

1-1-1963

## Conflicts

Maynard Jackson

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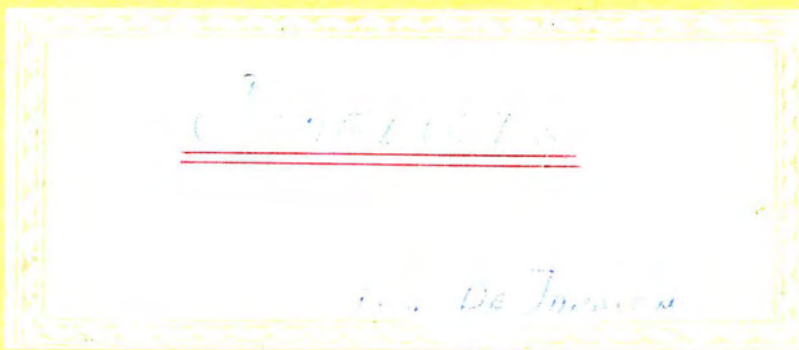
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**150 SHEETS**  
**WIDE LINES**  
**THREE INDEXED DIVIDERS**

MAYNARD HOLBROOK JACKSON, Jr.  
NAME  
1927 CECIL STREET - DURHAM, N. C.  
ADDRESS



**No. 33-383**



DATE DUE

## ASSIGNMENT

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This image shows a single, blank page from an old, spiral-bound notebook. The paper is a light cream or off-white color, showing significant signs of age such as yellowing, foxing, and various small stains. The page is ruled with horizontal blue lines, which are evenly spaced across its surface. A vertical red margin line runs down the left side of the page, creating a narrow left margin. Another vertical red margin line is positioned further to the right, approximately one-third of the way across the page from the right edge, creating a wide central column and a narrow right margin. The spiral binding, made of dark metal or plastic loops, is visible along the entire right edge of the page. There are three distinct circular punch holes along the right edge, located roughly at the top, middle, and bottom of the page. The overall appearance is that of a well-used but currently empty journal or ledger page.







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4 FEB. 63

PURPOSE

RESEARCH SOURCES:

Goodrich, Conflicts

REST. OF CONFLICTS

Stumberg, Conflicts

A.A.L.S. Selected Readings.

Marsh, Marital Prop. & Conf/Law

Rodell, Comparative Study of

Conf/Law.

Brake, Conf/Law.

Lefflar, Law of Conf/Law.

Erkensweig, Conflicts

(good on juris. problems).

The primary purpose of Conflicts/Law is to achieve some sort of uniformity of law on the operative facts have been in contact w/ two or more jurisdictions.

Juris. in power sense is necessarily territorial. Buchanan v. Rucker (Sale of Tobago). And w/o an agreement, a nexus, the forum state does not have to apply the law of the state on the act happened.

On this a choice of law, an argument v. same is that one should not be the victim of forum shopping.

Rule of Law

HYPO: Miss A went to France from N.Y. to live, but never got or sought French citizenship. She had never intended to live in N.Y. again. A died in France. The law ordinarily is: estate is to be administered at the decedent's domicile. French law: apply the law of the decedent's nationality. Wh law shall be used? FRENCH law, wh requires use of N.Y. law.

N.Y. law defines DOMICILE as phys. presence and intent to remain. So, under N.Y. law, French law would be used. French law applies DOCTRINE OF RENOUI wh seeks to solve the "ping-pong game." (See 45 Harv. L.R. by Griswold.) - LIVE ISSUE NOW

See p. 17 infra.



2  
In Re Dorraunce's Estate, p. 46  
163 A. 303, 309 Pa. 151 (1932)  
(see p. 15, infra)

## Tax Problems

Campbell Soup Case - this reached the height of incredulity. Said that each state has the right to decide the question of domicile. So, Pa., N.J. AND the fed. govt. EACH levied and got \$17 million as inheritance taxes. Why wasn't N.J. required to give full faith and credit to the Pa. decision?

Coca-Cola Case - Julia Hungerford died in Atlanta. But some of her Coke stock was in the vault of N.Y. Trust Co. Did the Ga. decree bind all of the assets? N.Y. Trust Co. said it was not bound by the Ga. decree because it was a Delaware corp. and w/o the juris. of the Ga. ct.

Sec. 1404(a) U. S. C. A. - TRANSFER from one dist. ct. to another dist. ct. "on the action could have been brought." Rodney v. Paramount Pictures (Hastie, J. dissented) - interpreted "could have been brought." Hastie's dissent is now about to become the majority rule.

CAVEAT: Some of these matters conflict w/ the privileges and immunities clause of the U. S. Constitution.



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Approaches to choice of law probs. -

(1) Personal Law - the law should be attached to the person and "run w/ the person." Not widely accepted today except in India due to caste system.

(2) Domicile - very much a part of this "personal law" concept. Certain things are governed by the law of domicile.

(3) Law of the Situs - look at the place on the transaction took place. Re Automobiles. N.C. has a statute wh says that on vendor buys on cond. <sup>sales</sup> and then moves to N.C., if V<sup>or</sup> knows of V<sup>or</sup>'s move, V<sup>or</sup> has 30 days in wh to register, or 4 mos. to register if V<sup>or</sup> did not know of the move. Failure to register w/in the appropriate time will raise a conclusive presump. of change of situs, and N.C. law will then be the law of the situs. Thus, if you would be as notice in N.C., and a BFP would cut off all outstanding equities. - Like you carry the law in the trunk of your car into N.C. until the stat. presumption takes over. If Land has



4  
Rule of Law:  
Land

always been governed by the law of the situs; but quare covenants in a deed: what law governs?

(4) Center of Gravity Test - let the law of the State w/ the most contacts govern.

(5) Proper Law Approach - (the Prof. Grayson theory) Since mechanical rules don't jibe, and the "center of gravity" test doesn't make too much sense either because of the difficulty of weighing the facts, we should sit back and look at the actual, proper law. De J. - "Seems to be a subjective test." - This is the most modern approach.

Assignment - Domicile.

Restatement of the Law, Conflict of Laws (1934)

Sec. 9. Domicil

Domicil is the place w/ wh a person has a settled connection for certain legal purposes, either because his home is there, or because that place is assigned to him by law.



\* (CHAP. 2)

Dom/orig. = dom. by law.

Shifting  
Domiciles

31 N.C. 99

6 FEB. 63

DOMICILE - \*

\* Two elements:

- (1) Physical presence.
- (2) Intent to remain there.

These two elements must co-exist.

There are two types:

(1) Domicile of origin - one  
one is born. Becomes fixed by opera-  
tion of law.

(2) Domicile of Choice - this is  
on the problems arise.

Domicile connotes permanen-  
cy.

WHITE V. TENNANT

(p. 10)

Note caveat at bottom of p. 10: "It was  
legal maxim that everyone must have  
a domicile somewhere, ...." - Take the  
stmt. w/ a grain of salt: remember the  
Campbell Soup case. (Stmt. goes over to p. 11.)

The majority of States do not accept  
this idea of "domicile shifting in  
~~itinerant~~ <sup>itinerant</sup>." This is true if the point of desti-  
nation is the domicile of origin; but if the  
shift is from one domicile of choice to an-  
other domicile of choice, the latter will  
not become his legal domicile until the  
shift is complete. See 31 N.C. 99.



## Itinerant Baby's Domicile

If baby is born while the parents are travelling, the domicile of the baby (if legitimate) will be the domicile of the father. See Chap. II of Goodrich.

Many factors are considered to determine the intent to remain, 139 F. 2d 865; 63 F. 2d 624 (tax cases: location of spouse and children determinative of domicile for purpose of filing taxes).

## Domicile of a Wife

As a general rule, the domicile of the wife is controlled by the domicile of her H. But, for purposes of divorce, a wife can acquire a different domicile.

Generally, residence is equated by courts and legislatures w/ domicile. But, this is sloppy language, and you must look closely to see what a court and legislature mean. 89 N.C. 115, Hammou v. Grizzard - Residence means domicile in N.C. laws.

(Quære?)

The "intent" is the intent to remain, not the intent not to return to another place. This will have to be raised by circumstantial evd. \*See 40 N.C. 196, Plummer v. Brandon - Dr. Scott left N.C. and went to Tenn. looking for a place to settle + set up his office. He left wife in N.C. and most of his prop. in N.C.

In L.  
tain  
acte



He looked around for 1 year, and died in Tenn. Tenn. allowed administration there. Wife then took the remaining prop. w/ her to Tenn. w/ permission of N.C. administrator and disposed of it. Then, N.C. tried to hold the N.C. administrator liable for letting the prop. get away, & that the prop. was w/in the N.C. juris. because domicile of Dr. Scott had never changed. It was so held, and the N.C. adm'r. was held liable. And see Williams v. Roxbury, 12 Gray 21.

8 Feb. 63

Revival of domicile was originally an English view (see poem by Sir Walter Scott) but the American view is In Re Estate of Jones, (p. 18). See Hyder v. Ik, 66 S.W. 2d 235 (Tenn.); Stein v. Fleischman Upst Co., 237 F. 679; Revival doctrine.

See Hicks v. Skinner, 71 N.C. 539 and 72 N.C. 1 (rehearing) - divinity student who agreed w/ his wife that all of her prop. would be in her name as if she were a femme sole. This case is "a weird view" and has

In Re Jones - "... a domicile is retained until a new domicile is actually acquired."



not been supported by later N.C. cases, although it has not been expressly overruled.

When, under Scottish law, a domicile of choice is estab., the domicile of origin is merely suspended. Mundy Case

### Bangs v. Inhabitants of Brewster (p. 23)

See Secs. 17 and 18 of the Restatement of Conflicts.

When one lives in a truck or ship, etc., the domicile of that party is on the truck, ship, etc., is "housed" or "locked" most of the time.

243/24  
Held, intent alone is insufficient to establish a legal residence or domicile by choice, it being required that y be both residence and ANIMUS MANENDI.

Vincent - held, the residence of the parties at the time of the institution of the action is controlling & is not affected by subsequent change of residence.

PRESENT

INTENT TO

REMAIN

See 24 B.N.C. 24 - N.C. said that the woman's domicile remained in N.C., not in Tenn. on she went to school. Going to school is an exception under the "special purposes" doctrine and will not change domicile.

See this case (Burwell v. Burwell).

A future intent to remain + phy. presence  $\neq$  domicile. There must be a co-existence of present intent to remain + phy. presence. Cohen v. Daniels, p. 24.



May v May - German Jew escaped from concentration camp to England & applied for admission to the U.S. While waiting for <sup>U.S.</sup> quota, <sup>on German Jews</sup> it was held that England had become his domicile. Reasoning: he did not intend to return to Germany and could not get into U.S., so he must have intended to remain in England. This case caused much discussion because it seems to be interpreting an "intent to remain." Seems to make it a subjective test rather than the usual objective test.

Gower v. Carter (1928) - "A question is incompetent that asks them of their intention to make the locality their legal residence, since the question involves a question of LAW as to what constitutes a legal residence to qualify them to vote."

195 N.C. 697 - an objective test of intent used. Domicile is a? of law. Gower v. Carter. In Re Hall's Guardian, 235 N.C. 697 - see this, too.

\* Students - going to school (241 N.C. 85) alone will (33 N.C. L.R. 697) not suffice to give domicile in the school town. But, if the student also intended to remain y, that would be domicile. A student could declare (immediately upon arrival even) his or her intent to remain. But,

Shanks Village Case



subsequent acts to the contrary could negate this domicile (e.g., Chapel Hill students who wanted to vote could have done that).

Assignment - read Hammerstein v. Id., p. 32, very carefully.

11 Feb. 65

Hammerstein v. Id.

(p. 32)

Quaere: Can domicile be raised by the testimony of the party alone who is under compulsion? = This involved a soldier stationed in Texas who sought divorce thru the Texas courts. Can P form the requisite intent for domicile while under compulsion? Goodrich says no.

"It would be a dangerous precedent to estab., & would open the floodgates for divorce seekers from all parts of the Union, if mere intention, unexpressed and uncorroborated by any act, could fix a domicile in the purview of our divorce statutes."

Divorce: domicile = a juris. requirement. So, if domicile is absent, the ct. does not have the juris. to render the decree. If a decree is issued anyway, full faith and credit need not be extended by any other state. 317 U.S. 287 + 325 U.S. 226, Wms. v. N.C.; Sherman v. Id., 334 U.S. 343; Coe v. Coe, 334 U.S. 378.



Kreiger v. Id, 334 U.S. 541; Estin v. Id, 334 U.S. 555 (all migratory divorce cases) and Rice v. Rice, 336 U.S. 674.

Statutes:  
Residence of  
Servicemen

50-5

N.C., Ala. and N. Mex. have  
stats. providing that a service  
man living in the state  
shall be deemed to be a resident.  
G.S. 50-18 requires <sup>residence for</sup> 6 mos.  
next preceding the divorce  
suit. \* 207 F.2d 67, Alton v. Alton -

Virgin Islands passed statute  
saying that 6 weeks residence  
= prima facie evid. of domi-  
cile. This was easy for divorce  
and almost replaced Las Vegas.

The Ct. did not allow the divorce  
even though Mrs. Alton had been  
6 wks. Goodrich, J. said the  
statute violated due process because  
Conn. had juris. over the res.

\* Granville - Smith v. Id, 349 U.S. 1,  
Involved same V.I. statute.  
Sup. Ct. invalidated the  
stat. on the grounds that the  
organic law of the Islands did  
not empower the V.I. to  
pass laws in this area, i.e.,  
an ultra vires act. But, the



N.C.  
Servicemen's  
Statute

Sup. Ct. avoided the question re whether domicile is a necessary requisite to jurisdiction over divorce, and if so, whether it could be waived.

Martin v. Id. 253 N.C. 704 - construed G.S. 50-18 to mean that a service man could estab. domicile in N.C., but 6 mos. alone and even w/ other evid. would not be conclusive. In essence, you may as well <sup>not</sup> have the statute.

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The Virgin Islands are treated like the Dist. of Columbia and are amenable to the 5<sup>th</sup> but not necessarily the 14<sup>th</sup> Amendment.

Alabama - declared its soldier stat. unconst. because they could not dispense w/ domicile. And, the "drive-in" divorce was held void. (NOTE: Read Alton Case, supra.)

N.Y. has said that on both



parties agree to an Ala. divorce, neither can later complain because they would be estopped. e.g., Wife leaves N.Y., goes to Alabama & meets reqs. in Ala. for divorce domicile. On telephone from N.Y., H said he was willing that the divorce go thru. The H would be estopped to later complain of the divorce. - This one case talks of estoppel. Quaere (my question to Def.): since domicile goes to subject matter juris. wh can neither be waived or conferred by the consent of the parties, how can estoppel on one of the parties confer that jurisdiction? (Answer: Hastie said in Alton case that since neither party complained, then whose process is due? [The true answer seems to be that there is no definite answer here.] )

### \* DOMICILE OF WIVES \*

Q. Can a W acquire domicile separate from the H? = This lies at the root of migratory divorces. The Williams case (N.C.) made the big change here: the marriage



14  
could be dissolved at a place other than the domicile of the marriage. i.e., if one of the parties changes, that is sufficient to bring the res before the Ct. of the acquired domicile.

Amer. Cts. gen. agree that a w can have a domicile separate from her H. 27 N.W. 2d 336, Banfield v. Banfield—

English war bride and Amer. soldier from Michigan. English girl sought divorce from H after he returned to Michigan. Mich. said it would grant alimony on an absolute divorce. England (and N.C.) would not. She sought divorce in Mich., and her only nexus w/ Mich. was that H was domiciled y. Mich. said y was not sufficient. i.e., the girl had a domicile separate from her H. This was a case of abandonment by H.

Q. Suppose H and w just could not get along? — See 20 Va. L.R. 244; 20 Mich. L.R. 86; 78 U. Pa. L.R. 780.



## English Rule: Dom. of W

In England, a W cannot acquire a domicile separate from that of her H. Canada has a Canadian Divorce Juris. Act (1930) wh allows a W a separate domicile.

## Effect of N.C. Servicemen's Statute

(Note: GS. 50-18 - seems to mean that it is possible for a service man to acquire domicile, but the N.C. ct. can only act on y has been domicile actually established. i.e., it eliminates the idea that it is impossible for a soldier to acquire domicile. It seems to be a stat. of legis. policy that a service man may acquire domicile.

13 Feb. 63

Stokes v. U. S., 211 F. Supp. 607 - (advance sheets) re service personnel. Man tried to claim domicile in Calif. to take advantage of community prop. law and pay lower taxes. But, ct. held he was not domiciled in Calif.

## \* In Re Dorrance's Estate (p. 46)

Death of Campbell Soup Co. magnate. Pa. and N.J. levied inheritance taxes, both

64 N.Y.S.2d 726 (1946)  
Hanson - see p. 35 ckt.



claiming that Dorrance was domiciled in their state. (Be sure to read the (N.C.) Williams Case.)

Q. Why was not N.J. required to give full faith and credit to the Pa. determination? Q. Is full faith and credit merely an expression constitutionally of the doctrine of res judicata?

172 A.503; 298 U.S. 678 (cert. denied)

- N.J. Ct. refused admir. set-off of Pa. taxes against the N.J. tax.

\* (1936) - The Fed. Interpleader Act was passed after the Dorrance cases wh gave the admr. of an estate the right to interplead opposing parties whose rights are unsettled. 49 Yale L.J. 377 (Chaffee).

302 U.S. 192, Worcester Case - under the Interpleader Act. Mass. and Calif. claimed the decedent was domiciled in their state. The admr. interpleaded both states. Sup. Ct. said no because this would violate the 11<sup>th</sup> Amend: citizen of one state cannot go against another state. So, the admr. could not



maintain the suit.

Then come Texas v. Florida (p. 57 cbk.) - Ct. said the interpleader would well lie because the estate was not big enough to cover all claims of N.Y., Tex., Fla. and Mass. and the fed. govt. The court found he was domiciled in Mass. This was all the "success" of the Interpleader Act. This seems to say the Act will only apply so long as there is a justiciable controversy because of the possibility of a state being cut out of its claim.

Assignment: Read thru p. 72

15 Feb. 63

In Re Amesley (Chancery Division) (p. 63)

### DOCTRINE OF RENVOI

Under French law, decedent could dispose of only 1/3 of her movables by will; under English law, she could dispose of all of them.

"The domicile must be deter. by the English Court according to those legal principles applicable to domicile which are recognized in this country and are part of its law." i.e., The first question was which law would be used to deter. the fact of domicile. The answer is



the law of the forum.

Next, since it was deter. that Annesley was domiciled in France, the <sup>whole</sup> ~~internal~~ law of France would be applied. The internal law of France says apply the law of the nationality of a foreign national domiciled in France. The law of nationality (English) applies the Doctrine of Renvoi (referring back) and refers it back to the internal law of France. Under French law, Mrs. Annesley had power only to dispose of  $\frac{1}{3}$  of her movables by will.

### In Re Schneider's Estate (p. 67)

Here, a naturalized American citizen of Swiss origin died domiciled in N.Y. county, leaving realty in Switzerland.

Three views of Renvoi:

(1) "Merry-go-round" - just keep going back and forth until someone falls off. Obsolete view.

(2) Acceptance of Renvoi - the accepting country would finally apply its internal law. *Griswold* advocates this.



(3) Sitting and Judging Formula - avoids the difficulty of a false issue that view #1 creates. This says sit and judge just as the court of France (e.g., in the Amesley case) would in determining this precise question. This seems to be the better rule. See articles by Griswold and Briggs (p. 444). Briggs says view #3 is divided into three questions:

- (a) Jurisdiction
- (b) Choice of law
- (c) Sit and Judge - once a. and b. are decided, then we sit and judge as would that court.

*juris choice / law* Schreiber —

Two types of Renvoi cases:

(1) "Remission" - a reference back to the law of the forum by the conf/laws rule of the foreign law, selected by the law of the forum to govern the legal matter.

