The Demise Of Lex Loci Delicti: Bishop v. Florida Specialty Paint Co.

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Abstract

Where a Florida resident incurs injuries as a result of tortious conduct perpetrated by another Florida resident in a foreign state, and an action to recover for the injuries is subsequently initiated in Florida, should the law of the place of the wrong govern the substantive rights and liabilities of the parties concerned?

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Where a Florida resident incurs injuries as a result of tortious conduct perpetrated by another Florida resident in a foreign state, and an action to recover for the injuries is subsequently initiated in Florida, should the law of the place of the wrong govern the substantive rights and liabilities of the parties concerned? Prior to the decision rendered by the Supreme Court of Florida in Bishop v. Florida Specialty Paint Co., state courts were mandated to adhere to the doctrine of lex loci delicti and apply the law of the place of the wrong irrespective of any other factors. In Bishop, guest passengers in an aircraft were injured when the aircraft, en route from Jacksonville, Florida to North Carolina, experienced engine difficulties and crashed in South Carolina. The trial court, applying the doctrine of lex loci delicti, granted a summary judgment in favor of the defendants. The court held that the law of South Carolina governing the standard of care imposed on a pilot and an owner of an airplane should be the controlling guideline rather than the law of Florida. Whereas Florida law merely required a showing of

1. RESTATEMENT OF CONFLICTS OF LAWS § 377 (1934).
2. 389 So. 2d 999 (Fla. 1980), answering the certified question issued by the First District Court of Appeal in 377 So. 2d 767 (Fla. 1st Dist. Ct. App. 1979).
4. S.C. CODE § 55-1-10 (1976) provides in pertinent part:
   No person transported by the owner or the 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 on the part of such owner or operator or caused by his heedlessness or reckless disregard of the rights of others.
5. FLA. STAT. § 320.59 (1940), the Florida guest statute, was repealed by ch. 72-
ordinary negligence, South Carolina law required a showing of either "heedless or reckless disregard of the rights" of others or that the accident was intentional. Plaintiffs conceded they could not satisfy the burden imposed by South Carolina law.

On appeal, plaintiffs, relying on Hopkins v. Lockheed Aircraft Corporation, argued that a modern approach to choice-of-law problems in tort actions should be adopted by the court. They advocated the adoption of the "most significant relationship" approach. Upon affirming the trial court's decision, the District Court of Appeal, First District, articulated:

Despite the uncertainties created by the court's action in Hopkins of first receding from the lex loci delicti rule (by a vote of 4 to 3) and then, on rehearing granted, reversing its original opinion (by a vote of 4 to 3), we conclude that the net effect of the decision was to leave in the rule as


7. 201 So. 2d 743 (Fla. 1967). In Hopkins, the plaintiff urged the Supreme Court of Florida to adopt a modern approach to choice-of-law problems. The Court agreed with the plaintiff, but on rehearing, it reversed its decision stating that it was not yet time to recede from the doctrine of lex loci delicti given the objectivity with which the doctrine could be applied. Id. at 752.

8. Restatement (Second) of Conflict of Laws § 145 (1971). Section 145 reads as follows:

§ 145. The General Principle
(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 the 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 domicile, 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.
previously established and generally followed by the Florida courts.\(^9\)

The district court, in light of the "great public interest"\(^{10}\) attached to the issue, then certified to the Supreme Court of Florida the following question:

Does the lex loci delicti rule govern the rights and liabilities of the parties in tort actions, precluding consideration by 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?\(^{11}\)

As previously indicated, the Supreme Court of Florida responded to the certified question in the negative. The Court acknowledged the "consistency and stability [promoted] by [the] application of a stable and objective standard [i.e., the doctrine of lex loci delicti] for choice-of-law determinations."\(^{12}\) However, it also stated that there were several factors in the Bishop case which disclosed the need for and prompted the Court to adopt a more flexible rule. The Court noted:

In the present case, for instance, the weekend trip was to begin and end in Florida, plaintiffs and defendants are all Florida residents, and the host-guest relationship between the parties arose in Florida. The relationship of South Carolina to the personal injury action is limited to the happenstance of the plane coming into contact with South Carolina soil after developing engine trouble in unidentified airspace.\(^{13}\)

In light of these factors, the Court announced that the time had arrived for a choice-of-law rule which would encompass factors of this nature. It therefore proclaimed the adoption of the "most significant relationship" approach.

