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Conflict of Laws

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opinion, "If the doctrine is to be abolished, reason and common sense dictate that the doctrine should be abolished as to *all* charitable institutions. . . ."[19] Abolishing it only as to hospitals will require periodic pronouncements as to the liability of each class of charities. This piecemeal determination of such an important issue can only delay the inevitable—the total destruction of the doctrine. Therefore, though the court has rung the death knell for charitable immunity once, the incompleteness of its ruling will require that the bell be tolled again and again.

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CONFLICT OF LAWS—Torts should be governed by the local law of the state which has the most significant relationship with the occurrence and the parties.

Griffith v. United Airlines, 416 Pa. 1, 203 A.2d 796 (1964).

> For over 100 years the law of Pennsylvania has been clearly settled, namely, the substantive rights of the parties, as well as the damages recoverable *are governed by the law of the place of the wrong or as it is sometimes expressed, the law of the place where the injury occurred— lex loci delicti*: [citing cases].[1]

Thus begins the dissenting opinion of Chief Justice John C. Bell, Jr. in *Griffith v. United Airlines,*[2] in which the Pennsylvania Supreme Court abandons this choice of law rule established in Pennsylvania as early as 1830.[3] The majority of the court replaces this conflict of law with one which holds that ". . . torts should be governed by the local law of the state which has the most significant relationship with the occurrence and the parties. . . ."[4]

On July 11, 1961, after purchasing a round-trip ticket from United Airlines (United) in Philadelphia, George H. Hambrecht, a Penn-

19. See Jones' dissenting opinion in Flagiello v. Pennsylvania Hospital, *supra* note 3 at ....., & n. 1.

1. Griffith v. United Airlines, 416 Pa. 1, 26, 203 A.2d 796, 809 (1964). (dissenting opinion of Bell, C.J.).

2. Griffith v. United Airlines, 416 Pa. 1, 203 A.2d 796 (1964).

3. Barclay v. Thompson, 2 Pen. & W. 148 (1830).

4. RESTATEMENT, CONFLICT OF LAWS § 379 (1964).

sylvania domiciliary, boarded a United Airlines plane in Philadelphia bound for Pheonix, Arizona. United, a Delaware corporation with its principle place of business in Chicago, regularly does business and maintains operational facilities in Pennsylvania. In the course of a scheduled stop in Denver, Colorado, the plane crashed and Hambrecht was killed instantaneously. Mr. Hambrecht's will was probated in Pennsylvania. His executor instituted an action in assumpsit for negligent breach of a contract of safe carriage under the Pennsylvania survival act[5] in the Court of Common Pleas of Philadelphia County.

The lower court held, under a long line of conflict of law decisions in Pennsylvania,[6] that Colorado local law should be applied as it was the situs of the tort, and required plaintiff to amend his complaint to demand recovery under Colorado local law. When the plaintiff refused to do so, the court dismissed his complaint. "The crux of this litigation lies in the differing measures of recovery granted in Colorado and Pennsylvania. . . ."[7] Colorado's survival statute[8] limits damages in tort actions to loss of earnings and expenses incurred *prior* to death, and does not allow recovery for ". . . pain, suffering or disfigurement, nor prospective profits or earnings *after* date of death. . . ."[9] Under the Pennsylvania survival statute,[10] recovery may be had for prospective profits or earnings during life expectancy.[11] Since the deceased died immediately, there would be little, if any, recovery under the Colorado local law, while Pennsylvania local law provides a substantial recovery. The supreme court found the lower court order appealable.[12]

Before reaching the choice of law problem the supreme court considered whether the action could properly be brought in assumpsit.

5. PA. STAT. ANN. tit. 20, § 320.603 (1949).

6. See Vant v. Gish, 412 Pa. 359, 365-66, 194 A.2d 522, 526 (1963); Bernarowicz v. Vetrone, 400 Pa. 385, 162 A.2d 687 (1960); Mike v. Lian, 322 Pa. 353, 185 Atl. 775 (1936); Barclay v. Thompson 2 Pen. & W. 148 (1830).