(2) "Transmission" - reference

ON to the law of some third legal unit by the conf/laws rule of the foreign law, to which the law of the forum immediately refers the matter.

See Schreiber, 31 Harv. L.R. 523 (1918).

The idea is to solve the problem of a question coming into conflict of two systems of law, and at the same time avoid the inequities of choice of court, and get a systematic application of law.



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Schreiber - (supra)

"The issue raised by the renvoi doctrine may thus be stated in interrogatory form as follows: When the conf/laws rule of the forum refers a jural matter to a foreign law for decision, is the reference to the corresponding rule of the conflict of laws of that foreign law, or is the reference to the purely internal rules of law of the foreign system; i.e., to the totality of the foreign law, minus its conf/laws rules?" He says that the natural course to follow, and the one best supported by authority, both judicial and juristic, is to regard the reference to the foreign law by the conf/laws rule of the forum as one directly to the appropriate rule of the internal foreign law.

Renvoi (cont'd.) -

Characterization - (or "qualification") this is a means of avoiding the application of Renvoi. See Toledo Society for Crippled Children v. Hickock, 261 S.W. 2d 692 - testator died domiciled in Ohio. His estate included a Partnership interest in oil wells. In Texas, this was treated as realty. Before death, the testator & his ptur. had agreed to form a corp., but death ensued before the corp. could be formed. Testator, by will, directed executor to form the corp. w/ the living ptur. A trust w/ broad powers was raised by the will, too, to give money to the Society. Under Ohio, this trust would have been invalid due to charitable disposition. Not so in Texas. In Ohio, the oil lease interests were considered personally. So, was this realty or movables? If the former, Texas law would



Held, Texas Sup. Ct. (forum) had right to characterize mineral estates in Texas as "land" for purpose of conflict of laws.

Characterizing these as "land", the law of the situs must prevail. - Cts. of a state, which is not the situs of land involved in a questioned devise, or devise in trust, are generally w/o right to apply a law different from that of the situs, and their judgments, assuming such a right, are not protected by full faith & credit clause of the fed. constitution, Art. IV, sec. 1.

Forum State = Mich. (p. 489) K completed in Illinois.

Held, by the Mich. law of the forum the case is governed by the law of Ill. under the rule that Ks must be construed and their validity determined by the law of the country or made (unless

the K<sup>ing</sup> parties clearly appear to have had some other law in view). Under the law of Ill., it must be

governed. If the latter, Ohio law would govern. - The ct. spoke in terms of characterization. (See this!)

There is a growing tendency to allow movables to acquire a situs of their own. So, once a characterization of something as "movable" or "immovable", the rule used to be that the personality followed the person ("mobilia personam sequuntur"), and this is still the majority rule probably.

→ Weiss, J.

U. of Chicago v. Dater, 270 N.W. 175, Clara Price, married, executed in Mich. a promissory note & deed of trust on Ill. land to secure loan for husband and others. She then mailed them to P in Chicago, and in Chicago the loan was made. The deed was recorded & and later the H & al. did not pay. So, Parent- to foreclose. Under Mich. law a married woman had no power to bind her estate w/o joining of H.



22  
held that the capacity of  
D Clara A. Price is govern-  
ed by the law of Mich.  
Under the law of Mich.,

a married woman cannot ~~was~~ able to K as femme  
bind her separate estate sol. — Should this be governed  
thru personal engagement ~~for~~ by on the K was made,  
the benefit of others. D Price or should this be character-  
ized as a problem of domici-  
cile? (Burr v. Becker, 106 N.E.  
206 [Ill.]) — H + W of Ill. W went  
on a "temp. sojourn" to Fla. H  
remained in Ill. He was  
treas. of Ill. concern. Y was  
an overdraft on the con-  
cern's account. He notified W  
of overdraft, and said he  
could pay the overdraft  
from a trust of which he was  
trustee but that he needed  
security. W executed in Fla. a  
deed of trust. Same thing as  
above <sup>happened</sup>. Ill. court said the  
delivery of the deed was  
complete in Florida, and Fla.  
law said the deed was void.  
Do we look to law of Fla.  
or of her domicile, Ill.? Do  
we say this is a <sup>problem of</sup> capacity and <sup>is one of K and</sup>  
therefore look to the law of  
Fla., or do we say this is a



question of domicile and what Ill. law would govern?) Justice Weiss discussed the Burr case and said it was applicable, & that the capacity of Clara Price was governed by the law of Michigan as per Ill. law. Burr Case said that this was a question of domicile & that per the law of Ill., the ? of capacity was governed by the place of making of the will, Fla. — The Burr case was misapplied by Weiss.

Rest. of Conflicts; secs. 7 & 8, says that Ill. should have applied the law of situs, Ill., and should have sat and judged as a Mich. ct. would have sat and judged.

### Rule of Law

So, under Rest. of Conflicts, Renvoi is applicable to matters of title to land and divorces.

(See 20 Col. L. R. 247 (Characterization in C/L.) Dater + Burr cases give a weird result w/o application of renvoi.)

C/L = conf. of laws.



19 Feb. 63

See advance sheet for Fed. Supp. for Feb. 10<sup>th</sup> - Bakshandeh v. Amer. Cyanamid Co. - close to remvoi problem. D, doing biz in N.Y., sent sales rep. to Teheran, Iran. while y, the rep. made certain allegedly actionable stmts. The argument was that under Erie v. Tompkins, N.Y. state law would apply rather than fed. law. So, when the fed. cts. looked at N.Y. law, N.Y. law referred them to Iranian law wh said that the bproof is on P to prove that the N.Y. law was as alleged. See 211 F. Supp. 803.

Seems to say that conf/laws rules are substantive, not merely procedural (adjective).

### \* (Chap. 3) Jurisdiction of Courts \* (p. 75)

References

See gen. Chaps. 3 & 4, Sternberg on Conflicts; Chap 3, Beale vol. 9, p. 273; Ehrensweig, chap. 1.

The big problem is that of nexus between the state and the subject matter.

NAME CASE

Buchanan v. Rucker

(p. 78)

The statute "can never be applied to a person who for aught appears never was



Bridger v. Mitchell (1924) - "On present <sup>or subject to</sup> ~~in~~ the juris." The statute's language ("absent from the island") "must be taken only to apply to persons who had been present ~~in~~, and were subject to the juris. of the ct. out of wh. the process issued."

ad (nonresident of this State) has had no personal service of summons made upon him and has not accepted service, and has no prop. herein subject to attachment or levy, a judgment upon publication of service under the provisions of the <sup>N.C.</sup> statute, C. 5. 411, may not be rendered v. him in personam in an action for debt; and on so ~~rendered~~ <sup>rendered</sup> it will be set aside upon special appearance of his atty. who moves therefor upon the ground of improper service, & the want of juris. of our Courts."

Assignment:

See Bridger v. Mitchell, 187/374.  
28/14 (old case; not law anymore).

20 Feb. 63

Hypo:

A v. B, <sup>for \$5000 debt</sup> in State 1 on substituted service. B did not answer. J/A by default. A sued on the judg. in State-2. B answers by a plea to the juris. of State-1, and a cc v. A for \$1000. State-2 says that the State-1 judg is void for lack of juris. & dismisses the action. Then B.



De J. - the judg. of State - 1 would be valid as to A, but void as to B. (!!!!)

in State - 2  
v. A. for \$1000<sup>00</sup> + A sets up by CC  
set off \$500<sup>00</sup> + B moves to strike the answer on the ground that the ct. had allegedly already decided that B did not owe A \$500<sup>00</sup>. Should the motion be allowed?

Hypo:

Same facts except that after State 2 dismissed the A v. B action on the State - 1 judg. for lack of juris of State - 1, A then begins new action v. B on the orig. c/a. B moves for dismissal on the ground that it is res judicata. Should the motion be allowed?

22 Feb. 63

Pennoyer

v. Neff Oregon (p. 83)  
U.S. Govt. patented land to Pennoyer. Mitchell sued Pennoyer in Oregon. Summons was issued and served by publication and copy was sent to Pennoyer who was then a non-resident. J/ Mitchell by default. Then, Mitchell levied on the land and sold to Neff. Then Pennoyer



instituted this action to recover poss. of the land. The question goes to the validity of the judgment by default for Mitchell. The land had not been attached or brought under the juris. of the court in any way. The first connection of the land w/ the case was caused by a levy of the execution.

### Issue

Was this extra-territorial operation w/ local effect, and therefore an excess of juris., or a local operation w/ extra-territorial effect? The Ct. held the former, and said that the judgment of Oregon was void. There was no nexus between Pennoyer and the Oregon court.

If the land had been attached before judgment, there could have been an in rem judgment to the extent of the value of the land.

If a Ct. can operate locally,



its judgments will be good everywhere regardless of the extra-territorial effects. The question now will be what allows a ct. to operate locally?

(SICK) 25 FEB 63 (Monday)

(Clement's notes)

State of Tenn.

v. Perry

(p. 91)

(Read: 240 N.C. 641)

Re "Runaway Papa" Act whereby the initiating state has juris. of the resident and the Pnokes a petition alleging certain matters. Upon proper finding, the judge sends petition to responding state who has D under juris. and the D under decree. Here, both cts. operate locally.

THEORY: two actions are really being brought. The W & children file in state of abandonment (initiating state). The judge, after scrutinizing allegations, certifies and has it forwarded to state in which the father-husband resides (responding state). When the



H fails to perform the duties of support after being decreed to do so in the responding state, he may be guilty of contempt & punished accordingly. (Support in N.C. = quasi criminal.)

If the certification of the petition of the initiating state is treated as a public act, then would not this be similar to fraudulent judgments? Since the U.K. E.S.A. is aimed at runaway poppas (sic), is the act sufi for that purpose?

#### HYPOT:

H + W marry in N.C. H leaves & goes to Va. W institutes action in N.C. and petition is forwarded to Va. on judg. is had against H who then goes to Tenn. Issue: whether the petition is sufi to run into Tenn. after H has absconded? It would seem so (240/641). Suppose W moved from N.C. H then moved to dismiss: granted. — Responding state may only enforce the petition of the initiating state. — Where the obligor leaves, the decree would be enforced against him as a result of full faith and credit. 24 N.E.L.R.



(Uniform Reciprocal Enforcement of Support Act)

423; 38 N.C.L.R. 7.

U.R.E.S.A. -

What public interest is served on the responding state is interested in whether the money goes to ~~the~~ Va. or Tenn. so long as the wife and children are there and they are the parties who need support?

Quare the right of recoupment by the initiating state (dept. of welfare)?



26 Feb. 63

Restatement: a court may acquire juris. over an indiv. who is domiciled within its boundaries by proper service of process upon him even tho' he is not present within the state.

Milliken v. Meyer (p. 96)

Controversy over  $\frac{1}{64}$  interest in profits from operation of certain Mo. oil props. Transcontinental cont'd. to pay Meyer  $\frac{1}{64}$ th of share of those profits. Milliken claimed  $\frac{2}{3}$  int. in that  $\frac{1}{64}$ th share. Held, on a judgment rendered in one state is challenged in another, a want of juris. over either person OR the subj. matter is of course open to inquiry. But, if the judg. on its face appears to be a "record of a st. of gen. juris.", such juris. over the cause & the parties is to be presumed unless disproved by extrinsic evd. or by the record itself. "In such cases the f.f.o.c. clause precludes any inquiry into the merits of the c/p, the logic or consistency of the decision, or the validity of the legal principles on which the judg. is based."

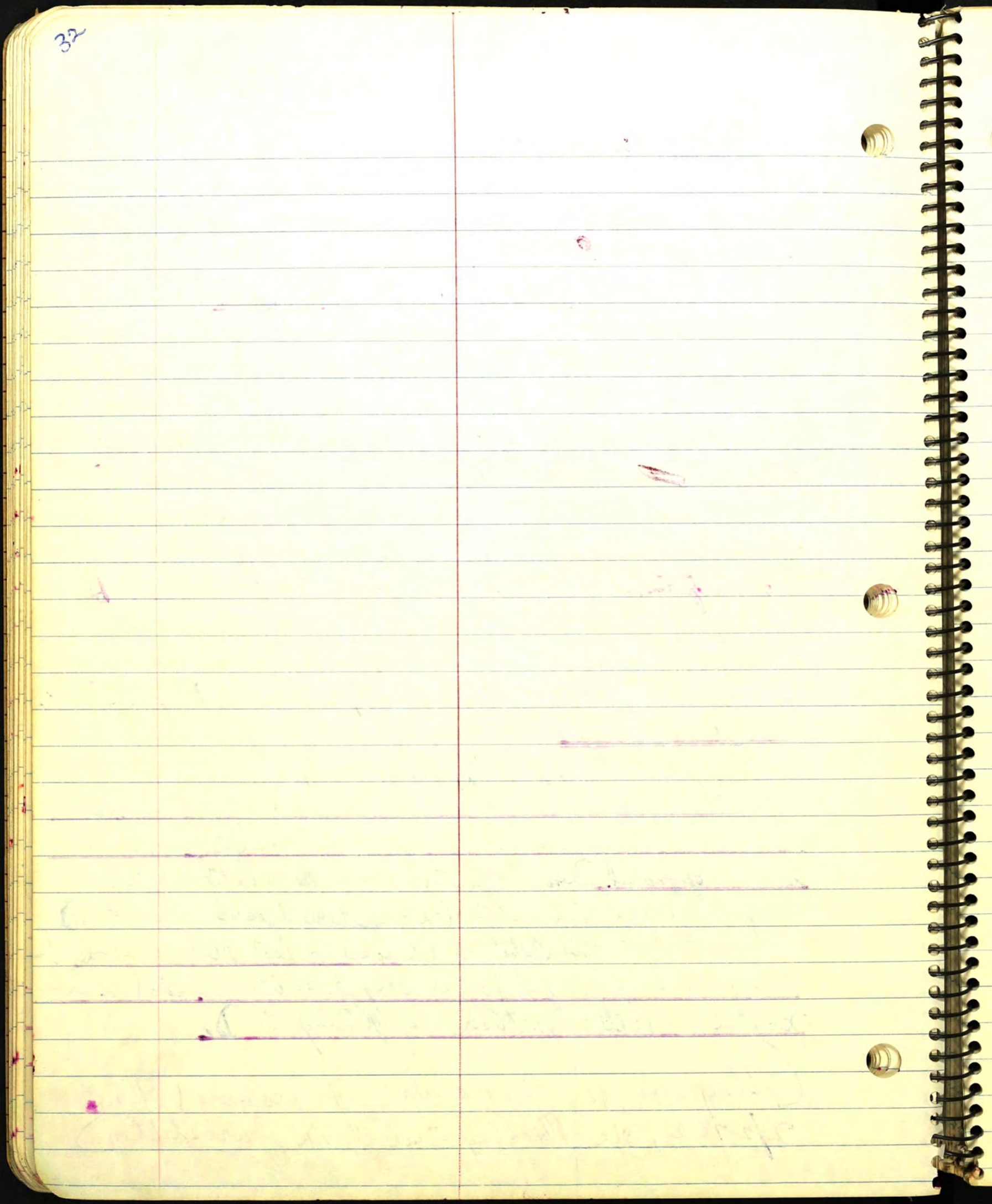
(16) Restat. / Judgs. - Act. may acquire juris. over an indiv. who is dom. within the State by proper <sup>service</sup> etc. (above).

Cts. say that a sister state is ltd. to a deter. of juris. Once juris. is found, the sister state is precluded from going further except in cases of fraud. Then the question arises whether the state is integrated or non-integrated (rare equitable defenses in law actions).

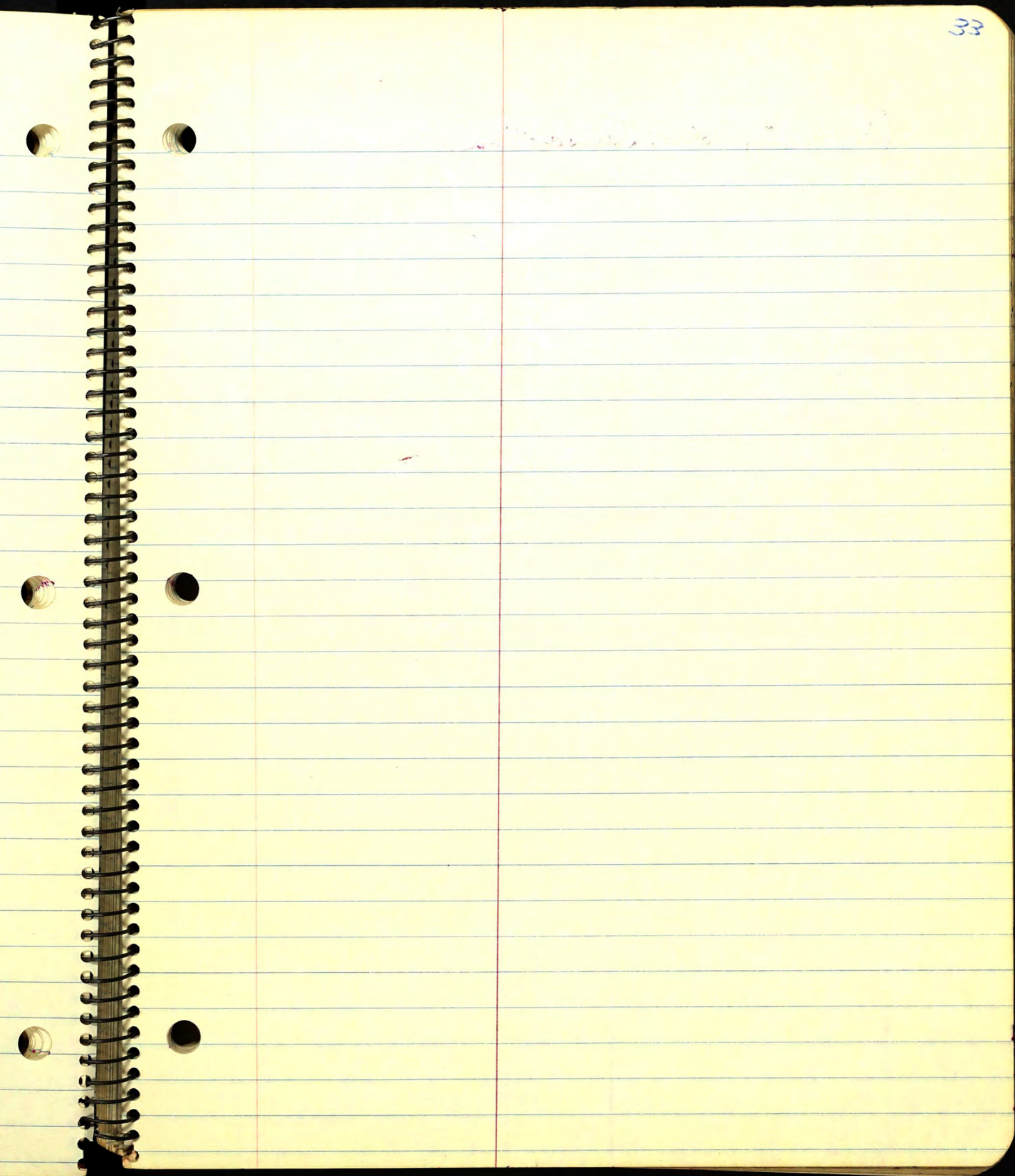
What about this statute to send notice to last place of abode? - This will be suff. if it is the only possible method and no other better method of getting the D.

(Maynard for remainder of material thru 2/27/62, see Pleating notes re Jurisdiction.)