To evaluate and fully comprehend the impact that the Bishop case will have upon future litigation, one needs to analyze the roots, criti-

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9. 377 So. 2d at 768.
10. Id.
11. Id.
13. Id.
cisms and applications of the two concepts — the doctrine of *lex loci delicti* and the "most significant relationship" approach. This comment initially seeks to trace the birth of the traditional rule and to elaborate upon the factors which justified its original popularity as well as those which ultimately provoked its demise. Thereafter, it examines the modern approach to ascertain whether it will rectify the problems encountered under the traditional rule.

**THE DOCTRINE OF LEX LOCI DELICTI**

The doctrine of *lex loci delicti* was conceived as early as the mid-nineteenth century. It emanated from the "vested rights" theory which dictated that "a right to recover for a foreign tort owes its creation to the law of the jurisdiction where the injury occurred and depends for its existence and extent solely on such law." Its chief proponent was Professor Joseph H. Beale. Courts and legal scholars have articulated numerous and varied justifications for the doctrine. In *First National Bank in Fort Collins v. Rostek*, the Supreme Court of Colorado justified the doctrine on the basis that "[i]n the mid-nineteenth century, conditions were such that people only occasionally crossed state boundaries. Under those circumstances, there was legitimacy in a rule which presumed that persons changing jurisdictions would be aware of the different duties and obligations they were incurring when they made the interstate journey." In *Hopkins v. Lockheed Aircraft Corporation*, the Supreme Court of Florida was impressed by the doctrine's objectivity, consistency and stability. The Court stated that "[t]here are obvious virtues, in consistency and stability, supporting the application of laws whenever possible in a cohesive rather than piece-

15. For a treatment of this theory, see Cheatham, *American Theories of Conflict of Laws: Their Role and Utility*, 58 HARV. L. REV. 361 (1945).
18. 182 Colo. 437, 514 P.2d 314.
19. *Id.* at ___, 514 P.2d at 316.
20. 201 So. 2d 743 (Fla. 1967).
meal fashion. In other words, the applicability or inapplicability of foreign law should so far as possible be based on objective and stable standards." It has also been suggested by William Reese, one of the Reporters of the Restatement (Second), that the doctrine was justified by man's proclivity to make things as easy as possible:

For it is in the nature of men to seek certainty and simplicity in the law. They will wish to regulate a field by a few simple rules if rules of this nature can be devised to handle adequately the problems involved. And if a few simple rules will handle all, or at least the great majority, of problems that have arisen in a great field, men will be tempted to believe that the same rules can satisfactorily be applied to handle all other problems with which they may thereafter be faced.

Finally, supporters of the doctrine emphasized the expediency, uniformity, certainty and predictability which the doctrine promoted.

As society grew increasingly mobile, and even before Professor Beale had completed his task of embodying the doctrine of lex loci delicti into the first Restatement, the doctrine was subjected to strict scrutiny by legal scholars in the field. The criticism proved warranted. While application of the doctrine appeared to pose no inequities to sin-

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21. Id. at 752.
22. Reese, supra note 17, at 680.
23. But see Reese, supra note 17, at 681. Reese contends that "rules cannot bring certainty and predictability to a subject in which these values do not exist. Of necessity, many conflicts rules must be fluid in operation and leave much to be worked out by the courts." On another occasion, Reese expanded upon his criticism of the traditional rule:

In retrospect, it seems clear that rules of this sort, at best in areas of contract and torts, could not prove successful. There are many different kinds of contracts and torts. The number of issues that can arise in these two areas of law and the variety of ways that relevant contacts can be grouped among the interested states border on the infinite. Certainly it would be miraculous if all issues could be satisfactorily decided by application of the law of the place of [the wrong].

gle state torts, the perfunctory application of the doctrine to cases where several states, especially the forum state, were significantly related to the occurrence proved problematic and frequently produced harsh results. To circumvent these unjust decisions, and frequently to invoke their own state laws, courts began to employ "manipulative devices" including characterization, public policy, and renvoi. As

