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Conflict of Laws - Wrongful Death Recovery under Federal Tort Claims Act - Conflict of Laws Rule Applies as Well as Internal Law of Place of Negligence

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sustain such a tax.¹⁵ The taxable incident must not lend itself to repeatable taxes in other states.¹⁶ The multiplication of taxes would erect a barrier to interstate commerce, the exact thing the Commerce Clause prohibits.¹⁷ Flaws in our system of taxation among the states make possible numerous incidences where a buyer may be subjected to multiple taxation.¹⁸ This is the case where the buyer takes delivery in his own equipment and actually transports the goods to another state. Both the sales tax of the selling state and the use tax of the consuming state may be applicable.¹⁹

There appears a need for uniform legislation in the field of state taxation of interstate commerce. The possibility of multiple taxation is ever present when a buyer accepts delivery to himself in the seller's state. Presently many states including North Dakota impose a sales tax although the interstate effect of the transaction is assured. The U. S. Supreme Court should strike down this tax as being a direct burden on interstate commerce when the factual situation assures an interstate transaction.

DON COOKE

CONFLICT OF LAWS — WRONGFUL DEATH RECOVERY UNDER FEDERAL TORT CLAIMS ACT — CONFLICT OF LAWS RULE APPLIES AS WELL AS INTERNAL LAW OF PLACE OF NEGLIGENCE. — The petitioners are the personal representatives of passengers killed when an American Airlines plane crashed in Missouri while enroute from Tulsa, Oklahoma, to New York City. The cause of the crash was traced back to the overhaul depot in Tulsa where an unsafe cylinder was placed in one of the engines. Petitioners brought suit against the United States in the Federal District Court in Oklahoma basing their claim on the failure of the Civil Aviation Agency to exercise proper surveillance of practices employed by the airlines in maintaining their aircraft. Petitioners had already received a \$15,000 settlement from American Airlines which was the maximum

15. *Memphis Gas Co. v. Stone*, 335 U.S. 87 (1948).

16. *Case of State Freight Tax*, 82 U.S. 232 (1872); *Memphis Gas Co. v. Stone*, 335 U.S. 87 (1948).

17. *Michigan-Wisconsin Pipe Line Co. v. Calvert*, 347 U.S. 157 (1954).

18. See Note, 46 Va. L. Rev. 1051 (1960).

19. *Ibid.*

amount recoverable under the Missouri Wrongful Death Act.¹ They now seek additional amounts from the United States under the Federal Tort Claims Act² by applying the Oklahoma Wrongful Death Act³ which contains no limitation on the amount recoverable. On appeal the Supreme Court of the United States *held* that petitioners could not obtain further relief under the Federal Tort Claims Act or under the Oklahoma Wrongful Death Act. *Richards v. United States*, 369 U.S. 1 (1962).

Three alternatives faced the court in determining the choice of law to be applied: (1) The internal law of the place where the negligence had its operative effect;⁴ (2) the internal law of the place where the negligence occurred;⁵ or (3) the internal law as well as the conflict of laws rule of the place where the negligence occurred.⁶

The court, in excluding the first alternative, concluded that Congress intended in the Federal Tort Claims Act that the government's liability should be determined in accordance with the law of the place where the negligence occurred.⁷ Special note was taken of the wording of the Federal Tort Claims Act, which states that the government shall be adjudged liable as an individual would be under similar circumstances. The court concluded that this would require liability to be determined in accordance with the internal law as well as the conflict of laws rules, thus adopting the third alternative. However, the government is not always treated as an individual would be under state law for in certain instances Congress is specific in directing a departure from state law.⁹

1. Mo. Rev. Stat. § 537.090 (1949). (Since commencement of these actions the Missouri Code has been amended to allow for maximum damages of \$25,000. Mo. Rev. Stat. § 537.090 (1959).

2. 28 U.S.C. §§ 1346, 1402, 2674 (1958).

3. Okla. Stat. tit. 12, §§ 1051-1954 (1951).

4. *United States v. Marshall*, 230 F.2d 183 (9th Cir. 1956).

5. *Voytas v. United States*, 256 F.2d 786 (7th Cir. 1958); *Eastern Airlines v. Union Trust Co.*, 221 F.2d 62 (D.C. Cir. 1955).

6. *Hess v. United States*, 259 F.2d 285, 291 (9th Cir. 1958). (The Court noted that the **Union Trust** interpretation, if followed, does violence to 28 U.S.C. § 1346(b) since the government is not held liable in the same manner and to the same extent as a "private person under (like) circumstances"); *Landon v. United States*, 197 F.2d 128 (2nd Cir. 1952).

7. 28 U.S.C. §§ 1346(b), 2674. (The government shall be treated "in accordance with the law of the place where the act or omission occurred.")

8. *Ibid.* That the government shall be liable "in the same manner as a private person would be under similar circumstances".