7. *Supra* note 2 at 6, 203 A.2d at 798.

8. COLO. REV. STAT. ANN., Chapter 152, 152-1-9 (Supp. 1960).

9. *Ibid.* (emphasis added).

10. *Supra* note 5.

11. "Under the Pennsylvania Survival Statute, recovery may be had for the present worth of decedent's likely earnings during the period of his life expectancy, diminished by the probable cost of his own maintenance during the time he would have lived and also by the amount of provision he would have made for the support of his wife and children during the same period." *Supra* note 2 at 7, 203 A.2d at 798.

12. "An order sustaining preliminary objections to a complaint is definitive, and therefore appealable, where it so restricts the pleader in respect of further amendment as, virtually, to put him out of court on the cause of action he seeks to litigate: [citing cases]." *Supra* note 2 at 6, 203 A.2d at 789.

United felt that the Pennsylvania Aeronautical Code[13] required the suit to be brought in trespass, as did the allegations of negligent carriage. If United had been able to convince the supreme court of this, then they would argue that under Pennsylvania choice of law rules, Colorado local law applies. Since Colorado local law grants meager damages the potential liability would be insignificant. But the supreme court found the Aeronautical Code meant that ". . . in tort actions for injuries sustained in air disasters, no special rules [are] applicable . . . to airplanes. . . . The rules of negligence . . . remain the same for airplanes as for other carriers."[14] The statute then had no effect upon this litigation as its purpose was merely to establish that in tort actions there are no special rules where airplanes are involved. There is no requirement that the suit be brought in trespass. The court also had to answer whether it would allow a passenger to sue in assumpsit against a carrier where his cause of action is based upon breach of contract of non-negligent carriage. The liability depends upon negligence, as there is no assurance by the carrier of safe carriage. The court recalled that it allowed suits in assumpsit or trespass for damages to shipped goods in the same circumstances and, "We can not preceive, . . . any compelling reason for Pennsylvania to restrict an injured passenger to an action in trespass . . . We hold, therefore, that plaintiff may bring a valid action in assumpsit for the alleged negligent breach of contract of carriage which caused the death of plaintiff's decedent."[15]

But at this point, the Pennsylvania Supreme Court refused to be bound up in technicalties. Plaintiff argued that since this was an assumpsit action and the Colorado limitation applied only to tort actions, the Colorado limitation was inapplicable here. The court looked to the recovery demanded—clearly a tort recovery—resting upon the negligently caused death governed by tort and not contract principles. "Mere technicalities of pleading should not blind us to the true nature of the action."[16] Since the case depended on tort principles for a tort recovery, the Pennsylvania Supreme Court felt bound to follow the Colorado local law limitation, if Pennsylvania choice of law rules were to be adhered to, regardless of the form of action declared upon. The case was now squarely within the Pennsylvania choice of law rule that the substantive law where the injury occurred would control, *i.e.* Colorado local law with its meager re-

13. "The liability of the owner or pilot of an aircraft carrying passengers for injury or death to such passengers, shall be determined by the rules of law applicable to torts on the lands or waters of this Commonwealth arising out of similar relationship." PA. STAT. ANN. tit. 2, § 1472 (1933).

14. *Supra* note 2 at 8, 203 A.2d at 799.

15. *Id.* at 10, 203 A.2d at 800.

16. *Ibid.*

covery. This is a harsh result when Colorado had no connection with the case except the ". . . purely adventitious circumstances that the accident occurred there."[17] At this point, the supreme court felt it was time to abandon this inflexible choice of law rule based upon the vested rights doctrine and replace it with one based upon the various states' connections with the occurrence, the parties and the policies behind the various states' laws.