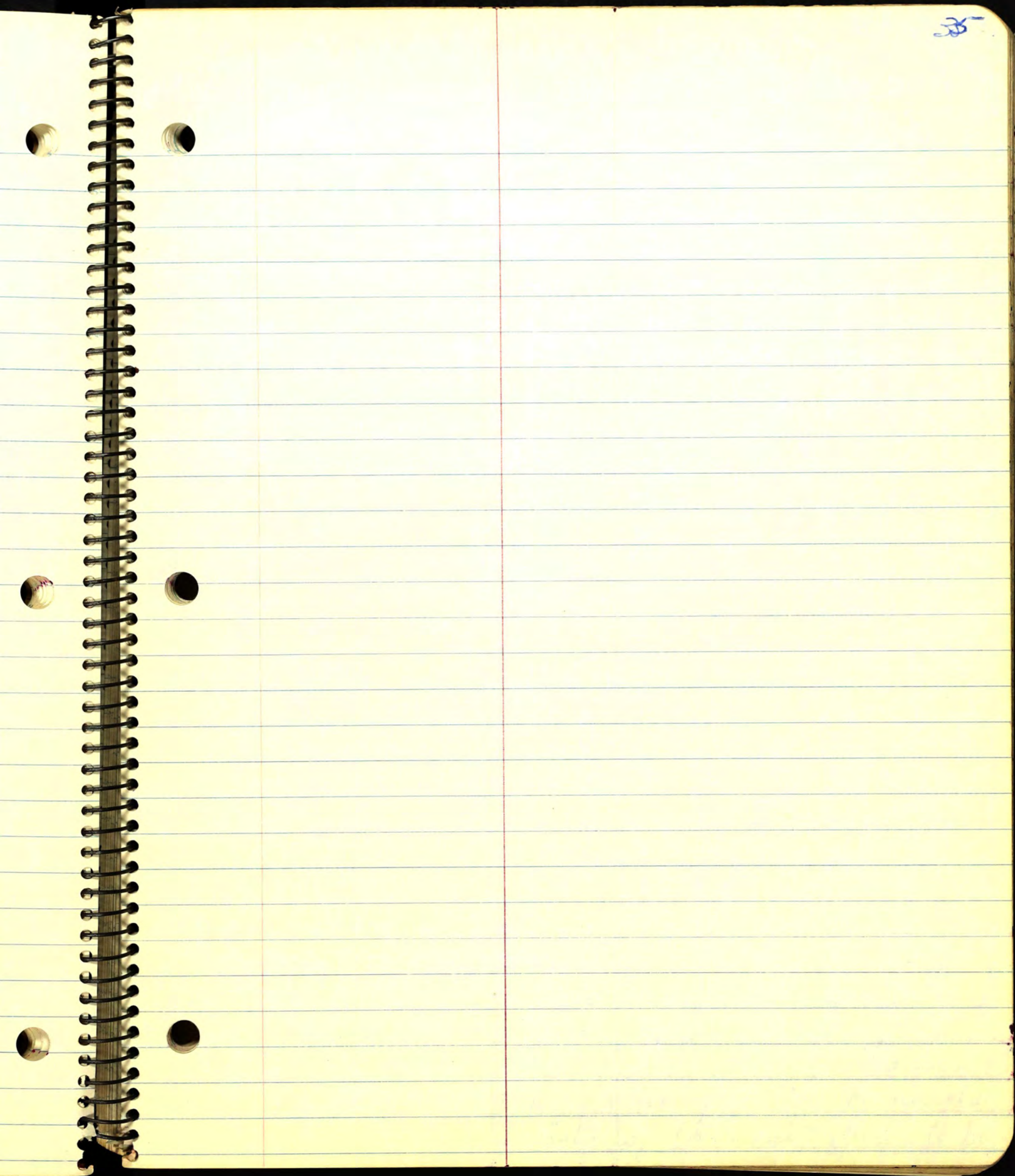


24

27 Feb. 63

(See Phading Notes: Jurisdiction)







36



15

(p. 115)

Nonresident parties may in advance, agree to submit to foreign jurisdiction. Unless their stipulations have a tendency to entangle natl. or state affairs, their Ks in advance to submit to the process of foreign tribunals partake of their strictly private biz.



The ct. reord. the dismissal of P's complaint here.

Copin v. Adamson (p. 119)

Here, as in Burnside, the ct. puts this on the volition of the D to agree as to what law shall govern. But, quære whether the D really could exercise volition in a K of adhesion?

The ct. said the D must have done something more than merely becoming a shareholder in the corp. in order for consent to juris. to be found.

Q When one consents by agreement, is that consent to the entire corpus juris of that state?

See 246 U.S. 79, Tobacco Co. Case — mere ownership of stock in the co. was not adequate to = consent to the juris. of Louisiana, + that "something more" is needed; that merely advertising in the newspapers



was not an adequate  
"something more."

⊗ N.C. and Ill. have  
statutes providing that if  
a foreigner ~~even~~ sells  
a product outside of N.C.  
w/ the reas. belief that  
~~it~~ it will be used  
in N.C., that seller  
is deemed to have con-  
sented to N.C. juris.  
See Erlanger Mills Co., 239  
F.2d 502 ("burning sweater  
case"); Triangle Pub. Co., 245/432;  
245/576, Painer v. The Home  
Fund. See § 55-176; 256  
P.2d 703, The Griff v. Charles Antell,  
Inc.

4 MARCH 63

(D) FOREIGN CORPS. -  
"DOING BIZ"

272 P.2d 652, Avery v. Frigate-  
Avery Corp. (Ill.) had subsidi-  
ary, Velicol, which had plants  
in Ill. & Tenn. and had no  
connection at all in Colo. Vel-  
icol hired Hineman to do  
research for better products  
w/ agreement that all new  
insecticides would be patented



under Velcical's name  
 in return for permits to  
 Hineman. Dispute over  
 royalties + Hineman +  
 friend leave Velcical,  
 go to Colo + start new  
 co. to make the insect-  
 icides. Then Velcical v.  
 Hineman in Colo. to re-  
 strain + for accounting  
 of profits. T/Velcical. Then  
 Colorado levied tax on  
 Avery Corp. + got away  
 w/ it. The court said  
that Avery had consented  
to the juris. of Colo.  
because that was on  
the income arose; that  
Avery had consented to the  
whole corpus of law of Colo.  
 — This seems to be really  
 based on a quasi  
 type of in rem juris.  
 over the income, but  
 even that is questionable  
 because Velcical was  
 protesting the income of  
 Hineman. This case  
 followed Inter. Shoe +



certiorari was denied by the same Ct. That had decided Int. Shoe. 348 U.S. —

So, the Ct. is saying that if there were "minimum contacts" w/ Colorado. The fruits could not be separated from the tree (Lucas v. Earl).

• McGe v. Int. Ins. Co. (78 Sup. Ct. 119). — this seems to have pushed Int. Shoe Co. to its utmost ~~limit~~ limits. The only real contact w/ Calif., the forum state, was the making of the ins. K in Calif. and the pymt. of some premiums from California. The Ins. Co. was of Texas and had only re-insured P in Calif. So, the pymt. of premiums from Calif. by mail was the only real contact. The juris. of Calif. was upheld over D-Co., saying that there had been substantial contacts w/ Calif.

Holmes has said that one isolated act  $\neq$  "doing biz."

• Hanson v. Denckla, 78 S. Ct. 1228 — followed McGe. — 79



S.Ct. 10 (re-hearing denied)  
 - Warren, C.J. - action on a  
 trust. Settlor of Pa. created  
 trust in Dela. w/ Wil-  
 mington Trust Co. of  
 Delaware as T. The trust  
 corpus = securities. She  
 (Dora Donner), the settlor,  
 reserved the income  
 for life, the remainder  
 to go to whomever she  
 said by inter vivos  
 or ~~the~~ testamentary con-  
 veyance. She then,  
 a few days later, exer-  
 cised the power of apptmt.  
 and replaced that w/  
 another power of apptmt.  
 four years later. Then  
 4 years later she moved  
 to Fla. 5 years later  
 she executed a will w/  
 residuary clause. On the  
 same day she executed  
 inter vivos power of  
 apptmt. including Dela.  
 \$200,000 each of two trusts  
 she had had to the  
 Delaware Trust Co. as T.



for some people. She died three years later (1952) in Fla. They found her will w/ the residuary clause giving all residue to Executive to distribute \$500,000 to Denckla. Hanson was a bene. of the inter vivos power of apptmt. trust of Dela. Fla. admitted probate & held that the power of apptmt. was no more than a testamentary disposition and should pass under the residuary clause of the will. — The Ct. held that Fla. did not have sufficient contacts w/ the res of the trust nor w/ the T, <sup>see</sup> the real party to this suit.

— How can this be distinguished from McGe? Can we say that because ~~the~~ a state is w/o power to exclude, it is w/o power to admit on condition? Maybe. McGe is a big involving a risk to the people



of Calif. But, if is no danger in the trust, then the Fla. Ct. cannot regulate it and <sup>it</sup> cannot be admitted w/conds. imposed.

5 MARCH 63

The Dunkla case was very close (5 to 4). Differed from M<sup>c</sup>gee Case also in that Calif. had enacted special legislation showing that these risk type of businesses are subject to state regulation (Ness v. Pawbowski is another example).

G.S. 55-145 - (see 339 U.S. 643) (Travellers Health Ins. Co. v. Comm. of Virginia). (NOTE: "Doing Biz" is a basis of IN PERSONAM JURIS)

\* Subsec. 3 of this stat. is the "hooker" - goods manufactured, etc., w/ the reas. expectation that they will be used in N.C. (!!!) The Shriner Mills Case threw the case



167 F. Supp. 498  
245/432 - Triangle Pub. Co.  
245/576 - Home Finance Co.

Moss v. Winston-Salem  
(1961) 254 N.C. 480

Edwards v. Partridge-Fetzer Inc.  
154 F. Supp. 41

out under this stat. as going beyond Inter. Shoe Case. But, Bubble-Up Co. Case, 167 F. Supp. 498, upheld the stat. because B-U sent agents into the state also for promotional campaigns. Also in accord w/ B-U Co. Case: 245/432, Triangle Publ. Co.; 245/576, Home Finance Co.; 249/454, Shepherd v. The Mfg. Co. Ill. mfg., Va. distributor & N.C. purchaser who bought in Va. an unsafe power mower. - Ct. said the stat. was okay, but that it were not sufficient minimum contacts w/ N.C. - Seems to avoid the real issue of the applicability of the statute.

Another case involving a N.C. man, who got the franchise for a part of N.C. for Kirby Vacuum-Cleaning Co., found the surety for the N.C. man suing the Cleveland, Ohio based Kirby Co. The cleaners were put on board Ohio trains F.O.B. Cleveland bound for N.C.



6 MARCH 63

SERVICE ON PARTNERSHIPS

A PL is not an entity in the contemplation of law.

Read → Flexner v. Farson, 109 N.E. 329, 248 U.S. 289 (on appeal); Davidson v. Doherty, 241 N.W. 700.

hypoi

112/253

Hancock v. Sulkgy - 186/278.

A, B + C = pturs. in Va. whom gr. goods w/ the reas. expectation that they will be used in N.C., and they are to the injury of X. <sup>As served.</sup> X v. A, B + C = J/X. Are the estates also of ~~B+C~~ bound? Partners are usually jointly & severally liable. — GS 1-113 — service on partnership will bind PL assets but not any ptur. personally who was not served personally. So, there would be no several liab. of any ptur. not served. — The statute ascribes a sort of quasi-entity to the partnership so far as binding PL assets, however. — So, the pturs. would be jointly liable to the extent of the PL assets, but



B & C would not be severally liable. So, after the PR assets have run out, only A's personal estate could be held liable. Of course, A could get an accounting from B & C.

\* (2) DOING AN ACT \*  
Hess v. Pawlowski

(p. 140)

Dangerous instrumentality concept was the basis of the Ct. saying the State had the right to regulate. G.S. 1-105 thru 107 in N.C. is the non-resident motorist statute. 233/564, Ewing v. Thompson; Davis v. Holt, 123 S.E. 2d 686.

Ewing v. Thompson - Canadian woman allowed her son to drive her car & he had an accident in N.C. The family purpose doctrine was applied along w/ the non-resident motorist statute, and the woman was held liable.

Foster v. Holt - G.S. 1-105 not applicable to a resident temp. absents

Hart v. Queen City Bus Lines  
 (241/389)

Q. How far does the non-resident motorist submit himself to the



juris. ? = Is the whole  
corpus juris. ? See 210/287,  
Lindsay v. Shaw; Brigham v.  
Foot, 201/14; Davis v. St. Paul  
Mercury Indemnity Co., 294 F.  
2d 641.

Q. Federal-State Relation -  
on it is diversity under  
these stats., does the  
non-res. mot. stat. affect  
the fed. venue stat. ? No.

hypoi: P (Conn.) v. D (Ohio) in Mass.  
due to collision on  
Mass. highway. Suit  
in Mass. fed. dist. ct.  
D moved for dismissal:  
fed. venue stat. prohibits  
this suit because Mass.  
is neither the residence of P.  
nor D. J.P. - Now, P could  
sue in Mass. state court or  
in Ohio fed. ct. or Ohio  
state court. Martin v. Fischback,  
183 F.2d 53.

Oberding v. Ill. Central R. Co. (p. 143)

Oberding = D-appellant

P (Ill.) + D (Ind.) + accident  
in Ky. at overpass main-  
tained by P. D pleaded to



Held, these state stats. do not change or override federal 49.  
venue requirements. These stats. merely satisfy the dictates of  
the Due Process Clause of the 14th A. — Venue is not a qualifi-  
cation upon the power of the court to adjudicate, but a  
limitation designed for the venue (this was in

consuence of litigants, and, as such, may be waived by them. ... But unless the D has also (ACTUALLY) consented to be sued in that dist., he has a right to in-

voked the protection which Congress has afforded him (i.e., venue). — Here, y was

no actual consent to be sued in Ky., so y was no waiver of the fed. venue requirements.

fed. dist. Ct.). Frankfurter, J. said if the Ky. stat. had designated an agent for service of process, the venue objection would not hold. T/D (Oberding).

U.S.C. 1404(a) — fed. dist. Ct., in the interest of justice & for convenience of witnesses, may transfer the case to a dist. where it could have been brought.

Q. What does "could have been brought" mean? — In 107 F. Supp. 700, Ct. held it means or it could have orig. been brought. (Quere?)

8 MARCH 63

Dubin v. City of Philadelphia (p. 150)

Statute subjects owners, lessors, etc., of Realty in Pa. to liability in personam by service on the Secy. of the Commonwealth & service by mail on the D who consents w/in the purview of the statute.

This policy behind the stat. is also probably tied up w/ the doctrine of forum non



Corps. v. Natural  
Persons:  
The Privileges &  
Immunities  
Clause

Conventions.

This case may be question-  
able because it is based on  
implied consent to juris-  
diction on the basis of owner-  
ship, etc., of local realty.

There is a reasonable  
basis of distinction between  
corps. and natural persons  
in the Ill. statute (p. 153)  
because since a state has  
power to exclude a corp., it  
can admit a corp. on condition.

But, natural persons  
cannot be excluded due to  
the privileges and im-  
munities clause of the  
Constitution.

(p. 155)

Perkins v. Benguet Consol. Mining Co (1952)

Philippine corp. doing biz in Ohio. Pres. of corp. was served w/ a corpus juris of Ohio regardless summons in an action in personam v. the corp. filed in Ohio state ct. by nonresident of Ohio. C/a did not arise in Ohio & did not relate to the corp's activities. HELD, due process clause did not require or compel Ohio to open its courts to such a case; but the biz done in Ohio was sufi substantial so that Ohio could, per due process clause, (1) entertain the c/a if it wished to do so, even tho' it was unrelated to the Ohio activities, or (2) refuse to hear the case if that was its own local rule or policy. (On remand, Ohio RETAINED JURIS.)



11 MARCH 63

\* (G) CONTINUANCE OF JURISDICTION \*

Michigan Trust Co. v. Ferry (p. 173)

NOTE: Re "Competence of Ct. and Notice" (p. 157), "the <sup>jurisdiction</sup> competence of the court by wh a judg. is rendered in any state may be questioned in a collateral proceeding in another state, notwithstanding the provision of the 4th Article of the Const. & the enabling law of 1790 (p. 171 c.) and notwithstanding the averments contained in the record of the judg. itself."

A presumption of juris. attaches to a judgment of a sister state when rendered by act. of gen. juris., but not by one of ltd. juris.

Suffi of notice goes to the question of juris.

TEST

Does juris, once it attaches, continue until the problem is solved? Yes, to all necessary, essential concomitant matters to the orig. action. Quaere what matters are necessary and essentially concomitant? = (Note (2), p. 175) - Ohlquist v. Nordstrom, 143 Misc. 502, 257 N.Y.S. 711 (1932): is an action between joint tortfeasors for contribution a necessary and essential concomitant to the orig. tort action? N.Y. held yes, thus the service of process in accord w/ the statute was OK.

— The facts of each case must determine whether something is a necessary + essential concomitant to the orig. action. An action to collect a judg. would probably be a necessary and essential concomitant to the orig. action on the c/p.



(Georgia)  
(190 Ga. 301)

See Blount v. The Ins. Co.,  
9 S.E. 2d 65 - H had 20  
yr. endowment on W,  
payable to W if she was  
alive in 1943, and if not,  
payable to H. H had agreed  
to pay the premiums.  
Before 1943, H & W separated.  
W got paramour & brought  
action v. Ins. Co. seeking  
H by publ. to have H's  
name stricken from the  
policy & the paramour's  
name there insert-  
ed. H came in to con-  
test the striking on  
the ground that Ga.  
was w/o juris. over  
him. Ct. said all of H's  
rights were embodied  
in the policy and since  
the W had the policy w/  
her in Ga., Ga. had juris.

N.Y. Life Ins. v. Dunlevy 241 U.S. 578

Rest. of Judg. Sec. 83. (Sec. 198 cbk.)

— Compare Dunlevy case.  
Blount case has NOT been  
disputed.

An action in aid of execution  
of a judg. is clearly an action  
which is a necessary essential

Van  
Mickay  
Sue



Concomitant -

"That wh accompanies or is collaterally connected w/ another." (Webster)

concomitant. But, on the <sup>second</sup> original. and could also be connected w/ the orig. action (joint tortfeasors seeking contribution), the question of "concomitant" is not so clear. Depends on the facts.

hypo:

H + W = divorce in Fla. H moves to N.C. + gets rich quick. W comes to N.C. + seeks reformation of decree + more alimony. Will Fla. decree bind because the Fla. ~~divorce~~ juris. continues, or can N.C. modify the decree? If N.C. says the attempted modification is concomitant, then W would have to go to Fla. for the modification. If she gets it y, she could collect in N.C. under "full faith and credit." So, why make her go back and forth; seems harsh (DeJ.).

— See 109 P.2d 701; 192 A.2d 241.

"This area of continuing juris. is a harsh one." DeJ.

Biewend v. Id., 109 P.2d 701 = "better rule." (Graynor, J. in Calif.). Otherwise,



54 Held, an order of ct. of competent juris. in one state for pymt. of money as alimony must be recog. by all other states under f.f.v.c. clause as to all ACCRUED installments not subject to modification by such ct., and recovery of amt. of such installments may be denied by ct. of another state only if they are still subject to modification.

the burden is placed on the one least able to afford it.

The f.f.v.c. clause does not obligate cts. of one state to enforce alimony decree, rendered in another state, w/ regard to future installment pymts, particularly when such installments are subject to modification by ct. of orig. juris. TP for state ct. to refuse to give effect to another state's laws as contrary to settled pub. pol. of forum state, it must be clear that enforcement of right obtained under such laws will be prejudicial to recog. standards of morality and general interests of citizens of such state. TP A mere variance between law of forum state and that of another state wherein c/a arose does not AROUSE warrant denial of enforcement of foreign law in forum state. TP There is a strong pub. pol. favoring enforcement of duties validly created by foreign law.

Q. Would it make any difference whether the Fla. divorce decree is prospective only, or ~~retrospective and pro-~~ prospective AND retrospective? = Yes, because if N.C. goes back and lowers the alimony below that set by Fla. & contra to the raise prayed by W, the N.C. Ct. is actually adjudicating the very thing wh Fla. had adjudicated originally, and that cannot be. - This = the point that Traynor cannot answer.