26. See Note, supra note 24, at 464-65, analyzing Tom v. Messinger, 203 So. 2d 357 (Fla. 2d Dist. Ct. App. 1967). In Messinger, two Florida residents, who had embarked on a round-trip journey to Washington, D.C., were killed when their automobile collided with a bridge abutment in North Carolina. The passenger's minor child brought a wrongful death suit under sections 768.01 and 768.02, Florida Statutes, against the driver's estate. The suit was subsequently dismissed with prejudice when the court concluded that North Carolina law governed, precluding suit by individuals other than the representative of a decedent's estate. Acknowledging that the decedents were both residents of Florida, that the guest-host relationship originated in Florida, that the journey was commenced and terminated in Florida, the court articulated that nevertheless it had an inviolable duty to adhere to the doctrine of lex loci delicti. The inequity manifested itself in the court's refusal to consider these factors and the fact that North Carolina had no interest in applying its law. The policy behind its law — distribution of recovery through the law of descent and distribution — would not have been advanced by the interjection of North Carolina law into an action involving Florida residents and Florida property.


It is an essential early step in almost any legal analysis, but the step is one that can serve the purposes of the legal artist as well as the legal logician. If more than one characterization is logically available on a set of facts and permissible, the choice between the characterizations may turn on a judicial desire to achieve justice in the particular case, on a public policy preference for one rule of law over another, on a preference for the forum state's own law or on something else other than pure logic.

Id. at 212.

[I]t is an elementary aspect of legal reasoning. But it should not be made to perform functions beyond its own purpose, which is classificatory only. Characterization is a proper initial step in any legal problem, including choice-of-law problems. If more than one traditional characterization is available on a given set of facts, all possible characterizations should be identified and brought into the open. Not until this is done is it possible to see what proper choice influencing
the courts' propensity to employ these devices increased, the once advocated virtues of the doctrine of *lex loci delicti* became progressively illusory. This judicial propensity to escape the strict application of the doctrine indicated that with the "horse and buggy days" gone, the time had ripened for the adoption of new choice-of-law theories which would embrace considerations of policy, fairness and other relevant factors.\(^{32}\)

**THE MOST SIGNIFICANT RELATIONSHIP APPROACH**

In 1963, a response to the overwhelming dissatisfaction with and the harshness of the doctrine of *lex loci delicti* was articulated by the New York Court of Appeals. In *Babcock v. Jackson*,\(^ {33}\) that court proclaimed its abandonment of the doctrine and its adoption of the most significant relationship approach posited in the *Restatement (Second)*\(^ {34}\). Elaborating upon his theory selection, Judge Fuld declared:

> Justice, fairness and "the best practical result" ... may best be achieved by giving 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.

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29. The public policy manipulative device was employed when a forum deemed the law of the jurisdiction whose law was to govern to be "shocking." See Sedler, *supra* note 27, at 841 (1978). According to Judge Cardozo in *Loucks v. Standard Oil Co.*, 224 N.Y. 99, 111, 120 N.E. 198, 202 (1918), a law was deemed "shocking" if enforcement thereof would "violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of common weal." Sedler, *supra* note 27, at 841 n.68. It is demonstrated in *Gillen v. United Servs. Auto. Assoc.*, 301 So. 2d 613 (Fla. 1974) and *Hopkins v. Lockheed Aircraft Corp.*, 201 So. 2d 743 (Fla. 1967) that Florida courts do subscribe to the use of this device.

30. See, e.g., *Richards v. United States*, 369 U.S. 1 (1962). In *Richards*, the Court, by employing the renvoi device, ruled that a federal district court was obligated to apply not only the internal law of the state where the negligent act or omission transpired, but the whole law, including the choice of law rules of the state.

31. *Ideal Structures Corp. v. Levine Huntsville Dev. Corp.*, 396 F.2d 917, 922 (5th Cir. 1968).

32. *See* 377 So. 2d at 768.


The merit of such a rule is that "it gives to the place 'having the most interest in the problem' paramount control over the legal issues arising out of a particular factual context. . . ." \[35\]

Since Judge Fuld rendered his decision in *Babcock*, numerous states, Florida now among them, have adopted one of several modern approaches to conflicts-of-law problems.\[36\]

As applied, the most significant relationship approach entails a two-prong test. Failure to respect either prong will only be counter-productive.\[37\] It is imperative that those variables listed under Section 145\[38\] of the *Restatement (Second)* be examined in light of the vari-

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35. 191 N.E.2d at 283.