This new choice of law rule set forth in the Restatement of Conflict of Laws, 2d § 379 will apparently provide the guidelines for Pennsylvania. The court looked to certain contacts to determine the state with the most significant relationship to the parties and issues. Vital contacts are: place of injury, place of conduct, domicile of parties, and the place where the relationship between the parties is centered. The contacts are weighed by considering the issues, the nature of the tort, and the purposes of the tort rules involved.

When one looks to the contacts of this case and the states' policies involved, the change of law does not seem so very undesirable. Colorado had no contact with the parties or action except the accident occurring in Colorado. There was no reliance upon Colorado law by the parties, anymore than there was upon that of each state the plane passed over. There was no medical aid nor assistance given in Colorado because of the instantaneous death. In looking at the policy behind the Colorado limitation upon damages, the court found that it was probably to prevent speculative damages or procedural considerations of local concern. But when Pennsylvania is willing to grant such damages, Colorado should be unconcerned. Another reason might have been to protect Colorado defendants from large verdicts. But here no Colorado domiciliaries are involved and there is no surprise to United as there was no reliance upon Colorado law to its detriment. (*i.e.*, no issue of not carrying adequate insurance because of reliance upon Colorado law).

When the Pennsylvania Supreme Court looked to Pennsylvania's interests, it found the deceased was a Pennsylvania domiciliary whose family still resided there, his estate was probated there and the contract between he and the defendant was entered into there. The Pennsylvania interest in the estate and care of these dependents are weighty considerations in granting damages. The policy behind Pennsylvania law in granting full recovery is so strong that the Pennsylvania Constitution[18] takes away the legislature's power to limit damages for injury or death except in certain enumerated cases.

17. Babcock v. Jackson, 12 N.Y. 2d 473, 481, 191 N.E. 2d 279, 283 (1963).

18. Pa. Const. art. III, § 21 (1915).

Once one looks away from the physical point where the accident occurs, and investigates the policy of both states' laws and the contacts with the issues and the parties, one begins to doubt the basic value of the ancient rule based upon the situs of the tort. Pennsylvania with its weightier contacts and strong public policy towards adequate relief should control, as against the prior lex loci delicti rule, developed in an age when all the contacts developed in one state consistently, which does not fit modern day circumstances.

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CONSTITUTIONAL LAW—Reapportionment—The Pennsylvania Reapportionment Act held unconstitutional.

Butcher v. Bloom, 415 Pa. 438, 203 A. 2d 556 (1964)

The courts of this land until recently, were hesitant to decide state legislature apportionment questions.[1] This subject was generally deemed political in nature, thus not properly one for judicial determination. In 1962, however, the United States Supreme Court said that dilution of citizens voting power caused by apportionment not substantially based on population presented a justiciable controversy for the federal courts.[2] Since then the judicial tribunals of the several states have been flooded with "apportionment" litigation—Pennsylvania has been no exception. In 1962 Pennsylvania taxpayers filed complaints in the Court of Common Pleas of Dauphin County challenging the constitutionality of the legislative apportionment law.[3] The case was held over by the Common Pleas Court and adjudication of the issues was deferred until the legislature had a sufficient opportunity to enact new apportionment legislation at its next session. Subsequently, two new apportionment bills were enacted[4] and signed into law. These two new apportionment laws were challenged by the plaintiffs by petitioning the Supreme Court of Pennsylvania to take jurisdiction of the case. The court granted the petition. Thus, the court was faced with a question involving

1. Cook v. Fortson, 329 U.S. 675 (1946); Radford v. Gary, 352 U.S. 991 (1957).

2. Baker v. Carr, 369 U.S. 186 (1962).

3. Butcher v. Trimarchi, 28 Pa. D. & C. 2d, 537 (1962). Act of May 10, 1921, P.L. 449, as amended, 25 P.S. §2201. Act of July 29, 1953, P.L. 956, 25 P.S. §2215.

4. Act of January 9, 1964, P.L. 3, 25 P.S. §2221 (Supp. 1963). Act of January 9, 1964, P.L. 4, 25 P.S. §2217 (Supp. 1963).