See W.



12 March 63

HYPOTH. If A v. B in Ct. - 1, and B seeks injunction in Ct. - 2 to restrain A from pursuing the action & it is granted, the injunction has no bearing on the continuing juris. of Ct. - 1 because it does not affect the power of Ct. - 1. The injunction only runs against A.

\* (Sec. 3) JURISDICTION OVER THINGS \*

Sec. 166 - Goodrich

W. W. Cooke - 15 Cal. L.R. 37

\* (A) LAND \*

Complicated by:

- (1) Development of "quasi in rem" concept.
- (2) Attributing a situs to movables (not so at C.L. - depended on the person who owned the movables).

Combs<sup>D</sup> v. Combs<sup>P</sup>

(p. 181)

P = Ky.

D = Ky.

land = Ark. (security for lien<sup>P</sup> & debt of D).

P v. D = Ky.

Then, D v. P in Ark. to discharge the lien & declare the extent of indebtedness & accept pymt. from D per the Ark. declaration. Service by constructive process only. T/P in Ark. Then, D pleaded Ark. judg.



in bar of Ky. action and  
alleged payment into the Ark.  
ct. per its judgment. Ky.  
did not recognize the  
Ark judgment because  
the Ark judg. adjudicated  
the extent of the debt  
and that was action in  
personam even though  
Ark. did not have juris.  
in personam of P here.

Comment on  
Case

— Quaere this case?  
How could Ky. recog. the  
lien discharge but not  
recog. the adjudication  
of the extent of indebted-  
ness? It seems im-  
possible!

HYPOT.

State X decrees alimony upon  
separation of H & W. Then,  
W gets divorce w/o participa-  
tion by H in State Y. Then,  
W demanded from H the  
cont'd. payment of alimony.  
— T/W: the divorce was  
in rem and affected  
only the marital res  
(status). It did not affect  
the in personam obligation of



"Divisible Divorce  
Doctrine" →

alimony, and alimony and divorce are separable. — Courts generally agree. "Confusion hath finally wrought its masterpiece." — But, H could go back to State X's court and have them recog. State Y's decree of divorce & end his obligation to pay alimony.

\* (C) INTANGIBLES \*

See NOTE 3, p. 197 - T.I. - "As neither the certificates of deposit nor the holder thereof were within the state of Florida, its cts. could not — in the absence of consent — acquire juris. to determine the liability of maker to holder." — This differs from Harris v. Balk because in this case (Bank of Jasper v. 1<sup>st</sup> Natl. Bank of Rome (Ga.)) the debt was out of the hands of Jasper because the debt was wrapped up in the certs. of deposit, and the Fla. ct. did not have juris. over the cts. or the holder. Harris v. Balk

As compared to  
Harris v. Balk

(258 U.S. 112, 42 S.Ct. 202 (1922))



see 46 N.E. 180 (Ward v. Boyce);  
N.C. Land Co v. Boyer, 191 Fed.  
 522; Elec. Co. v. Light Plant,  
 185/534 ("runs close to creating  
 juris. by his own acts").

See 130 N.E. 566, Hanna v.;  
Schoenholz v. N.Y. Life Ins. Co.,  
 188 N.Y. Supp. 596; White v.  
Ordille, 229 N.C. 490.

### Multiple Escheats

did not involve a ne-  
 gotiable instrument. —  
Jasper owed a debt to  
 whomever held the c.p.

**12 MARCH 63**

White v. Ordille — (Wash., D.C.)  
 was arrested in Greensboro  
 on charge of obtaining money un-  
 der false pretenses. He posted  
 \$3000<sup>00</sup> bond & returned to D.C.  
 P began civil action in U.C.  
 by attachment of the bond  
 w/ service by mail on  
 D. The bond, meanwhile,  
 was raised to \$3500<sup>00</sup> &  
 the ct. notified D he'd have  
 to send or bring the full  
 \$3500<sup>00</sup>. — The court upheld  
 the attachment.

W. Union v. Pa., 82 S.Ct. 199 — re  
 W.U. money orders. Here, Pa. W.U.  
 had many unclaimed m.o.'s  
 because the payees had not  
 shown up & the senders never  
 returned. These m.o.'s  
 were going out of state, Pa.  
 tried to claim that the \$\$  
 escheated to Pa. N.Y. said that



Most escheat stats. are 7 years.

After a corp. declares a dividend on a certain date, that becomes a debt of the corp.

Since much of the money was intended to come into N.Y., N.Y. should have it. Was y suffi nexus between the states and the money? —

This case seems to open up the area w/o answering anything.

— 19 States have adopted the Uniform Disposition of Unclaimed Prop. Act (N.Y., Mass., Calif., N.C., Fla., Ariz., N.J., Conn. et al.). — Ct. said N.Y. got the money and a Pa. decision did not bind N.Y. because N.Y. was a party in interest and was not interpleaded. See Standard Oil v. N.T. 341 U.S. 428; Sec. Sav. Bank v. Calif., 263 U.S. 282. The Stand. Oil case: frowned on multiple escheats. But, in the W. Union case, multiple escheats seem to be sanctioned. — (What a waste!!)



15 March 63

\* (SEC. 2.) FORUM NON CONVENIENS \*

What's the (PRECISE) UNITED KINGDOM?

Orig. a Scottish doctrine. Used because of hardship on the court, and because it would otherwise be vexatious on the D.

Unlike Scotland, U.S. has a "privileges & immunities" clause. Thus, some conflict arose between that clause and F.N.C. First big test came in N.Y. in Collard v. Beach, the 1st American automobile tort case. P & D in Conn. + tort in Conn. Suit in N.Y. - N.Y. refused to entertain this action because it was v. their settled public policy. Did this case reject the suit in tort actions only, or on the ground of forum shopping?

177 F.2d 360, Jaff v. Stewart  
Wamer; 349 U.S. 28; E & D.v.

Woodruff, 164 F. Supp. 414;  
29 Cal. L.R. 1; 29 Ill. L.R. 867.

Gulf Oil Corp. v. Gilbert (p. 216)

Venue and jurisdiction must co-exist on the action is brought before F.N.C. can



## Statement of Rule

## Stmnt. of Policy Underlying F.N.C.

even be considered.

"The (idea) of F.N.C. is simply that a court may resist imposition upon its juris. even when juris. is authorized by the letter of a general venue statute. Ct. will consider many factors." (see p. 217). "It is often said that the P may not, by choice of an inconvenient forum, vex, harass, or oppress the D by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy. BUT UNLESS THE BALANCE IS STRONGLY IN FAVOR OF THE D, P'S CHOICE OF FORUM SHOULD RARELY BE DISTURBED."

F.E.L.A. - How does this jibe w/ an action arising under a fed. c/a?

Mondou v. N.Y., N.H. & H.R. Co. (p. 218)

The F.E.L.A. requires a state, otherwise competent, to entertain

the suit because fed. action is paramount to and supercedes state law.

Douglas v. N.Y., N.H. & H.R. Co. (p. 219) - suit in N.Y. by Conn. resident was dismissed on F.N.C. Sup. Ct. sustained: p. + i. Clause not offended because the rejection of



juris. by N.Y. was not based on "citizenship" but on residence, and even N.Y. domiciliaries who reside in Conn. would be treated the same way. So, there would be no distinction between citizens of N.Y. and citizens of other states.

B. & O. R. Co. v. Kipper (p. 219)

D. sought in Ohio an injunction <sup>restaining</sup> N.Y. suit, <sup>by Ohio resident</sup> on the ground of F.N.C. - Sup. Ct. said no because the P. had the "privilege" of bringing this action in any dist. in wh. the railroad was doing business, by virtue of the Fed. E.L.A. - Same rule applied in State court in MILES v. Ill. Cent. R. Co. (p. 220.)

Miles v. Ill. Central R. Co. - "To deny citizens of the Fed. E.L.A. - Same rule applied in State court in MILES v. Ill. Cent. R. Co. (p. 220.) access to its cts would, if it permitted access to its own citizens, violate the P. and I. clause."

Then came sec. 1404(a), 28 U.S.C. - the "transfer" statute ("... it might have been brought"). EX PARTE COLLETT, 337 U.S. 55 (1949)



(Utah gives biggest verdicts in airline crash cases.)

Assignment:

held this statute made F.N.C. applicable in F.E.L.A. cases regardless of the state rule as to F.N.C.

\*Sec. 1404(a) - "For the convenience of parties and witnesses, in the interest of justice, a dist. ct. may transfer any civil action to any other dist. or division where it might have been brought."

18 MARCH 63

Mo. ex rel So. Ry. Co. v. Mayfield (p. 220)  
(5 to 4 split)

Merely because a case arose under the F.E.L.A., a state court is NOT OBLIGATED to hear a case which it would otherwise decline to hear on the ground of F.N.C.  
— See R.R. v. Norton, 55 S.W.2d 272 — injunction on state level.  
Accident in Ind. P from Ind. R.R. doing biz in Ind. Action brought in Mo. D sought Ind. injunction against P to restrain Mo. Action. D sought contempt cite "P in Ind. ct. P sought Mo. injunction in effort to restrain contempt prosecution. D went into



"A Pilate type of reaction:  
'I wash my hands of this.'  
De Jarnon

(292 F. 326)

Mo. Sup. Ct. & sought writ of prohibition against lower court to prevent it from entertaining the P's injunction. (Invoked F.E.L.A.) - Ct. said it would neither obstruct nor implement the domicile's injunction (that of D).

R.R. v. Schendel, same sort of thing but the foreign action was brought in a foreign fed. dist. ct. D sought injunction in domicile state ct. against the foreign fed. juris. Arose under the F.E.L.A. The Johnson act will restrain state courts from depriving fed. cts. of juris. in matters involving fed. causes of action.

(See) James v. Grand Trunk W. Ry. Co. (Ill.) (p. 25 supp.)

So far as I have been able to ascertain, Held, the Michigan (domicile) no ct. has as yet held that such an act could not usurp the injunction is entitled to f.p.+c. in proper power of the the sense that the action toward Ill. court which had juris, wh the injunction is directed and ~~a counterinjunction~~ in must be abated. When such Ill. ~~could~~ have been injunctions have been recog., allowed against the Mich. has been because the State in injunction. - P. Is this a desirable result? - Does not wh the action is pending ~~has~~ This make for a see-saw? chosen to do so as a matter of



comity, and not because it was required to do so by constitutional command.

(The dissent is very good.)

The ct. took the position that Ill. could ~~do~~ what a fed. ct. could have done. But, that was erroneous because the fed. ct., unlike the state ct., is something like a coordinate court between the several states.

(SEC. 3.) OTHER LIMITATIONS  
IMPOSED BY THE FORUM \*

19 March 1963

Quaere: Should courts of one state enjoin foreign actions?

(1.) If it can be performed locally, even though it has extraterritorial effect, then it should be issued.

(2.) Some cts. say that although it cannot restrain foreign acts, if that foreign act has effects in the forum state, the forum state may issue a negative injunction restraining the effects of the act. — Is this doing indirectly what the <sup>forum</sup> state could not do directly? (Salton Sea Cases — negative injunctions.)

Another limitation is by way of machinery



NAME CASE

Slater v. Mexican National R. Co. (p. 228)

of the courts.

Action for wrongful death that occurred due to negligence of the D. Ps = widow and children of deceased.

The Texas Court declined to decide the case because the machinery of the Mexican courts is much better suited to handle the case and assess the damages peculiar to and provided by the Mexican Statute

Ga. follows the "comparative negligence" doctrine (balancing of the negligence). N.C. follows contrib. negl. theory (the least amount of negl. will be a complete defense to his c/a).

under which the c/a arose. But, Texas has jurisdiction in the power sense.

Mexico gave Ps a vested right, and if Texas handled the case it might deprive Ps of that vested right w/o due process of law.



20 MARCH 63

Assignment: Chap. II; \* (SEC. 4.) LIMITATIONS IMPOSED BY THE STATE OF THE TRANSACTION \*  
 next, Chap. VII.

Gen. Rule

Exception

Usually, unless strong reasons exist, P's choice of forums should not be disturbed. EXCEPTION: if the c/a was unknown at C.L. but was legislatively created, then it is a basis to impose a limitation on P's choice of forum.

Q. Can a D have any remedies to protect himself, or can he take any action on his own initiative in derogation of the C.L. concept? = Since 1934, it has been well settled that the intended D can get a DECLARATORY JUDGMENT. Most states have adopted the Uniform D. J. Act.

62 Harv. L. R. 789 - D. J. stats.

Q. Would it matter on D seeks D. J. so long as he can get juris. over the other party? = Remember that D in a D. J. action has the B/P (the risk of non-persuasion). - Answer inclusion per Def.



Q. Can a State tie down a person to its own forum? =

Tenn. Coal, Iron & R. Co. v. George (p. 237)

NAME CASE

Ala. created by stat. a cpa but provided that the suit be brought only in Ala. courts. P. D. in Ga. Ala. demanded that Ga. give full faith and credit to Alabama statutes. (See p. 238 for issue.)

Held, Venue is no part of the right; and a State cannot create a <sup>gen.</sup> transitory cpa and at the same time destroy the right to sue on that trans. cpa in any court having juris.

Why cannot we say that the limitation was a part of a legislatively invented cpa & must be followed, for it is well settled that on the provision for the liability is coupled w/ a provision for a special remedy, that remedy,



and that alone, must be employed?

Gen. Conf.  
of laws  
Rule

[Ord., the court must apply the substantive law of the state on the c/a arose, and the procedural law of the forum.]

\* The court seemed to hold that this was no more than a codification of the C.L. wh removed C.L. defenses, and was, therefore, to be read separately from the attempted limitation.

But, if this had been a stat. created c/a unknown at C.L. (e.g., wrongful death), all matters that adhere to it must be read in connection w/ it and any limitations imposed by that stat. would have to be given full faith and credit.

Weaver v. Ala. Great So. R. Co. (p. 240)

Ala., wh recog. c/p as an absolute defense to an action for negl., sought to restrain P from suing in Ga. wh recog. "comp. negl." theory.



"When the law declares that such contributory conduct conclusively estab. the defense of C/N, it withdraws the issue from the field of evid., and creates a rule of substantive law."

See Fay v. Noia (Law Week for wk. of 3/20/63): see discussion of adequate indep. state grounds as freeing the U.S. Sup. Ct. from consideration of fed. issue. - T.I. March 18, 1963: under fed. habeas corpus statute.

Ala. ct. said C/N = sub-stantive law and allowed the injunction. Quare, however, because if it is substan. law, Ga. would have to apply the Ala. law anyway. - Not clear what ct. means on p. 243 ("when the law declares ...")

22 MARCH 63

(p. 5) \* Effect of Interstate Commerce \*

Atchafalaya, T. & S.F. R. Co. v. Wells (p. 246)

Held, seizing the rolling stock and credits of D - appellant for the purpose of compelling the Santa Fe to submit to the juris. of the court in the Wells (original) suit interfered with interstate commerce. - But,

how can the ct. ignore Harris v. Balk? = See McJannet, 33 Ill. L.R. 875; Foster, 43 Harv. L.R. 1217; 34 Mich. L.R. 979.

(p. 248)

Standard Oil v. <sup>Superior Ct.</sup> ~~the~~, 62 A.2d 454 (appeal) 336 U.S. 930 - stand. oil was not a <sup>common</sup> carrier, but had some goods in Delaware & that was the only



contact w/ Delaware. But, S.O. did carry its own goods. Sup. Ct. dismissed appeal from lower ct. ruling <sup>against</sup> S.O., saying a suff. fed. question was not presented. — The lower court said this suit was not an unreas. burden on I/C because S.O. was a carrier for its personal purposes. But, if S.O. had been a common carrier, it implied, the suit would have been dismissed as an unreas. interference w/ I/C. — Qualere this result and reasoning?

## (Chapter 5) \* Foreign Judgments \*

### \* (Sec. 1) Policies Underlying Recognition & Enforcement of Foreign Judgments \*

"Public policy dictates that it shall be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties."



"Full faith and credit" applies to Acts, records and (FINAL) judicial proceedings. — what is a final judgment? Frequently found in divorce proceedings.

25 MARCH 62

Is there any difference between the f.f. + c. clause of the Const. and that of the Enabling Act? Yes: the enabling act seems to be broader ("... same ... as ...")

Comity — this accomplishes on the international level what f.f. and c. accomplishes nationally. Not compulsory. "It is the recognition whose nation allows upon its terr. to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the right of its own citizens or of other persons who are under the protection of its laws."



Hilton v. Guyot

(p.251)

Holding

The U.S. will not extend comity to the judgments, acts, etc. of a country which does not reciprocate by recog. thru comity U.S. judgments, etc.

Crowans v. Ticonderoga Pulp & Paper Co. (p.255)

Refused to recog. Hilton v. Guyot and said it would extend comity to the judgs. of Quebec, Canada despite the absence of reciprocity.

Now, under Erie v. Tompkins, what would a federal ct. sitting in N.Y. do about a comity question? Is comity a fed. question? Since comity is an international matter, has fed. govt. pre-empted the field? [Due to trend toward world rule of law, we will probably back away from Hilton v. Guyot. (DeJ.)]

When is a judgment "final"?

\* (Sec. 2)

Modes of Effect \*

(A) In Personam Judgments



Lynde v. Lynde (p. 258)

Any alterable decree is not final. Prospective decrees are alterable. Thus, prospective decrees are not final.

Alterable retrospective decrees are not final.

Full faith and credit need be extended only to "final" judgments.

*Sutton v. Sutton*  
218 U.S. 1  
Worthington v. Worthington (Calif.)

Majority Rule:  
"final" judgments

Re action for alimony. W got N.J. decree for past due alimony, counsel fees and future support of \$80 per wk. W then sought enforcement in N.Y. on the N.J. decree. H in N.Y. — N.Y. upheld the decree as far as the back alimony and counsel fees — retro-spective in nature —, but not the provision for \$80<sup>00</sup> per week for the future because N.Y. said that N.J. could modify that if it chose to do so. Thus, as far as PROSPECTIVE matters are concerned, the N.Y. Ct. would not extend full faith and credit: not a "final" judgment for a fixed sum.

The majority rule is that if a decree is retrospective but alterable, even then ff. and c. need not be extended.

Calif. says that it will extend f.f. and c. even to alterable decrees because "the



Traynor, J.

Calif. judges can read as well as other judges and can alter the alterable decree itself if the occasion should arise. Worthley v. Id., 283 P.2d 19. And see Sistare v. Id., 218 U.S. 1.

ADOPTIONS - governed by "the best interests of the child." A nebulous test. Suppose State A allows adoption and the question arises in State B. Must State B refuse to question the decree on the ground that "best interest of the child" is a continuing thing? May v. Anderson (cbk. 841) says that the adoption of kids is such a matter of extreme concern to State B that it is not precluded from looking into it. = a new twist to the non-finality doctrine wh. ord. says that j.f. & c. need not be extended on the matter is not a final judgment, and until final judg. is rendered any action by the second state = premature, and that " " must take "hands off" attitude



Ehrensweig, vol. 1, juris. in Conflicts (Title Doctrines). until final judg. by 1<sup>st</sup> State.

On both parties are before the court of State B, it would seem to make no difference whether the decree of State A is final or not. This is on both parties are now domiciled in State B, and to talk of the "continuing juris. of State A" would seem to be ridiculous.

Georgia has a peculiar support Act: can be lump sum pymt.  
See p. 283 cbl.

26 March 63

\* (C) JUDGMENTS IN REM AND QUASI IN REM \*

Harnischfeger Sales Corp. v. Sternberg  
(Miss., 1939) Dredging Co. (p. 265)

The La. judg. was set up by way of defense. Ct. held that as to the defense of br/warr, the matter was res adjudicata due to La. judg.