38. The variables listed under Section 145 include:
   (a) the place of the injury,
   (b) the place where the conduct causing the injury occurred,
   (c) the domicile, 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.

*Restatement (Second) of Conflict of Laws* § 145 (1971).
ables enumerated under Section 6 of the Restatement (Second). It was from these factors that the approach derived its flexibility and earned judicial respect and recognition. This flexibility permitted courts to eliminate "false conflicts," minimize the use of manipulative devices and determine the applicable law on an issue by issue basis.

Irrespective of the obvious attributes of the new approach as compared with the doctrine of lex loci delicti, critics have revealed that the most significant relationship is not the anticipated conflicts panacea, for its viability is threatened by a few inherent infirmities. It has been suggested that the language of Sections 6 and 145 of the Restatement (Second) is rather indeterminate and without direction. Interpretation of terminology is left to the discretion or "idiosyncratic analysis" of courts. This discretion militates against the choice-of-law policies of predictability of result and uniformity of application. Moreover,

39. Section 6 provides for consideration of the following factors:
(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.

Id.
For a discussion of these factors, see Reese, supra note 17, at 682-91.

40. For a discussion on false conflicts, see Note, supra note 24, at 464 n.7.
41. See Leflar, supra note 27, at 272-73.
42. Id. at 273; Babcock v. Jackson, 191 N.E.2d at 283-84. In other words, it is conceivable that in a single case, one state's law may govern with respect to one issue and another state's law may govern with respect to another issue. In contrast, the doctrine of lex loci delicti appeared omnipotent. Leflar states:

[The doctrine] covered all such aspects of the act and injury in question as the state of mind with which the act was done, the motive if any, the surrounding circumstances tending to indicate negligence or non-negligence, including contributory negligence, privilege or other legal justification for the act, its causal connection with produced results . . . and all other matters inherent in the act and injury which go to determine their legal characteristics.

LEFLAR, AMERICAN CONFLICTS LAW 317 (1968).

43. See Note, supra note 24, at 472.
44. Leflar, supra note 37, at 273.
45. See 514 P.2d at 318.
courts may be prone to construing the variables in a self-serving, as opposed to neutral, fashion.\textsuperscript{46}

Critics also warn that the absence in the \textit{Restatement (Second)} of any direction as to the relative weight to be accorded to the variables of Sections 6 and 145 will have adverse consequences.\textsuperscript{47} They point out that although the approach requires that the variables be qualitatively, not quantitatively,\textsuperscript{48} weighed, the absence of any direction allows the courts, on a carte blanche basis, to subjectively assign greater significance to one factor than to another.\textsuperscript{49} They predict that the ultimate result of this exercise of judicial subjectivity will be a return to the doctrine of \textit{lex loci delicti}. Courts will be forced to place a premium on the first consideration of Section 145, to wit, the place of the wrong.\textsuperscript{50}

Finally, the critics warn the legal community that this complex approach cannot be applied in a simplistic manner. They advise the community that the approach should not be transformed into a mechanism by which the factual contacts of each state involved are counted and the law of the state with the greatest number of contacts be held applicable.\textsuperscript{51}

\textbf{CONCLUSION}

By exposing the infirmities of both the doctrine adhered to in the past and the newly adopted approach, it is hoped that this comment has defined the boundaries within which the Florida courts should venture in order to achieve the justice and fairness sacrificed in the past. At this point, Florida courts enter into a transitional period during


\textsuperscript{48} LEFLAR, \textit{AMERICAN CONFLICTS LAW} 221 (1968).


\textsuperscript{50} See Reese, \textit{supra} note 17, at 704. Reese states that "again we are entangled in the circular reasoning which refers us to the law under which the 'cause of action' is alleged to have vested, and again the place of wrong, so often fortuitous, assumes its predominant importance." \textit{Id.} at 704.

\textsuperscript{51} LEFLAR, \textit{supra} note 48, at 330.
which they will learn to implement the requirements of this newly adopted approach and learn from the experiences of sister courts in other states who adopted the approach long ago.

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