del. 1965). Here the court held that the Delaware Guest Statute did not act as a bar to recovery in a case involving a Delaware guest and a Delaware suit against a Delaware driver because the accident occurred in New Jersey and was therefore governed by New Jersey law.

evident trend toward greater emphasis upon policy considerations[38] this opinion seems conspicuously erroneous and unrealistic. This lack of accord from jurisdiction to jurisdiction is extremely dangerous. It leads to positions that cannot possibly be reconciled with one another and this necessarily must breed forum-shopping.

In the final analysis each court must determine whether the mechanistic stability and uniformity of the *lex loci delecti* doctrine with its thoughtless application is worth the price that must be paid. It seems that it is not, because as has been pointed out, courts have always found ways of avoiding its application, and because it stands as a monumental obstacle in the path of progressing toward meaningful and necessary public policy considerations. The overwhelming majority of writers are opposed to its retention, and contemporary cases are running clearly contra to it. The problem, of course, is that there is a good deal of spirited debate as to what is the proper method for analyzing and solving these problems. At the present time, the choice of law doctrine finds itself in a muddled and embarrassing posture. Only time and a creative, responsible judiciary can lead us to a more sound and consistent position. Minnesota appears to be headed clearly in the right direction.

SAL MARTOCHE

CRIMINAL LAW—ADMISSIONS BY ACCUSED—TACIT ADMISSION BY SILENCE—While in jail on a charge of burglary, the confession of the defendant's confederate was read to the defendant by the police, after the defendant was informed by the police of his right to remain silent. The defendant, Staino, remained silent or periodically said, "I have nothing to say" His failure to deny was received in evidence at the trial as a tacit admission and the defendant appealed his conviction. The equally divided Superior Court of Pennsylvania affirmed the conviction and *held* the evidence was admissible under the tacit admissions doctrine.[1] *Commonwealth v Cavell,* 207 Pa. Super 274, 217 A.2d 824 (1966)

The tacit admissions doctrine[2] is an exception to the exclusion-

38. Babcock v. Jackson, *supra* note 26, Griffith v. United Air Lines, Inc., 416 Pa. 1, 203 A.2d. 796 (1964), Pearson v. Northeast Airlines, Inc., 309 F.2d. 553 (2d Cir. 1962), *cert. denied,* 372 U.S. 912 (1963).

1. The dissenting justices said the doctrine violated the rules of self-incrimination.

2. [W]hen a statement made in the presence and hearing of a person is incriminating in character and naturally calls for a denial but is not challenged or contradicted by the accused although he has opportunity and liberty to speak, the statement and the fact of his failure to deny are admissible in evidence as an implied admission of the