See  
v. U  
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## (Sec. 3) \* RANGE OF EFFECT \*

### (A) PERSONS AFFECTED

(Sup. Ct., 1938)

Sovereign Camp v. Bolin

(p. 267)

### Class Actions

Action by beneficiaries under fraternal ins. policy in Mo. Ct. Prior Neb. judg. was a class action to wh. appellant alleged appellee belonged. Mo. did not extend full faith and credit to the Neb. ~~the~~ judg. because the K was made in Mo. and payments were made in Mo. by decedent who was a Mo. domiciliary.

Ct. held Mo. must give f.f. + c. to Neb. judg. because it was a class action embracing P-appellee. Must look to the law of the domicile of the D-appellant (fraternal order). Held, in such a suit the assoc. reps. all its members and stands in judg. for them, and even though the suit had a different object than the instant one it is conclusive upon all the members of the association w/ respect to all rights, questions, or facts as determined.

See 331 U.S. 586, Order of Travellers - (discussed in class) -  
V. Woolf - HELD, as long as member of Ohio fraternal benefit society remains a member, terms of his membership, including obligations and funds of his society, are his. His society is subject to change in certificate re-issued by Ohio fraternal benefit society re-quiring action to be brought under Ohio law, was valid under Ohio law, was brought on the certificate in South Dakota, notwithstanding mere actions on Ks was by S.D. for com-  
 HELD, as long as member of Ohio fraternal benefit society remains a member, terms of his membership, including obligations and funds of his society, are his. His society is subject to change in certificate re-issued by Ohio fraternal benefit society re-quiring action to be brought under Ohio law, was valid under Ohio law, was brought on the certificate in South Dakota, notwithstanding mere actions on Ks was by S.D. for com-



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and that S.D. had  
enacted a stat. declaring  
void any stipulation in a K  
limiting time w/in wh party  
could enforce his rights under

This is an exception to the gen.  
rule that one is not bound  
by a judg. in personam in a  
litigation in wh he is not  
designated as a party or to  
wh he has not been made  
a party by service of process.

See Ben Hur Case - 255 U.S. 356,  
fraternal benefit assoc. organ. under  
Indiana law. They tried to re-  
organ. by issuing new class of  
membership. Action in fed. dist.  
ct. of Ind. wh held the  
re-organ. valid. Then action in  
state ct. of Ind. was brought  
attacking the re-organ. -

## Class Actions

Held, class action binding  
on all members of the class  
whether present or not.  
Also binding on persons who  
are not members at time of  
action but who subsequently  
join the class. i.e., Applies to  
"co-citizens" who are not then  
members. — This whole matter  
goes beyond stare decisis  
and equals res adjudicata.



Giordano v. R.C.A., 183 F.2d 558, carries class action doctrine to non-incorp. associations (protemal groups at least are incorp. and = legal entities). Labor union brought action to restrain R.C.A. from expelling the union. D said there was no party in interest. Court said that members of the class are personally bound regardless of the fact that the rep. of the class in the action is an unincorp. association.

HYPOTHESIS: Suppose an action against a class & money judg. is recovered by P. Can P then bide his time and collect from the more prosperous members of the class regardless of their absence from the action? i.e., what did the court mean by "personally bound"?

The <sup>about</sup> member of such class is <sup>merely</sup> not in "privity" w/ the rep. before the court, but is considered A PARTY.

The Southern states argue against this because every Negro class action will include every Negro alive & subsequently born.



Restat. Judgs. in accord

27 March 63

Riby v. N.Y. Trust Co. (p. 272)

It may be assumed that the judg. of probate and domicile is a own deter. of the domici- judg. in rem and  $\therefore$ , as "an act of the sovereign power," because the prior Georgia judg. of domicile was "its effects cannot be disputed" IN REM.  $D = N.Y.$ ,  $P = Ga.$  in the juris. But this does not bar litigation anew by a stranger, of facts upon which the decree IN REM is based. — While the Ga. judg. is to have the same faith and credit in Delaware as it does in Georgia, that requirement does not give the Ga. judg. extra-terr. effect upon assets in other states. So far as the assets in Ga. are concerned, the Ga. judg. of probate is IN REM, so far as it affects personally beyond the state, it is IN PERSONAM and can bind only parties thereto or their privies. i.e., If the effect of a probate decree in Ga. IN PERSONAM was to bar a stranger to the decree from later asserting his rights, such a holding would deny procedural due process.  $\#$  Dela. was free to decide for itself, whether claimant is entitled to receive the portion of Mrs. Hungerford's personality in Delaware's borders.

\* (B) ISSUES AFFECTED \*

Warner v. Buffalo Drydock Co. (p. 277)

Prior Ohio fed. Ct. judg. dismissed same action because of laches. N.Y. (here) said that would not = a bar to this action "because it is not res judicata as to everything which it decided, but because it did not decide that the P's claim was extinguished, but only that they could not sue in Ohio on



account of the local stat. of limitations...." — Quere why the Miss. Ct. in Harnischfeger Sales Corp. v. Stenberg Dredging Co., had to accept Louisiana's deter. of fraud, and here N.Y. did not have to accept Ohio's deter. of the equitable defense of laches? — Reason: here, Ohio only decided that the suit could not be brought in Ohio because of Ohio's laches rule. Thus, even if N.Y. gave f.f.c. thereto, N.Y. would only be saying that the suit could not be brought in Ohio, not that it could not be brought in N.Y.

(p. 283)

How does this line up w/ YARBOROUGH v. YARBOROUGH? It jibes. But, quere the last line of the majority opinion in Yarborough ("We need not consider..."). This shows that Brandeis recog. that if the father were domiciled in S.C., S.C. would have a "new interest" in not having kids on its welfare rolls. But, that did not arise because



the father was still domiciled in Georgia. — In Warner case, both parties were in N.Y. In Garborough, only Sadie — not her father — was before S.C. court.

May v. Anderson —

345 U.S. 528 — custody problem.

In custody cases, the rule has been that the most the f.p.c. clause can require is that the prior ruling shall be deemed conclusive in the absence of an asserted change in circumstances.

Divorce granted by Wis. court awarded custody of kid to H. H placed kid w/ paternal grandparents. W got hands on kid & took her into Ohio. H sued out habeas corpus and said Ohio would have to give f.p.c. to Wis. decree. Frankfurter said no: Ohio did not have to extend f.p.c. because the child's welfare has such an interest ~~in~~ <sup>with</sup> the ~~state~~ <sup>state</sup> that it need not recog. a prior adjudication in Wis. Discharging Wisconsin's responsibility to the kid. — This seems to be in accord w/ Stone's dissent in Garborough. See this.

Fall v. Eastin

(p. 278)

Equitable Decrees and the Full Faith & Credit Clause Historically, eq. decrees are not encompassed w/in the f.p.c. concept and clause because no



duty ran between the parties, but only between the Chancellor and the party ordered to do something or to refrain from doing something. — This idea still persists today to some degree. See 30 A. 676; <sup>contra</sup> *Matson v. Id.*, 173 N.W. 127 (18 Mich. L.R. 142, 28 <sup>L.R.</sup> 119) and *Mallet v. Scherer*, 160 N.W. 182, and *Weesner v. Id.*, 95 N.W. 2d 682 (1954) (facts identical to *Fall v. Eastin* except that H was before the Ct.).

Assignment; comp. cases, et al.

29 March '63

\* Workmen's Compensation Cases \*

Alaska Packers Assn. v. Indus. Accident Comm'n

294 U.S. 532 — domiciliary of Calif. working and injured in Alaska: could seek comp. in either state.

(Georgia)

Price v. Horton, 23 S.E. 2d 744 —

Ga. had given <sup>S.C.</sup> claimant comp. for Ga. accident. Claimant now wants to collect under more-money S.C. stat. — Held, he could get the difference because the Ga. judg. would not be a bar.

1) *Fall v. Babcock*, 182/725  
2) 191/75 — *Johnson v. The Ry.*  
3) *See v. The Chemical Co.* 200/319.



See 44 Cal. L.R. 330;  
92 U. of Pa. L.R. 401 (both, 1944)

Quaere: Would a W.C. recovery in Va. be a bar to a C.L. action for damages in N.C.? = Cts. are split on this question.

hypo: P =  $\epsilon^{\text{cc}}$ . D =  $\epsilon^{\text{st}}$ . T/P in Va. for W.C. Then, under W.C. subrogation-type statute, D v. X (third party tortfeasor). — This is the way it usually arises, and X pleads P's recovery in bar. — The probably better reasoned rule is that it would be no bar. That's the view N.C. took.

\* The overriding policy in favor of <sup>national</sup> uniformity was held to prevail over the alleged interest of La. in her citizens.

Magnolia Petroleum Co. v. Hunt (p. 289)

The Texas W.C. recovery = bar to recovery under more-money La. W.C. stat. P could not even get the difference. — Ct. split 5-4. See Cheatham, 44 Cal. L.R. 330 on F.F.C. + this case.

Industrial Comm'n of Wis. v. McCartin (p. 291)

Went opposite view from Hunt case.



(Sec. 4) \* DEFENSES \*

Trimier v. Sunshine Mining Co. (p. 307)

It is already admitted that f.o.c. need not be given to a judg. rendered w/o juris., and a recital by F-1 that it had juris. would not be binding on F-2.

But, quære on F-1 considers and adjudicates the question of juris, thereafter deciding it has juris?

Amelia Pelkes died & left  $\frac{1}{4}$  of the stock of respondent-company, ~~and  $\frac{1}{4}$  to~~ to Katherine Mason, and  $\frac{3}{4}$  to John Pelkes. K.M. v. J.P. in Idaho: S/K.M. after Washington Judgment for S.P. in a suit between K.M. and J.P. — Should Idaho have given full f.o.c. to Wash. decree? (This was action of interpleader of K.M. & J.P. by Co.) Miss Trimier was a relative of Amelia Pelkes. — Held, If Idaho had not litigated anew the juris of Wash., the Wash. decree would have been res judicata because Wash. had already adjudicated juris issue.



But, Idaho erroneously decided the juris. issue by saying that Wash. did not have juris. However, no matter how wrong that Idaho determination, it was attackable only on direct appeal and not collaterally by an interpleader action.

Rule of Law

Thus, on juris. is litigated, and found, it then becomes res judicata.

If time for direct appeal had not passed, then J.P. could take the case upon direct appeal and require that Idaho give f.f.o.c. to the Wash. decree.

Christmas v. Russell (p. 320)

Held, under f.f.o.c. the defense of C. (Miss.) made note to R (Ky.). fraud can <sup>NOT</sup> be raised v. the enforcement of a sister state judgment. "The D had full notice of the (Ky.) suit, and it is beyond all doubt that the judg. of the Ct. was conclusive upon the parties in Ky." "It must, therefore, be conclusive here (Miss.) also."

On C's visit to Ky., R.v.C. in Ky. v J/R. Then, R.v.C. in Miss. on Ky. Judg. C claims fraud in Ky. judg. R claims the Miss. Ct. must give f.f.o.c. to the still outstanding Ky. decree. - J/R.



Levin v. Gladstein (p. 322)

G. (N.C.) + L (Md.) had dispute over good shipped to G in N.C. G goes to Md. to argue w/ L. L stops G. w/ service. Then, L says he'll withdraw suit if G will accept some of the goods. G then goes back to N.C. but L does not stop suit. T/L by default in Md. Then, L v. G. in N.C. on Md. judg. G claims fraud. T/G.

C.V.R. / L v. G. =

C.V.R. — "... so long as the judgment remains in force, it is of itself conclusive of the right of the thing adjudged in his favor, and gives him a right to process, mesne or final, as the case may be, to execute the judgment." (p. 321 cbk.)

(1) Held in C.V.R. That Miss. must give f.f.v.c. because Ky. + Miss. did not have integrated law + equity; that fraud = eq. defense, and until raised via Eq. in Ky, Ky. judg. remained "outstanding" and must be accorded f.f.v.c.  
(2) Md. had non-integrated system but N.C. = merged law + eq. "N.C. judges" can read as well as Md. judges, so fraud can be decided by N.C., and N.C. need not give f.f.v.c. to Md. decree.

Assignment Chap. 7



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(CHAP. 7) ENFORCEMENT OF FOREIGN BASED RIGHTS(SEC. 2) DISSIMILARITY, PUBLIC POLICY AND PENAL LAWS

Gen. Rule

It arose early that F-2 would not enforce the <sup>fiscal or</sup> penal laws of another state in the first instance. If it has gone to judg. in F-1 based on a <sup>fiscal or</sup> penal statute, F-2 may then extend f.j.r.e.

A penal stat. is one on the thrust of the law seeks to cure or reprimand a public wrong rather than recompense a private right.

Locks v. Stand. Oil Co. of N.Y. (p. 354)

Cardozo, J.

This case <sup>restricted</sup> ~~accepted~~ the concept of "penal" so as to allow extraterritorial enforcement of state granting punitive and/or exemplary damages.

Re "Penal": the question is not whether the stat. is penal in some sense. The question is whether it is penal <sup>in the rules of private international law</sup>. A stat. penal in that sense is one that awards a penalty to the state, or to a public officer on its

Mass. had wrongful death stat. giving \$ judgments in relation to the amt. of culpability. — Is this a PENAL statute? In one sense, it is; the damages are not ltd. to compensation; they are proportioned to the offender's guilt. N.Y., domicile of decedent, had reg. type of wrongful death stat. not based on degree of culpability.



behalf, or to a member of the public, suing in the interest of the whole community to redress a public wrong. THE PURPOSE MUST BE NOT REPARATION TO ONE AGGRIEVED, BUT VINDICATION OF THE PUBLIC JUSTICE. HELD, Mass. stat. not penal. 89.

"If aid is to be upheld here, it must be because the act in its nature offends our sense of justice or menaces the public welfare. If a foreign statute gives the right, the mere fact that we do not give a like right is no reason for refusing to help the P in getting what belongs to him. Similarity of legislation has indeed this importance: its presence shows beyond question that the foreign stat. does not offend the local policy. But its absence does not prove the contrary." THE FUNDAMENTAL

PUB. POL. IS PERCEIVED TO BE THAT RIGHTS LAWFULLY VESTED SHALL BE EVERYWHERE MAINTAINED.

See Nolan Case, p. 39 supp.

A ct. need not close its doors to a foreign c/a merely because of a dissimilarity of public policies. "They do not close their doors unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal." (See case, p. 781 cbk.). IP See Currie, DUKE Bar Jour. 1963-1, Conflicts + Confusion in N.Y. — Cf. Kilbourn and Pearson Cases.

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See Rodwell Case - 205/292 -

followed somewhat the Loucks view. And see

235/728; 3 N.C.L.R. 98

11 " 263

16 " 211

Daggrell v. Southern Box Co (p. 389 Ark. corp. 3 incorporators: 2 from Tenn., 1 from Ark. Under Ark. law, personal liab. was imposed on incorporators for defective corp. (did not allow theory of de facto corp.). P v. D-corp. in Tenn. under Ark. Stat. - D said Ark. = penal stat. and that Tenn. should not enforce the penal law of a sister state. IP in dist. Ct. D appealed. In another unrelated action in



Tenn. state ct., it was held that the Ark. Stat. was penal. Then, D went back to fed. ct. and said, "see !?!" - Circuit Ct. held (2 to 1) that Erie Case required that the fed. ct. follow the ruling of the State Ct. of Tenn.

The dissenter said Tenn. must give f.f. & c. to Arkansas' interpretation of the statute (Ark.). - But, is that really correct here? He seems to be way off here.

Def. says that Tenn. has the power to deter. classification (whether Ark. Stat. = penal or not), but the majority did not go far enough when it applied Erie Rule.

\* Under Klaxon Case, fed. ct. must also apply the conflict of laws rule of the state in which it sits; and that would mean that the Ark. classification of "non-penal statute" would bind.

(Def. - Tenn. probably wrong, as a matter of fact, in holding that Ark. Stat. was penal. But,



having the power to classify  
[Dorrance, Loucks cases], its  
classification is binding. —

Note, actually, Crk. had never said  
the stat. was non-penal, but if it  
had said so, the question would  
be res judicata.

Mertz v. Mertz —

See Coster v. Id., 46 N.E.2d 509 + 46  
N.E.2d 621; Woodcock v. Id., 30 N.Y.S.2d  
326; Howard v. Id., 200/574; 217/443;  
Bogen v. Id., 219 N.C. 51 (bar exam);  
Torts between parent & kid, 41 Fed. Supp.  
545; Riene v. Id., 8 A.2d 497; 169 F.  
2d 677; 183 S.E.210.

Mertz case no longer the law,  
even in N.Y.

"ambiguity" to what = 4/10, p. 10



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Holzer v. Deutsche R-G (p. 366)

An example of the policy rule.  
This ran clearly contra to  
the deep-seated "tradition of  
the common weal."

(Sec. 4) Local LAW OF THE FORUM —  
(p. 382) \* "SUBSTANCE" AND "PROCEDURE" \*  
(See Stumberg pp. 131 - 159)

(B) PRESUMPTIONS AND B/P

Levy v. Steiger (p. 383)

Walter Wheeler Cooke's test of "substan-  
tive" or "procedural" - How far  
can the cts of the forum go in  
applying the foreign rules of  
law w/o unduly hindering or  
inconveniencing itself? See  
42 Yale L.J. 333, 334 (1933).

Accident in P.I. by D-driver.  
P's guests in another car. Action  
in Mass. — Ct. said the  
Mass. rule on C/N was mere-  
ly a rule affecting B/P and  
did not disrupt any substan-  
tive rights, didn't affect the  
basic c/a. B/P of C/N on D.

— Is C/N a defense to a c/a that  
has come into existence, or is it  
a factor wh prevents the c/a  
from ever coming into existence?

If the latter, the forum state  
should look to the law of the  
state of accident. — Held,

i.e., C/N = rule of "procedure".

this was an affirmative  
defense and must be pleaded  
& proved by D; that, ∴, Mass.



can apply its own law & not look to the law of R. I.

Other cts. take the opposite view. So. Ry. v. Robertson,

(Georgia) →

66 S. E. 535 (before F. E. L. A.) -  
 2<sup>nd</sup> injured in Ala. & sued his  
 2<sup>nd</sup> in Ga. Ga. required P to  
 plead & prove freedom from  
 C/N. Ala. = affirm. defense.  
 Ga. said this was like a rule  
 of substan. law in that it re-  
 quired proof of freedom from C/N  
 as a cond. precedent to a C/A. The  
 Sup. Ct. of Ga. reversed & said  
 C/N = rule of procedure  
 and that Ga. must recog.  
 the Ala. law hereon be -  
cause that's on the tort  
arose.

Hypo: Accident in State - 1 wh follows C/N  
 rule (complete bar). State - 2 follows  
 comparative negl. rule. Action in  
 State - 2.

"It is elementary that the law  
 of the place of injury determines  
 whether a right of action exists;  
 and that the law of the place  
 on the action is brought regulates



the remedy and its incidents,  
such as pleading, evid. & practice.

Fitzpatrick v. Internal Ry. Co. (p. 385)

157 A. 525 (N. H.)

N.Y. said the Ontario Comp. negl. rule affected the substantive rights of the parties, and, therefore, must be applied in this N.Y. action.

— N.Y. recog. C/N, but put B/P on P to plead & prove freedom from C/N.

See 157 A. 525 (N.H.) — if the foreign rule is so tied up w/ the substantive right that they are difficult of separation, then the forum state should apply the whole law of the foreign state on the C/N arose and not be concerned about deter. whether the matter is of substan. i.e., the procedural law wh would be determinative of the outcome would be applied, too.

How would you classify a S/F problem?



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Harrison v. The R.R., 168 N.C. 382 -  
P's decedent killed while walking across the <sup>va.</sup> trestle. -  
Ct said Va. law should have been pleaded, and was no duty owing to him until his cond. of peril became known, per Va. law.

See: 110 F.2d 754, cert. denied 340 U.S.

650 - Sampson v. Channell.

Societe Internationale (S.I.) v. McGraw-Hill (p. 389)

Did the interference of the foreign (Swiss) power w/ the documents ~~require~~ require the forum court to dismiss the action for lack of proof? - Ct. said no because this was procedural and the forum Ct. was free to apply its own laws.