9. See 28 U.S.C. § 1346(b) Permits claimants to sue only in the federal courts, and not in the state courts which are available in actions against a private individual; § 2401(b) specifically prescribes a period of limita-

The principal argument against this holding is that there could result indefinite oscillation between the situs of the negligence and the situs of the death if the conflicts rules of the two forums are not in accord; i.e., when the court looks to the Oklahoma conflicts rule and is referred to Missouri law, what is to prevent a reference back to Oklahoma law should the Missouri conflicts rule provide for recovery by applying the internal law of the situs of the negligence? There exists a two-fold answer to this perplexity. The great majority of the states have accepted the general conflict of laws rule that recovery should be based upon the substantive law of the place of death or injury.¹⁰ After reference to the conflicts rule of the state where the negligence occurred, final settlement would be determined in accordance with the law of the place of death. Secondly, American courts have generally rejected the doctrine of *renvoi*,¹¹ thus precluding any reference to the conflict of laws rule of the foreign state and look only to their internal law.¹² By applying only the internal law of the foreign state, in this case Missouri, any "endless circuitry" would be cut off and the final settlement would be in accord with the wrongful death statute of Missouri.

It is this writer's view that the alternative selected in the instant case is the most desirable. This interpretation is more flexible in that it allows a federal court to take advantage of new developments in the conflict of laws area rather than

tions which may be shorter or longer than that of the state; § 2402 claimant cannot obtain a trial by jury under the Act, although he could against a private individual; (In all these instances Congress was specific in setting up an independent federal rule).

10. *Young v. Masci*, 239 U.S. 253 (1933); *Riley v. Capital Airlines, Inc.*, 24 Misc. 2d 457, 199 N.Y.S.2d 515 (1960); *Faron v. Eastern Airlines, Inc.* 193 Misc. 395, 84 N.Y.S.2d 568, 570 (1948). (The Court held that where causes of action against airline company for death of passenger on airplane which caught fire over N.Y. and crashed in Connecticut were based on negligence, airline would be permitted to interpose defense that injuries and death occurred in Connecticut so as to limit right of recovery to \$20,000 which was the maximum allowed under Connecticut death act.) *Gochenour v. St. Louis-San Francisco R. Co.*, 205 Okla. 594, 239 P.2d 769 (1952). Goodrich, *Conflict of Laws* § 93 (3d ed. 1949) Wrongful death . . . "The weight of authority is that the law of the place where the injury takes place applies". *RESTATEMENT, CONFLICT OF LAWS* § 377 (1934) "The place of wrong is in the state where the last event necessary to make an actor liable for an alleged tort takes place"; § 391 reads "The law of the place of wrong governs the right of action for death".

11. Goodrich, *Conflict of Laws* § 10 (3d ed. 1949) "The theory of *renvoi* has been the subject of much legal discussion, most of which has rejected its application in this country in all but a few situations"; See generally Griswold, *Renvoi Revisited*, 51 Harv. L. Rev. 1165 (1938).

12. Goodrich, *Conflict of Laws* § 10 (3d ed. 1949); 68 Harv. L. Rev. 1455, 1456 (1955); *RESTATEMENT, CONFLICT OF LAWS* § 7 (1934) "When there is a difference in the Conflict of Laws of two states whose laws are involved in a problem, the rule of Conflict of Laws of the forum is applied; . . . the foreign law to be applied is the law applicable to the matter in hand and not the Conflict of Laws of the foreign state".

directing it to choose between the *lex loci delicti* or the *lex loci mortis*.¹³

GERALD F. JOHANSEN

CONTEMPT — DIRECT CONTEMPT — RIGHT OF THE COURT TO PUNISH SUMMARILY — The defendant, who had continually interrupted the court in its attempt to examine a witness, was charged with direct contempt of court and sentenced to twenty days in jail. The judge sentenced the defendant on the day after the trial, refusing to allow the defendant to explain his actions. The United States Court of Appeals, Second Circuit, *held*, one judge dissenting, that the court had power to convict the defendant for direct contempt under Rule 42a of the Federal Rules of Criminal Procedure.¹ The dissent argued that no one is to be punished under our laws without the opportunity to be heard. *United States v. Galante and Mirra*, 298 F.2d 72 (2d Cir. 1962).

The power of courts over contempt is practically plenary and in the absence of constitutional or valid statutory restrictions, the exercise of such power should not be questioned by any tribunal.² This power is established to protect courts of justice and to maintain their dignity and authority.³ However, the power to punish for direct contempt is not arbitrary. It must be exercised in accordance with the rules of procedure established by the courts or prescribed by statute.⁴ Punishment of contempt committed in the presence of the court is within the court's sound discretion and will not be disturbed on appeal, unless the discretion is abused.⁵ However, the lack

13. *Kilberg v. Northeast Airlines*, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961). Wherein the Court applied the substantive law of the forum, the plaintiff's domicile, rather than the law of the place of injury, *lex loci delictus*, for the reason that it was repugnant to the public policy of the forum-state to limit wrongful death recovery to the amount prescribed by the *lex loci delictus*. (Indicative of a trend to give more recognition to the law of the state whose interests are most affected); See generally Morris, *The Proper Law of a Tort*, 64 Harv. L. Rev. 881 (1951); (Critical attack upon the inflexibility of the "Last event" doctrine); Note, 45 Iowa L. Rev. 125, 133 (1959); Note, 6 N.Y.L.F. 484 (1960).

1. Fed. R. Crim. P. 42 (a); "CRIMINAL CONTEMPT—SUMMARY DISPOSITION—A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court. The order for contempt shall be signed by the judge and entered of record."

2. *State ex rel. Grebstein v. Lehman*, 100 Fla. 481, 129 So. 818 (1930).

3. *Ibid.*

4. *State ex rel. Rankin v. District Court of First Judicial District*, 58 Mont. 276, 191 Pac. 772 (1920).

5. *United States v. Bollenback*, 125 F.2d 458 (2d Cir. 1938).