Ct. here should have & could have gone off on a policy consideration to resolve this case but chose to go off on technical legal grounds.

(NOTE, p. 392) - Levy v. Mutual Life Ins. Co. -  
Ga. K of ins. on Ga. resident 3 wks. before death of the insured. Action in N.Y. -



Better Rule

This result (applying the law of Ga. re admissibility of doctor-patient confidences) seems to conflict w/ the Supreme Lodge Knights of Pythias Case (p. 388).

— The better result may be that policy considerations should be determinative (that the forum will apply Ga. law despite conflict w/ N.Y. law unless it would abuse "some deep-rooted tradition of the common weal").

— The only thing wrong w/ that is that the policy argument is usually used to avoid applying foreign law.

NOT SO IN Loucks v. Stand. Oil (Cardozo).

D.) \* Formalities — Statute of Frauds \* (p. 394)

Amer. Cts. are divided re whether S/F = proc. or substan.

Better View:  
S/F = "substantive"

The preferable view = substan. as one of the formalities of the K, so if valid or made, it should be valid every-where.

It seemed to have been a conflict between secs. 4 and 17. So, the Sale of Goods Act



altered sec. 17 to conform w/ §4.

Amer. jurisdictions have adopted the orig. language of EITHER sec. 4 or sec. 17. N.C. has taken both positions (q.s. 22-1 + 22-2): "no action shall be

(sec. 4) → brought", and "the K shall be (sec. 17.) → void unless ...." Sec. 22-3(q.s.)

- no K over \$10<sup>00</sup> w/ a Cherokee shall be valid unless written.

### General views:

(32 Yale L.J. 311, Loring)

→ (1) S/F = substantive + expresses strong pub. policy. Emery v. Burbank, (P. 399) - Seldom Taken view.

(2) That it is procedural + the forum state can apply its own law.

(3) That we should not try to classify S/F as either, but merely say that a K, valid on made, is valid everywhere. "Better view" - De Jarmou.

### Better View

N.Y. used sec. 17 and said it was substantive because the word "void" was necessarily substantive.

Maybe the Sales article of the U.C.C. and the Unif. S/F Act will solve the problem.



See note (1), p. 395 (seems to follow converse of #3, *supra*).

### Assign. - Torts

Re Torts, see Restat./Conf.,  
secs. 377 - 397 (1934)

(E) \*

S/L =

"procedural"

85 N.Y.S. 35

They use the Sec. 4 language.

If view #3 were applied, it would not contravene pub. pol. because it would not be against any pub. pol. to recog. vested rights.

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### STATUTE OF LIMITATIONS \*

Gen. considered a procedural problem. But, under conf. of laws rules, the problem arises on there is a foreign claim or cfa in dispute. Attempts to solve this:

(1) Uniform act.

(2) Borrowing statutes - In Holmes v. Henges, 85 N.Y. Supp. 35, N.Y. Ct. held that if the action was barred by S/L in Neb. on cfa arose, N.Y. would not allow the action. N.Y. applied the renvoi doctrine (rare in this type of case). (See Dane Vernon's article in Vand. L.R., Def.'s office.)

### GENERAL RULE

So, the gen. rule is that the S/L is procedural and the forum state may apply its own law.



## EXCEPTION

Now, if we have a stat. c/a  
 wh has its own S/L, the c/a =  
 substantive as a part of the c/a.  
Truall v. Seaboard R.R. Co., 151/545; Curlee v.  
Duke Power Co., 205/644; 228/574; 228/618.

## \* CHAPTER 8) TORTS \*

### (Sec. 1) THE LAW GOVERNING LIABILITY

Gen. Rule - the tort is governed  
 by the lex loci delicti (the  
 law of the State on the  
 tort happened).

### Ala. Great S. R.R. Co. v. Carroll (p. 418)

On the unlawful act is com-  
 mitted in one juris. or State  
 and takes effect — produces

The result wh it is the pur-  
 pose of the law to prevent,  
 or, if having ensued, punish

for ~~the act~~ in another juris.  
 or State, the wrong is deemed

to have been committed  
 and is punished in that  
 juris. or State in wh the

result is manifested  
 and not on the act  
 was committed.

Negl. in Ala., injury in  
 Miss. Ala. W.C. law did not  
 allow "fellow servant" defense.  
 Miss. c/a said that fellow  
 servant would = bar.

Held, the tort arises on the  
last act that makes for liab.  
occurred.

On is "the last act that  
 makes for liability"? This is a very  
 live question now, esp. re air-  
 planes! Prof. Carpenter, Loyola (Chicago) Law  
 School, speaks to this point. — Ps usually  
 contend that, e.g. under Dram Shop Act of  
Ill., the last one to sell the intoxicant



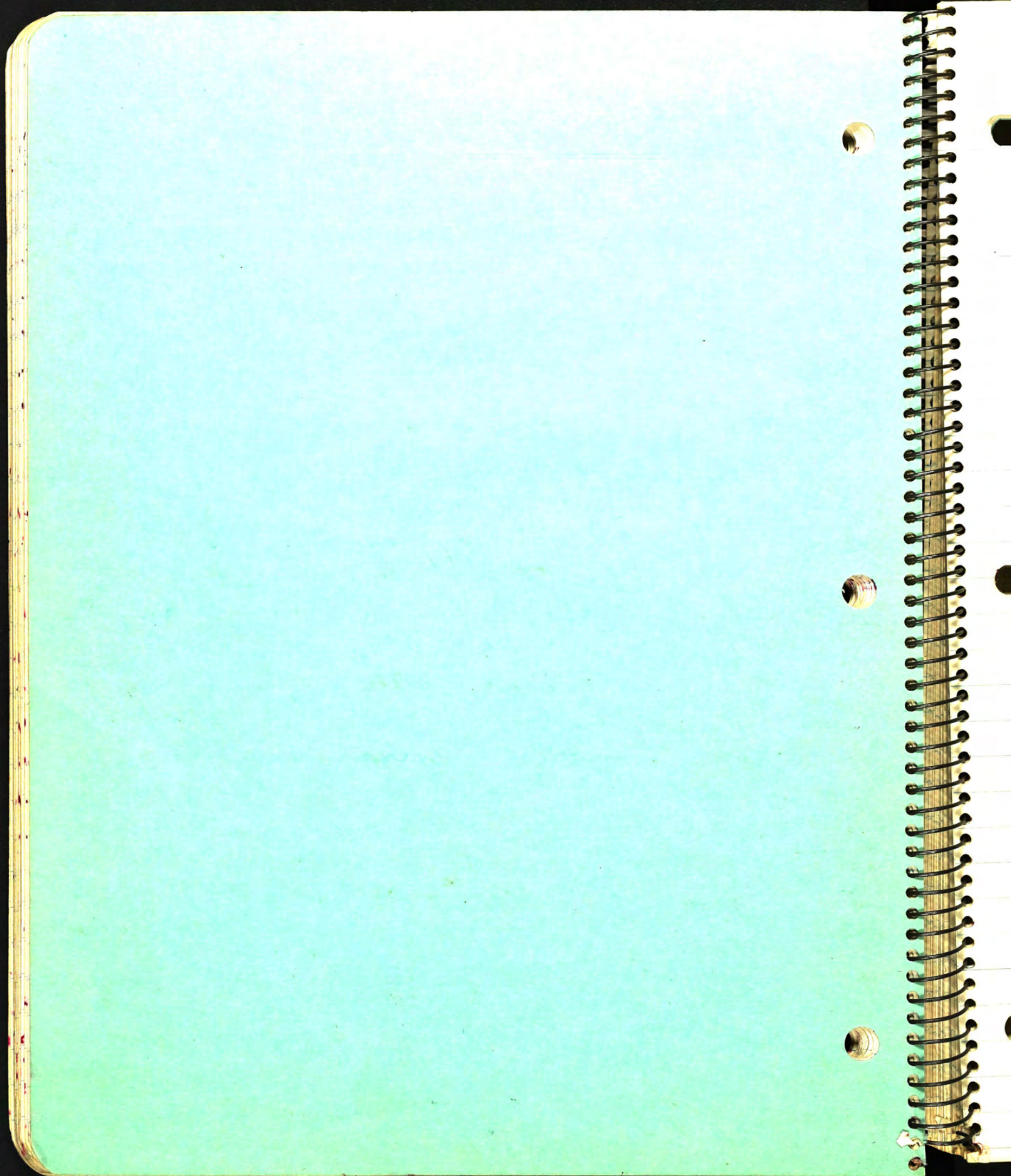
the liquor becomes liable then,  
 and it only remains for the  
 intoxicant to select a P. —  
 But, this seems to confuse the  
 tort of the D and the injury  
 to the P, because the last  
 act that made for liability  
 was the tort — the  
 injury — causing act —  
 of the intoxicant.

Assignment: Read Schmidt Case  
 carefully (read checked-  
 off cases cited r).



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Schmidt v. Driscoll Hotel, Inc.

(p. 421)

There are three cases cited in the main case.

- (1) Eldridge v. Don Beachcomber, Inc., 342 Ill. App. 151, 95 N.E. 2d 512 (1950) —  
Ill. Ind.

Dram Shop Act

D ← v. — P

Sale

accident

Intoxication

Held, "While it is alleged that the tortious act was occasioned by intoxication which occurred in Ill., the fact remains that the act itself took place in Indiana. The Ct. held that the legislature did not intend the stat. to be applied extraterritorially."

The main case went the opposite way.

(p. 445)

- (2) Young v. Masci, 289 U.S. 253, 53 S.Ct. 598

- (3) Lewy v. Daniels' U-Drive Auto Renting Co., Inc., 108 Conn. 333, 143 A. 163, 61 A.L.R. 846.

Conn.

DEFENDANT  
RENTAL  
DRIVER  
Statute

Masci

Accident

P



The theory behind many of these states' decisions is that the wrongful act in the forum state (e.g., selling liquor to intoxicant, renting cars to bad drivers, etc.) makes for liability then, and the subsequent injury in a foreign state only cements the claim. It's like having two torts: selling liquor to intoxicant, <sup>in S-1</sup> and intoxicant ~~then~~ perpetrating tort in S-2. It's like fixing the violation of the statute of S-1, and then finding a Plaintiff.

See Scheer v. Rockne Motors Corp., p.448;  
Young v. Masci, p.445.



10 April 63

## (B) WRONGFUL DEATH ACTIONS \*

Leflar, Sec. 114 - "no c/a for wrongful death exists

same as it is created by the law of the place on

the tort occurred, and it is the c/a of created wh

must be sued upon at any place on action

is brought. This is true both as to the

amt. recoverable + as to who is entitled to take

beneficially the amt. recovered. Even

the S/L of the place of tort, if incorporated in

to the Death Act itself, limits the bringing of

actions elsewhere to the period set by it, the rule

in this respect being different from that for ord. torts.

See p. 175 of Stumberg. And see 103 U.S. 11; Conner v. N.Y. M.H.

H. R. Co., 68 A. 481. Action in R.I. by Conn. Admr. due to wrongful death in Conn. - Conn. admr. allowed to maintain the R.I. action.

At C.L., no c/a for wrongful death. Lord Campbell's Act (1846) was the first departure which allowed a c/a for wrongful death. In every U.S. state, it is a wrongful death stat., and all are in derogation of the C.L. (thus, to be strictly construed).

Two gen. rules:

(1) When a stat. gives a c/a not known at C.L., all elements of the stat. c/a are substantive.

(2) Gen., an admr. of the state cannot sue beyond the Terr. in wh he was appointed.

Parties to an action are almost universally a procedural matter.

But, due to #1, this is now considered substantive.

See Howard v. Pulver, 45 N.W. 2d 530 (1951).

So, under #2, an admr. apptd. in S-1 would not be able to sue in S-2 for the wrongful death of X in S-2.

The admr. would have to have an auxiliary admr. apptd. by S-2.

Stumberg says, "These decisions cannot always be reconciled."



104

Leflar, §114 - Any person who by the law of the FORUM satisfies the governing Death Act's description of the proper person to bring suit may maintain it. That means, generally, that an adm'r. appointed at the forum may hypo:

X injured in S-1, dies in S-2. Would a S-1 adm'r. be qualified under the statute solely as a kind of trustee for the beneficiaries designated by the governing Act. hypo: X injured in S-1, dies in S-2. Would a S-1 adm'r. be qualified under the statute solely as a kind of trustee for the beneficiaries designated by the governing Act.

gives the c/a to the widow or surviving heirs. Stumberg says that since this is an derogation of the C.C., the law of the place of injury controls because that would be the strict construction.

### (C) SURVIVAL OF CAUSES OF ACTION

Leflar, §114 - no c/a survives in some states, but most states have survival stats., some only ltd. ones. —

Majority Rule - In terms of substantive or vested rights, it seems that the state which creates a c/a. can also destroy it; therefore, if by the law of the place of injury there is no survival, the death of the tortfeasor would terminate the c/a everywhere. By the same token, if by the law governing the tort the c/a does survive the tortfeasor's death, his death should be nowhere a ground for refusal to entertain the suit.

A survival of a c/a was not recog. at C.C. because the relief could not be enjoyed, and the Ct. should not do a vain thing. G.S. 28-172 - N.C. survival statute. 28-175 - no survival for libel, slander, false imp. or battery; reason is that the relief could not be enjoyed. Most states follow same policy. C/a arises in State - 1 where there is a survival statute, and action is brought in State - 2 which does not have a survival statute.



These results are arrived at, obviously, on the assumption that the question of what survival rule applies is one to be characterized as sounding in tort. This, however, is not a necessary characterization. N.Y. has characterized the problem as one of the distribution of the deceased tortfeasor's personal estate, therefore governed by the law of his domicile (Herzog v. Stern, 264 N.Y. 379, 191 N.E. 23 (1934)).

234 N.W. 314

Read Grant case, p. 455 - highly criticized. Traynor, J. result.

MASSSED CLARS: 4/12 + 17/63 (four)

Survival stat. makes the decedent's c/a survive, but a wrongful death stat. creates in the named party a new c/a.

N.Y. has no survival statute and death would abate the c/a. TP See Ormsley v. Chase, 290 U.S. 387; Orr v. Ahern, 139 A. 691 - Action v. adm'r. To recover damages for personal injuries caused by the adm'r. in testate in N.Y. Action in Comm. Ct. said since N.Y. had no survival statute, and since "he who gives (a c/a) can take away (a c/a)", the action was not allowed. The injury occurred in N.Y. and the law of that place will control. So, on c/a arises in a state following the C.L., that action is abated, and the C.L. of that state will prevail.

says now he would reach an opposite



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(p.455) (See Grant v. M<sup>rs</sup> Auliffe)

This case held that survival statutes are procedural, not substantive, so that the forum's stat. will govern admin. of decedent's estate? - The major criticism of this characterization is that it enables the P, by selecting the forum, to control the matter of what law will be applied.

Sup. Ct. of Calif. = 1<sup>st</sup> we should characterize the action: is it tort or admin. of decedent's estate? If it = tort, Calif. would have to look toward Arizona law.

Traquor View - the real issue here = admin. of decedent's estate. Can this c/a run against the estate of a wrongdoer? All parties Calif. residents. All contacts in Calif. The only connection Arizona had was that it was the place of injury. Thus, Calif. policy was more to be served by treating this as a Calif. problem so that admin. of decedent's estate must be governed by the law of the state of admin. Calif. has an interest in the prosecution of all Calif. estates. Schauer, J. (Dissent) once you stick in the characterization test in considering this type of problem - you do away w/ any uniform Rule. "Whimsical"



process is not due process."

MAJ. VIEW - Knocks out the substantive - procedural "test" re Survival statutes; the individual comes into the picture on the basis of facts wh he thinks are important. Judge comes into much more play now (some valid grounds).

DeJ. - What worries him is

what pub. pol. of Ariz. was defeated by this type of decision and what pub. pol. of Calif. had been advanced. All of the contacts of this case were in Calif. (estate, P+D). If was no foreign admin. here coming in dragging off assets at the expense of local Cons.

PROPER LAW APPROACH - even tho' tort arose in <sup>Arizona</sup> ~~Calif.~~, Calif. law would be the proper law to apply. Deter. which law has most contacts w/ the problem and wh law would be the proper one to apply.

Mechanical approach - cfa is like a flower growing in the desert: it must be recog. as long as it grows y. But, once it is cut, y remains nothing to be recognized. Andrews, J., analogizes this to s/k: if State X = 2 yr. s/k, and State Y = 1 yr. s/k w/ action brought after 1 year in State Y, not too difficult to see that State Y could entertain the action.

The converse would be true. If the cfa in the place of happening is gone, no need to even get to the substantive-procedural consideration. Once you make characterization, the Survival question does not come into the picture.



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## \* (D) INTRAFAMILY TORTS \*

Involves conflicting policies. Family union = matrimonial domicile has tremendous interests in that status and its interests should be given some consideration in looking at that status. Opposed to this we have strict choice of law rules. Or we have vested interests, they should be entitled to recog. everywhere.

Jaeger v. Jaeger (p. 459)

W injured as passenger by H due to his negl. in Arizona, a community prop. state. D-ins. co. contracts Ariz. law applies. Action brought in a separate ~~property~~ state, Wis., wh was also the matrimonial domicile. Wh one should prevail? Ct. held for P (in Wis.). Ariz. gave the cpa (accident occurred in). Since Ariz. gave cpa, it should be able to take it away.

[A wrongdoer should not be able to profit from his own negl. = settled principle of law.] So, under standard choice-of-law, place of happening should prevail.

Gen. Rule

- But, here Wis. had a substantial connection w/ the facts + had the judicial power to apply its own law to them. If the question is as to marital prop. rights in a tort claim, the issue clearly has a substantial connection w/ the spouses' domicile.

Held, "... a claim for damages ex delicto arising from a tort or tres. upon the person of a married woman while temporarily sojourning in one state, and whose matrimonial domicile is in another state, cannot be considered as community prop. acquired in the former state..." Further, "w/ respect to the legal consequences of marriage, both as to the status of the



parties and as to all their prop. interests except interest in land, the law of the matrimonial domicile governs.

T/P. Brown, J. (DISSENTING) - the law of the place on the tort occurred should govern.

Buckeye v. Buckeye, (p. 460), D injured P in Ill. thereafter but before trial in Wis., P & D married. P = wife. Forum State = Wis. on spouses could sue each other. Not so in Ill. I argued that Wis. law governed the legal consequences of the marriage and that under that law she did not lose her separate identity. HELD, T/Ds (H and his liab. insurer) \*H If, as seems clear, the law of Ill. is to govern, both as to the creation and extent of D's liab., and if the liab. so created is subject to discharge or modification by the law of Ill., P's c/a has been wholly extinguished by her marriage."

Bogert v. Bogert, (p. 461) - action by W v. H in N.C. HELD to lie even tho' it would not have lain in Ohio, matrimonial domicile.

Mertz v. Mertz, (p. 362), suggests that capacity to be sued is a "procedural" question to be decided per forum law.

Re parental immunity, see 23 U. of Chi. L.R. 474 (1956).



4 - 22 - 63

214 F. Supp. 545, Turner v. Capital Motor Trans. Co. (Advance sheet, 4-15-63) - this went opposite way of Killburn case (2nd Circuit). Maine dist. ct. said it was bound to follow the Mass. "degree of culpability" statute.

### (E) DIRECT ACTION STATUTES

Is a D/A stat. substan. or procedural? i.e., Does it create a new c/a, or does it merely clear the way for the party to be sued or to sue?

Quaere: On c/a arises in state w/ D/A stat., & action is brought in state w/o D/A stat., should the forum state characterize the problem as substan. or as procedural to deter. whether to apply its own law? =

### Collins v. Amer. Auto. Ins. Co. (1962)

Cf. 186 So.  
120 A.L.L. 846

McArthur Case

Held, this was a substan.

D/A stat. in La., and

The forum can make its own characterization of foreign law. Ct. said this was not a matter of deter. of proper parties to the action; "it is ... a matter of enforcement of a right of action v. a So, Ins. cos. now include "no designated D or no such right of action" clauses in ins. ks.

law. Ct. said this was not a matter of deter. of proper parties to the action; "it is ... a matter of enforcement of a right of action v. a So, Ins. cos. now include "no designated D or no such right of action" clauses in ins. ks.

matter of deter. of proper parties to the action; "it is ... a matter of enforcement of a right of action v. a So, Ins. cos. now include "no designated D or no such right of action" clauses in ins. ks. previously existed.

Watson v. Essex Liab. Assur. Corp.

348 U.S. 66 - woman (Mrs. Watson)



was injured from use of Toni home permanent in La. The Toni Co. = div. of Gillette Co., a Dela. corp. w/ principal place of biz in Boston. Toni had principal (sic?) place of biz in Chicago. Toni insured by D-ins. Co. wh had become domesticated in La. and did biz y. So, P v. D in La. — The policy had a no Action clause, and said that D could not be sued until judg. had been obtained v. assured (Toni) or until an agreement of settlement w/ assured had been obtained. Black, J. said that La. had a legitimate interest in safeguarding persons injured y, an interest so fundamental that the due process clause would not be violated by disregarding the "no action" K. clause; that the DfA stat. attached as soon as Toni began doing biz in La. and preceded the "no action" clause, thereby not violating due process clause.

Cf. 348 U.S. 48, Lumberman Case

— seems to put it on a procedural basis. Re auto liability.



## (F.) MULTIPLE STATE TORTS

In libel cases, the old C.L. cts. said that injury was the gist of the action. If that is true, there might today if should be a c/a arising in each and every place of injury. Thus, every publication gave rise to a new c/a. In The King v. Carlisle, every copy of the same libel became a separate c/a. Duke of Brunswick v. Harmer, 117 Eng. Reprint 175 - libel in newspaper. 17 years later, a copy of same was sold<sup>by</sup> and Court held this later sale = new c/a.

### American Rule

In America, the "SINGLE PUBLICATION RULE" - Jehon v. Kan. City Star, 107 S.W. 496.

This case broke w/ Duke of Brunswick case by holding that the whole issue, tho' composed of many copies, was but one publication wh.



4 N.Y.S.2d 640, aff'd. 18 N.E.2d

676, Wolfson Case.

Gregoire v. G.P. Putnam & Sons  
Co., 81 N.E. 2d 45

occurred on the first publication or distribution to the public; that the c/a accrues upon the first publication. And see Polchlopek v. Amer. News Co., 73 F.Supp 309; McClure v. Weekly Publ. Co., 63 F.Supp. 744; Ogden v. Assoc. of the U.S. Army, 177 F.Supp. 498 - re book "Combat Action in Korea." D wrote book & said that P had poorly handled a platoon. Book published in Nov., 1955. P did not buy it until 6-1959 at wh. time he found out about the alleged libel. D-Army admitted by letter in 1956 the error of D-author. Ct. held that the prevailing American view is that the c/a arises upon the first publication.

Q. Could you bring an action on the theory that the first publication in each state = new c/a? =

Uniform Single Publication law only adopted by Ariz., Idaho, Calif., Pa., N. Mex. and two others.

Assign. - Chap. 10.



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(Chap. 10)

(SEC. 1)

\* CONTRACTS \*THE ELEMENTS OF A K: CAPACITY, FORMALITIES, ESSENTIAL  
VALIDITY

The Amer. Cts. have taken at least four (4) basic approaches:

(1) On question re validity, formality, etc., the cts. generally look to the law of the place of making (also, capacity).

(2) Re breach, damages, etc., look to the law of the place of performance.

(3) Look to the intentions of the parties as to what law the parties intended to govern.

(a) Should the intentions of the parties be governed by their expressions, or should we look to the instrument to deter. same? Would it matter if the expression of the intended governing law be made in K of admission or of cohesion?



The rationale here is that (b.) Theory that the K will be the parties, not intending to do a vain thing, must have intended that the law which upholds the K was to govern.

upheld by reference to any law w/ wh the K had substantial connection w/ law would uphold the K. Goes back to: insidious Ks. Rationale for this view: the parties did not intend to do a vain thing. So, this is a second subdivision of theory #3.

✓ (4) "Center of Gravity" approach — we should not concern ourselves w/ one or two items at the time. We must deter. what all items are — look at whole mass of facts and contacts — and then see what law has the most contacts, and apply that law as the center of gravity to govern the incidents of the transaction.

Some theorists say that we should apply the doctrine



of Renvoi to achieve some degree of uniformity. This would be applied only or not to do so would mean that the result depends on on the P happens to choose his forum.

Goodrich says this area of K's is a very confused area.

Union Nat. Bank v. Chapman (p. 488), could have been easily solved by using "center of gravity" approach, and that would have resulted in finding that Ill. law governed.

Rule

⊗ You must first characterize the problem (validity, capacity, etc.) & then go to the conf/laws approach.

The four basic approaches sometimes blend together.

⊗ In characterization, when you are deciding if there ever was a valid K, you



must first deter. on the  
K was made; then,  
you must apply the law  
of the place of making  
to deter. if there ever  
was a valid K. So, a  
validity problem must  
be deter. by looking at  
the <sup>internal</sup> law of the place  
of making. Do we also  
apply the conf/laws law  
of the place of making? No.

Only the internal law  $\leftarrow$   
would be applied.

24 April 63

The new Restat. of Conflicts  
~~is~~ that is being drafted  
seems to be leaning more  
toward the "center of  
gravity" test. Schulman (The  
Institute of Practising Law) criti-  
cizes this severely: the center  
of gravity will shift de-  
pending on the emphasis  
placed on the factual contacts  
w/ the states in question.  
But, it is a trend now  
toward "center of gravity"  
as the test to use.



## The Prevailing Rules of Law

The most certain, but mechanical, approach is to say on the question is the existence of the K, we look to the law (internal) of the place of making; re other matters concerning the K, its performance, etc., we look to the law of the place of performance unless the parties intended that the law of another state determine the matter.

### Berkraut v. Fowler (p. 58 supp.)

360 P.2d 906

<sup>corroborated</sup> agreed that if D<sup>r</sup> would re-finance a certain loan, he (C<sup>or</sup>) would in his will cancel the remaining debt. This was valid in Nevada, but invalid under S/F in Calif. When C<sup>or</sup> died, he did not cancel by will the remaining debt.

Raynor, J., said that the bulk of contacts were in Nevada.



(re-financing, req. K, obligation) and that Nevada law should govern. —

This result is directly opposed to *Emery v. Burbank*, but the reason may depend on how the courts treated the S/F. Holmes in *Emery v. Burbank* (page 399) looked at S/F as a

fundamental policy, but Traynor did not. And concerned himself less w/ characterization and more w/ the <sup>most</sup> contacts.

*U. of Chicago v. Dater*, (p. 489), is a "bad case" because it is too mechanical, and starts out w/ *Renoir* but then abandons it.

### Pritchard v. Norton (p. 493)

The only place the indemnity bond could have been performed was in ~~the~~ Louisiana. Held, "in every forum a K is governed by the law w/ a view to which it was made." N.Y. did not allow this type of indem-

See De J.'s book; Conf. of Laws  
and the S/F (esp. p. 70).



Faculty Lecture - 21 Feb. 63. Mr. Sampson.

## DEFAMATION

"Reflections on Sullivan v. N.Y. Times Inc. et al."  
\$500,000 damages won in ~~Alabama~~ <sup>Alabama</sup> Court, on  
advertisement in N.Y. Times (1962) newspaper  
re Negro's struggle for freedom. P = city police  
commissioner in Montgomery.

Action for Defam. seems to conflict w/ 1<sup>st</sup>  
Amend - freedom of speech (Black, J.). But,  
it is a need for legis. and judicial  
re-appraisal of the action because if it  
is abandoned, a real void in protection  
from social abuse will result.

P here was never specifically men-  
tioned, but it was alleged that the  
non-violent demonstrators "were met w/  
an unparalleled wave of violence."  
But, Montgomery was not at that point  
mentioned. Later, in the advertisement, it  
was stated ~~that~~ what the police did  
in response, alleging that the police  
"ringed" the campus. Anyway, I should  
show that the defamatory stmt. applied  
to him and that others reas. under-  
stood that the defamation, if any, was  
intended to refer to this P.

Excessive damages (punitive) may vio-  
late the first Amendment because they may =  
abridgement of the freedom of the press as  
being unseemly pressure on the press, as  
being repression of future speech almost the same



as if physical restraint were applied, i.e.,  
the fear of huge adverse judgments.  
This case stretches beyond all con-  
ceivable bounds the C.L. concept of  
group libel. The largest group allowed  
recovery, per prosser, is 75. But, the  
Montgomery Police Dept. = at least 200 persons.

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nity K but La. did.

"As all the foregoing rules rest upon the presumption that the obligor has voluntarily submitted himself to a particular local law, that presumption may be rebutted, either by an express declaration to the contrary, or by the fact that the obligation is illegal by that particular law, though legal by another. The parties cannot be presumed to have contemplated a law which would defeat their engagements." So, La. law was held to govern.

### Test of Intent

The question of intent can hardly be said to involve the actual mental operations of the parties. The law looks at the acts of the parties and the circumstances surrounding



See Travelers Ins. Co. Case  
164 F. Supp. 393

121  
them who may possibly have  
exerted some influence upon  
their ~~intentions~~ actions, and  
then assumes that their  
intention is in harmony w/  
such acts and circumstances.

(Make-up class)

24 April 63

Re N.C. statute, see Bank v.  
Ramsey, 113 S.E. 2d 723 -  
N.Y. auto dealer sold car to N.Y.  
resident on cond. sales K  
made in N.Y. The buyer  
drove the car to N.C. -  
sold car to N.C. dealer. The  
seller had registered the K in  
N.Y. on the same day of  
the sale to N.Y. buyer.  
Bernkrant Case - Under this view, maybe  
Traynor is wrong when he  
says the ntgee. of a purely  
local transaction "could not  
reas. be expected to take  
cognizance of the law of all  
the other juris. on the  
prop. might possibly be  
taken." (p. 59 Supp.) - The  
N.Y. stat. gives it not to the



seller to check up on the buyer who takes the car into a foreign state w/o seller's consent - 4 mos. after seller finds out of the buyer's action.

Thompson v. Erie R. Co., (p. 515) - (discussed by De J.)

Most contacts were in N.Y. But, under the "shopping around for a forum" view, the Ct. said he could have gone into Maine himself (Doherty) and entered into the loan K; Therefore, N.Y. law was not necessarily binding.

## \* (B) BILLS AND NOTES \*

Negot. instr. = courier w/o luggage.

Q. Should the validity of a N/I be governed by the law of the place of making or the law of the place of payment? =



It would seem that the place of payment would be the one of most interests since the N.I. is a courier who is free to move in the hands of holders. Also, it can easily be said that the parties must have contemplated the law of the place of payment.

McCormick & Co. v. Tolmie Bros. (p. 521)

Prom. note, executed in Idaho payable at Utah bank. Court said that

*General Rule*

the negotiability question should be governed by the place of payment, unless the parties intended the law of some other place to govern.

As a gen. rule, in the K area, the law intended by the parties will govern. Only on that intention is uncertain do the courts resort to the four, or one of the four,



approaches to deter.  
what law governs.

CAVEAT !!

De J. says that the  
"intentions of the parties"  
theory should be ltd. to  
some state w/ which  
is some contact. This  
should be esp. true in  
Ks of adhesion.

Assign. - Property

See: Stumberg, Chap. 12.  
Marsh, Conf. of Laws + Marital  
Prop.

26 April 63

## \* CHAP. 12 PROPERTY \*

### (SEC. 1) Characterization of Property

Orig., the law was that  
movables were governed by  
the law of the domicile,  
and immovables were  
governed by the law of  
the situs. But, this simple  
classification was inade-  
quate to handle the many  
problems in property. Re  
prop. is always the  
question of title.

Quare security ar-  
rangements involving prop?  
A mtg. runs to the  
immovable, but should



Swank v. Hufnagle, (p. 634) -

"the validity of the mtge. of real property is to be deter. by the law of the place where the property is situated."

The various effects of an incumbrance on land are governed by the law of the situs. Thus, in addition to matters relating to validity, this law deter. the

extent of the mtgor's right to redemption after foreclosure and what constitutes a discharge of a mtge. See Restat., Conf. secs. 225-231 (1934).

we distinguish the mtge. from the legal effect of the mtge.?

Stumberg says the mtge. should be governed by the law of the place of the land, but the legal effect of the mtge. should be governed by the law of the place of the obligation.

Quere how you can distinguish the mtge from its legal effect?

Security transactions and deficiencies = Q. Does liab. for deficiency run to the mtge. or to the person? = N.C. does not allow deficiency judgments on purchase money mtges.

Stumberg says that the law of the place of obligation when dealing w/ deficiencies.

Q. What law should govern an agreement to assume a mtge.? = I.g., A sells B/A to B. B/A is mtged. B agrees to "assume the mtge." Then B defaults. Then the mtgee v. A, the guy he dealt w/.



Re  $C^{or}$  who seeks to enforce the underlying debt as distinguished from the mortgage itself: "on the state whose law governs the personal obligation is also the situs of the encumbered prop., the law of that state will normally be applied. (See p. 636)

Monday v. Wis. Trust Co., (p. 637) -

"On interstate commerce is not directly affected, a state may forbid foreign corps. from doing biz or acquiring prop. within her borders except upon such terms as those prescribed by the Wis. statute. ... The title to land can be acquired and lost only in the manner prescribed by the law of the place on such land is situated."

The law of the situs is commonly said to deter. the validity and effect of a conveyance of an interest in land including the question of formalities and of the capacity of the respective parties to convey & receive title.

Some states say the assumption of mortgages is v. public policy. - Is this an immovable problem, or is this a K problem?? See Clement case, 117 N.W. 491 - involved Minn. & Iowa. Contra: 16 F. 2d 223.

Quaere an agreement to give a mortgage? This may = an equitable lien, thus legal v. eq. liens would have to be resolved.

Q. Re "legal effect," what part should eq. conversion play in conflict of laws?

29 April 63

On p. 632, the Restat./Prop. takes the position that Renvoi should be applicable to questions of title to land.

See Cooke, Immovables and the Law of Situs, 52 Harv. L.R. 1246; 18 Canadian B.R. 568; 20 Canad. B.R. 1; 22 Canad. B.R. 17.



Clark v. Clark

(p. 627)

(U.S. Sup. Ct., 1900)

Testatrix domiciled in S.C.  
 leaving realty in Conn.  
 By will, she devised the  
 realty and all personalty  
 to P(H) and D(daughter) <sup>#1</sup> & <sup>#2</sup> ~~daughter~~  
 share and share alike.  
 H (as executor) brought S.C.  
 suit and it was held  
 that eq. conversion made  
 everything personalty. Daugh-  
 ter #2 died. P(H), the father,  
 brought Conn. action as adm'r.

The law of the situs is commonly said to deter. the validity and effect of a conveyance of an interest in land including the question of formalities and of the capacity of the respective parties to convey and to receive title. e.g., A deed which does not comply w/ the formalities required by the law of the situs will not be effective to pass title.

it was held that the land in question was and passed as realty. P appealed be-  
 cause this would cut him off as an ascending heir, and realty passed to descendants. - P appealed on the basis that Conn. had failed to give j.f.v.c. to the S.C. judgment. - White, J., said that the issue of conversion VEL NON is deter-  
 by the law of the situs of the land said to be converted.  
 How does this case



(Polson)  
 differ from Polson v. Stewart,  
 (p. 638) (held, the lex rei sitae cannot control personal covenants, not purporting to be conveyances, between persons outside the juris, altho' re a thing in it?)

30 April 63

Re LAND, see Resat. Conf.,  
 Ch. p. 632, 633: all questions  
 of title to land, its devolution  
 upon the death of the owner  
 intestate, and the validity  
 and effect of a will of (1.)  
 an interest in land are  
 deter. by the law of the  
 state where the land is.

The law of the situs deter.  
 whether a will involving  
 immovables has been revoked.

On the question presented re-  
 lates solely to the rights and  
 liabilities of the parties, cre-  
 ating rights in personam, the  
 legal effect of the personal (2.)

covenant must be deter. by the  
 law governing the K, even

Gen. characterization is the  
 big point in these matters.  
 (De J.)

See Wilson v. Kryger, 149 N.W. 721, aff'd. 242  
 U.S. 171; 26 Yale 405 (on Wilson case) - K  
 to deed N. Dakota land made in Minn.

Notice by publ. in N. Dakota of can-  
 cellation. Allegation that notice should  
 have been governed by law of  
 Minn. Effect of notice = cutting off  
 equities in the land. Ct. said this  
 was really an action to quiet  
 title, ∴ was a local action  
 deter. by law of or the  
 land is situate.

See Finnes v. Selover, Bates & Co., 113 N.W.  
 883 - K in Minn. to convey Colo.  
 land. K provided for cancellation. Y



though the subject matter of the K maybe land in another State. 90 N.E. 2d 468 (1949) (cbk. 641).

The *lex rei sitae* cannot control personal covenants, not purporting to be covenances, between persons outside the juris., at-

though concerning a thing within it. —

The competency of the wife to receive the covenant is established by the law of her domicile and of the place of the K. Polson v. Stewart, p. 638.

was default. So, it was cancellation & the land was sold by D to 3rd party. P sued for damages <sup>in Minn.</sup>.

Court said upon the repudiation of K, the buyer of the land P has two alternatives: (1) he can stand on his K & seek to get land, or (2) he can seek damages for br/k. If he seeks the former, only Colo. can give relief; but if he seeks the latter, Minn. cts., also, can give relief. Reasoning: in seeking the land, the law of the situs governs. In seeking damages, the law of the place of contracting governs. — Is there any real diff. between these two cases?

Here, the Sup. Ct. of (3) See Selover - Bates, Inc. v. Walsh Minn. held for P, and held 226 U.S. 112 — same problem, the Minn. stat. applicable. but P (vendee) says that the vendor (D) cannot cancel under Minn. law w/o 30 days notice. Court said you must look to the law of Colo. on the land lies, and Colo. law did not require notice. P contracts



K simply, we have no doubt of the state's power over it, and the law of the state, therefore, constituted part of it. ... Whether it had extraterritorial effect is another question. ... Cts. in many cases, thru action upon or constraint of the person, affect prop. in other states ... and in the case at bar the action is strictly personal.

that this = taking of the land w/o due process of law. (I was seeking damages here.) The Sup. Ct. said Finnes Case was right.

See Stumberg, Chap. 12 re these three cases.

1 MAY 63

See: Chaps. 14 + 16, Lefflar, Law of Conflicts (re Ks + Prop., i.e., immovables, respectively).

Deeds —  
A <sup>warranty</sup> deed has two parts:  
(1) Conveyance  
(2) K (covenants)

Irving Trust Co. v. Maryland Casualty Co. - 83 F. 2d 1168 (Cbk 645)  
- The law of the situs absolutely deter. the validity of conveyances WHEREVER MADE.  
"We have no doubt, therefore, that title passed by the deed delivered in N.Y. to prop. situated in those of the 3 states whose laws did not forbid such transfers, yet the law of N.Y. might still make receipt of the deed a wrong and impose a liability upon the grantee though he's got a good title. ... The

If a grantor's title is defective by what law do we deter his liab. on the K part, the covenants? = How does one characterize a covenant of seisin, for example? = Can you have any seisin aside from the land? = Goodrich says that covenants re title should be deter. by the law of the situs. But, that may be too pat, too mechanical. Sec. 144, chap. 16, Lefflar, Law of Conflicts: Real covenants governed by law of situs; personal covenants governed by law of the place of making.



validity of the conveyance depends upon the *lex rei sitae*, but any court may compel the tortfeasor specifically to restore the prop., whatever the law of the situs. — So, I could get a decree directing reconveyance of the prop. to him (enforceable in personam), or he can recover damages as a substitute. T/D/Rogel.

Branchamp v. Bertig (p. 643)

Restat. Conflicts: sec. 341 -

(1.) The law of the place on a deed of conveyance of an interest in land is determined by the K<sup>ual</sup> duties of the grantor.

(2.) The law of the state on the land is determined by those duties of the grantor w/ respect to the land, which are not K<sup>ual</sup> in character.

i.e., #1 refers to personal covenants; #2 refers to real covenants.

In accord: Branchamp v. Bertig, 119 S.W. 75, 90 Ark. 351, 23 L.R.A., N.S., 659 (1909).

SEE NOTE, p. 645!!

The Restat., sec. 341, carries two statements on this question.

3 May 63 (69 yrs. old)

### \* (SEC. 3) MOVABLES \*

At one time, we thought of movables as following the person. But, the trend moved toward giving a movable a situs of its own.

Restat. says the law of the place on the chattel is at the time of the occurrence should govern. — D.J. says that is an artificial view.

Automobiles (Heffler, either sec. 15 or 17) have greatly affected this area, esp. re security arrangements and registration of the cond. sales. Hornthall v. Burdette, 109 N.C. 10; Applewhite v.

Etheridge, 210 N.C. 443 — In Hornthall case, the Va. stat. held not to have been intended to apply to out-of-state security arrangements, and the temporarily carrying



the mortgaged goods across state lines was never intended to alter the mtge. arrangements. Then, Va. amended its statute to show that it was intended to apply to ALL chattel mtges. Then, Applewhite case, w/ the same facts (except that the mtgr. moved his family to Va. because the job would take a long time), came up under the amended statute. So, it had to be deter. where the ~~statute~~ situs of the prop. was. So, it was held that the mtged. prop. (sawmill machinery in Hornthall) was sited in Va. Green v.

Green v. Van Buskirk, (p. 678) Van Buskirk, 18 L. Ed. 599, 19 L. Ed. 109, it was held, compelled transfer of personal prop. by assignment or sale, made in the state of the domicile of the owner, he held to be valid in the courts of the State or the prop. is situate, when these are in different sovereignties. The result in Applewhite. Green case (name case): Green, Bates, Van Buskirk were all residents of N.Y. Bates owned some iron pipes in Chicago, Ill. Bates executed, delivered and recorded



held: T/P/Rud. Writ of error allowed. / N.Y. erred by not giving the  
Ill. judg. the same full faith and credit as it would have received in  
the cts. of Ill. Rationale: As a question of comity, the author is  
in favor of the proposition that such transfers will, generally, be  
respected by the cts. in N.Y. a chattel mtge. to

of the state on the prop. is Van B. Bates was also in-  
located, altho' the mode of debt to Green. So, Green  
transfer may be different from that prescribed by the  
the local law .... But, the safes and had them sold  
after all, this is a mere writ of attach-  
principle of comity be- ment. Green returned to  
tween the cts., who must N.Y. and Van B. said that  
give way when the state's he was entitled to the sale  
of the country on prop. is money. Should Van B.'s mtge.  
situated, or the estab. policy be good as against Green?  
of its laws, prescribe nothing in  
its cts. a different rule. All. To put Green on  
[Under Ill. law, the pur- notice of Van B. Under the old  
chaser at the attach- law that movables are  
ment sale would prevail governed by the law of  
over the N.Y. mtge.] the domicile of the person,  
and that would give Van B.  
a good claim under N.Y.  
law. — The Sup. Ct. said no,  
that the chattels had no  
nexus w/ N.Y., and that  
therefore the law of the  
 situs (Ill.) should govern.  
So, the movables were  
given a situs separate  
from their owner.

Held,

Quaere whether Green case  
compels the Applewhite result?



In Applewhite case, court relied heavily on the fact that the mtgor. had moved his family to Va., and that the mtged prop. had acquired a Va. situs. However, the Ct. did not hold that mtgor. had changed his domicile. — \* Seems like an application of the const. law-interstate commerce doctrine of "coming to rest."

See \* G. Fin. Corp. v. Guthrie, 227 N.C. 431 — Gm. Fin. Co. had then based on cond. sales K of used car. The K was not recorded for five days on the car was bought (Atlanta, Ga.). Vendee returned home to Greensboro, N.C. Then, vendee got dropted. So, vendee's uncle took over the car, registered it in N.C. Had the car come "at rest" in N.C. so that the law of N.C. would govern? Under Applewhite, the answer would seem to be yls. The uncle prevailed.



N.C. Law

N.C. has adopted new stat. -  
G.S. 44-38.1 which bolstered  
up the Guthrie Case. Sub-  
section (c) of same stat. says  
that a recording in state  
of sale before the vendee  
can get back to N.C. and  
sell the ~~the~~ chattel, provided  
that the chattel has not ac-  
quired N.C. situs, would  
bar any B.F.P. from  
the vendee. Stat. also allows  
cond. vendor to record in N.C.  
w/in 10 days after removal  
from state of sale w/o cond.  
vendor's knowledge; 4 mos.  
when taken up. cond. vendor's  
knowledge. If cond. vendor fails  
to timely record in N.C.,  
it will be presumed that  
a N.C. situs has been ac-  
quired.

See: 113 S.E.2d 723 (1966)

Family  
Assignment: Marriage Law,  
p. 770.

with p. 770



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See Lefflar on Marital prop.;

Marsh on Marital Prop.

\* FAMILY LAW \*\* (sec. 1) MARRIAGE \*

Gen., it is an in rem — in personam classification of these cases. So, often a conflict between the situs law and the dom. law arises.

Status (marital) = in rem; support pymts. = in personam rights.

So, if H and W seek separation in Conn. and W is awarded support, and H then estab. Nev. dom. and gets divorce w/o W's presence, the Nev. decree would only deter. the status, and the in personam right of support would be unaffected thereby. So, H would have to continue paying W support.

Parent — child rel. is treated as a status. It is argued that once the status is estab., it should be recog. everywhere. But, the rights and duties incident to the status are often deter. by the law of the place or the

Rule;  
Incidents of Status



incidents are sought to be exercised. — This leads to frequent confusion, but that's the law.

Hypo: H & W married in Ill. Had 3 children. H & W divorced. H went to Okla. and there became father of illegitimate child w/ whom he recog. Okla. law: recognition legitimates a child. Ill., however, requires more. H died. One of the Ill. kids became wealthy and died intestate w/o wife or kids of his own. — Can the Okla. child share in the Ill. child's estate? Is this a status or an inheritance problem? The status would have to be deter. by Okla. law, and inheritance an incident to the status, would seem to be deter. by Ill. law. — But, This hypo is raised to show the confusion in this area.



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LYRICAL PARAPHRASE: ("ACCENTUATE THE POSITIVE")

"ACCENTUATE INHERITANCE,  
ELIMINATE THE STATUS,  
LATCH ON TO EVERY INCIDENT,  
DON'T MESS WITH LAW THAT'S IN BETWEEN." (By M. H. J.)

Supp.

S.C. white man went to N.Y.,  
married Negro woman and  
raised kids. He died, leaving  
S.C. prop. His N.Y. child sought  
to take S.C. prop. as heir. The  
marriage was good in N.Y.,  
but S.C. had miscegenation  
statute. - S.C. said this  
was an inheritance problem  
and was to be deter. by the  
S.C. law (wh declared the  
N.Y. child illegitimate due  
to mixed marriage).  
- But, this case was  
never appealed and probab-  
ly would have gone other-  
wise had it been appealed.

See Hood v. McGehee, 237 U.S. 611 -  
adoption problem. (Adoption = in  
rem proceeding; custody = in personam  
proceeding because the status is not  
affected.)



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See Fuhrhop v. Austin, 52 N.E. 2d 267

Here, bigamous marriage. H married in Ill. then, he married again in Ark. Ill said issue of big. marr. = illegitimate. Ark. said the issue were legit.

Moore v. Saxton, } See.  
96 A.960

(On 1962 Conf./laws exam)

Does the phrase "out of wedlock" or "in lawful wedlock" add a greater test than legitimacy? = 43 Am. Rep. 669, Miller v. Miller (or 91 N.Y. 315) - came up by way of action in ejectment. German-born kid out of wedlock. Came w/ his mother to Penn. The father married the mother in Penn. That would legitimate kid under Penn. and German law. Family moved to N.Y. on they acquired land. H died. H's heirs sought ejectment of kid. N.Y. has "out of wedlock" statute. Is this merely status question (look at Penn. or German law), or is this more? Lower Ct. said this was status question and once status is decided, it should

See: Falkenbridge, Legitimacy or legitimation, 27 Canad. B.R. 1163; Godrick, 22 Mich. L.R. 637; Tainter, 18 Canad. B.R. 589, 36 Haw. L.R. 83. he recog. everywhere. HELD, AN ILLEGITIMATE CHILD THAT HAS BEEN LEGITIMATED BY THE SUBSEQUENT MARRIAGE OF ITS PARENTS ACCORDING TO THE LAWS OF THE STATE OR COUNTRY WHERE THE MARRIAGE TAKES PLACE AND THE PARENTS ARE DOMICILED, IS LEGITIMATE EVERYWHERE.



AND ENJOYS THE RIGHTS DERIVED FROM LEGITIMACY, INCLUDING THE RIGHT OF INHERITANCE.

Eddy v. Eddy,

79 N.W. 856 - Henry Eddy had two bastards in Norway wh he orally recog. He later came alone to N. Dakota. Could the bastards take H. Eddy's N. Dak. prop.? - N. Dak. stat. required that if bastards were acknowledged in writing in presence of witnesses, they would be legitimate; and, if the bastards were taken in and treated fully as belonging to the father's family, etc., they would be deemed adopted, for all purposes being treated by law as natural children.



Blythe v. Ayres, 31 P. 915 - (Calif.) Florence Blythe claimed as heir of Thos. Blythe. Calif. stat. says that by public acknowledgment, treating it as his own, accepting it to his family w/ his w's consent, a bastard will be deemed legitimate from date of birth. — "I was a child of Blythe, a citizen of Calif., ... Birth out of wedlock in England, & the acts necessary to legitimate the kid taking place in ~~England~~ California. The Calif. court said that the acts in Calif. were suff. to legitimize the kid in England. But, quære the result if Thos. Blythe had died leaving a Calif. w and child. Florence did not arrive in Calif. until after death of her putative father, Thos. cf. Estate of Lund, 159 P. 2d 643 (1945), 59 Harv. L.R. 128 (note on Lund) — father acknowledged and rec'd into his family in Minn. a child born out of wedlock in Norway. He moved to N. Mex. and later to Calif. taking the bastard w/ him. Ct. said that although he moved his dom. to Calif. after the bastard



reached majority, the Calif. law still applied. \* Three judges dissented. (Note that the acts in Wis. were <sup>insuffi</sup> for legitimation in <sup>Norway</sup> N. Mex. and <sup>Minny</sup> Minn.) The judges dissenting said that since no legitimating acts occurred in Calif., Calif. law should not be applied, even though the acts would have been suffi under Calif. law.

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\* (Chap. 14) FAMILY LAW \* (cont'd.)

\* (Sec. 1) MARRIAGE \* (cont'd.)

Gen.  
Rule

Generally, if the marriage is valid or celebrated, it should be valid everywhere.

There are certain exceptions usually based on p. p. considerations.

Lanham v. Lanham (p. 774)

Two general exceptions:

- (1) Marriages which are deemed contrary to the law of nature as generally recognized by civil



civilized states.

(2) Marriages which the law-making power of the forum has declared shall not be allowed validity on grounds of P.P.

Incestuous marriages fall w/in #1, and many states put miscegenous marriages in exception #1, too.

If a marriage is valid on celebrated but contravenes a deeprooted <sup>traditions and</sup> policy of the commonwealth, most courts still hold the marriage valid.

76/242  
76/251

Under the U.M.E.A., the fact that they left N.C. to avoid its law would bring them w/in the spirit and letter of the Act.

Kennedy Case - 76 N.C. 251 - Two N. Carolinians left N.C. to marry elsewhere and returned right away to N.C. - Held, though valid on celebrated, this miscegenous marr. was held invalid in N.C. because N.C. has a particular interest - an overriding one - in her domiciliaries.

76 N.C. 242 - miscegenous marr. valid on celebrated, and



the couple later changed their domicile to N.C. HELD, valid in N.C. under gen. rule.

hyps: Negro-white couple, domiciliaries of N.C., marry in N.Y. on marriage is valid. They move to Calif. wh also recog. the marr. as valid. H dies and W tries to take as an heir (under new N.C. stat.) of H certain N.C. realty. Is W a widow w/in meaning of N.C. law? DeJ. feels that she would be able to take because the marriage was valid on celebrated and the parties did not come w/in the Unif. Marr. Evasion Act. - Petway disagrees. — [Close question.] Court could say that even if the marriage is valid on celebrated, this is a question of inheritance, an incident of the marriage, and N.C. law would govern on that matter (i.e., characterization). (better stat. by M.H.S., J.)



The state (forum) also has the power to declare that marriages between its own citizens contrary to its established p.p. shall have no validity in its courts, even though they be celebrated in other states under whose laws they would ordinarily be valid. The intention to give such effect, however, must be quite clear.

hypo: H & W divorced in State X which requires waiting period of one year before remarriage. H moved to State Y (no one-year waiting period required) and married 6 mos. later. which law governs? = State Y. The State X statute operates locally to prohibit remarriage in State Y w/in one year after divorce.



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In Wms v. N.C. (#1), held, a divorce action at the domicile of one of the parties is entitled to f.f.c. as a matter of Constitutional compulsion even w/o the presence of the defending spouse. Haddock v. Haddock, which held that divorce juris. depended on the matrimonial domicile, was specifically overruled.

In Wms v. N.C. (#2), it was held that N.C. could deter. for itself that y was or was not domicile of at least one of the parties to the divorce in Nevada; that a divorce not at the domicile gives no protection against a prosecution for bigamy in the state of the domicile\*. Nevada had not specifically decided on the question of domicile. e.g., If Mrs. Williams from N.C. had gone out to Nevada and contested the domicile of Mr. Williams, and if Nevada had held that Mr. W<sup>ms</sup> was domiciled in Nevada, that decree would be entitled to full faith + credit and N.C. would be precluded from

And see 340 U.S. 581, Johnson v. Muhlberg.

\*... although if the Dis in ct. be, him- self, may be precluded from question- ing the decree on the grounds of res judicata. Sherer v. Id, 334 U.S. 343, 68 S.Ct. 1087 (1948).

Arguehart v. Id,  
77 N.E. 7.



relitigating the issue of domicile.

NOTE: "If a w lives apart from her H, she can acquire a domicile of choice, and her domicile is determined by ordinary domicile of choice rules." Restat. of Conf. of Laws Second sec. 28 (current American rule).

So Williams (II) implies that in an ex parte divorce the spouse absent is not completely deprived of her say because she can contest domicile (and, therefore, jurisdiction) unless domicile was specifically litigated at the court of the divorce state.

Dr. J. said he is worried re the fact that N.C. in determining domicile, looked at facts AFTER the Nevada divorce to make its decision.

After Williams (II), Nevada would be bound to give f.f.v.c. to N.C.'s deter. of no domicile in Nevada. McDonald v. Roach (States of Wash. and Oregon were involved).

70 Yale L.J. 45, Clark, Stopped (re



*Sherrer v. Id.*

**Big Issue:** What effect does an ex parte divorce decree have on the incidents of the marital status?

*Eisenwein v. Eisenwein*  
(Pa.) 325 U.S. 279

Doctrine of Divisible Divorces =  
W sued H for support. Decree issued requiring H to pay \$X per wk. H then got ex parte divorce in Nevada after quitting his job and moving to Nevada.

The divorce was good. A year later, he returned to the state on the support decree was given. W alleged H owed a year's back support pymts. because the Nev. decree acted on the status and was in rem, and that the support obligation and decree were in personam.

The W won. Douglas, J., said that it was an interest of the state in preventing its citizens and domiciliaries from becoming public charges. So, H carried the status w/ him, but left the incidents behind. Thus, the "case of the unmarried W." Even F-2 (divorce state) would have



to give f.p.v.c. to the F-1 support decree if the question arose.

\* Vanderbilt v. Vanderbilt, 354 U.S. 416 (1957) — (Eisenstein decided in 1945 on same day as W<sup>US</sup> #1, & held that the status and its incidents are separable) The Nevada div. decree did not affect the N.Y. support decree of W even though N.Y. was not the marital domicile and even though the support proceeding was begun AFTER the Nevada div. action. — This shows that the incidents are entirely separate from the status although the incidents arise out of the status. The incidents were never before the Nevada Ct., even though the Nev. decree is valid. — Seems to carry Eisenstein case one big step forward: the incident of support survives the termination of the marriage by divorce. Wow!! The W's right to support is in personam and the status is in rem.



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N.Y. says its statute applies only on H got ex parte div. But, if W sought the div., she would be precluded from getting post-div. alimony.

Georgia

G.S. 50-11 (1961 Supp.) - re alimony after divorce: allowed?

Hudson v. Id., 344 P. 2d 295 (Oregon, 1960); Hopson v. Id., 221 F. 2d 839 (D.C. D.C.). \* Ga. - 94 S.E. 2d 725 - expressly repudiates alimony after divorce.

Ordinarily, support action is incidental to an action deciding the status. Now, some statutes (procedural) give courts powers to hear and decide support actions independent of status actions.

\* It may make a difference whether the H or the W is the moving party. (See N.Y. Stat. interpretation above.)

On H gets ex parte div., W could establish domicile in a state allowing survival of support duty, and, thereby, get post-divorce alimony.

Questions are raised under the U.R.E.S. Act, e.g., If W gets div. in "survival state" and H was not a party to it, and H was then domiciled in a "non-survival state", W may be able



to get support after div. under the U.R.E.S. Act.

**Quaere:** Should the cts. treat a foreign ~~domestic~~ ex parte div. differently than a domestic ex parte divorce? = The argument goes, yes, because the interest of the state in its domiciliaries is different than the state's interest in non-domiciliaries."

[Note, on H and W join in divorce, it is personal juris. over both parties, and since in personam rights of support could have been litigated, even if not, there would be res judicata of those rights being relitigated elsewhere.]

**Assignment** \* See *Alton v. Alton* (Chk.) (p. 784); *Grawille-Smith v. Id.*, 349 U.S. 1.  
— Read both!

In *Grawille-Smith v. Id.*, U.S. Supreme Ct. held the Virgin Islands Statute invalid, but the majority opinion did not pass upon the constitutionality of the statute under

the due process clause; rather the decision was based on ground that in enacting the stat., the V.I. Legis. Assembly had exceeded the power granted it by Congress.



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## Artificial Insemination -

Unrecog. at C.L. In the U.S., we began experimenting w/ A/I during the war (II). There are now about 100,000 babies born by A/I, and it's estimated that from 2000 to 1000 are born each year.

No states have stats. recog. A/I. Several bills have been intro., but none have passed.

Sec. 112 of N.Y. City Sanitary Code - all donors for artificial insemination must be given a complete and comprehensive phy. exam. IP This seems to be the ONLY legis. recog. of A/I in America.

## Three Types of A/I:

(1) A.I.H. - "artificial insemination by husband." This is on How cannot conceive due to some phy. incompatibility or incapacity, the H's sperm is artificially injected. - No legal problem here.

(2) C.A.I. - "confused A/I." On the H's sperm is weak & is mixed

C AI  
AD



"AID" IS RIGHT! (ha!)

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w/ other stronger sperm.

(3) A.I.D. - "A/I by donor."

Two big problems:

- (1) Has there been adultery?
- (2) After conception, what is the status of the child?

Re adultery, two questions:

- (1) Has y been adultery in civil sense suffi to justify div.?
- (2) Has there been criminal adultery?

23 U.S. Law Wk. 2308 -  
discusses the two cases  
below.

Hoch v. Hoch - Cir. Ct.  
of Cook Cty., Ill., in  
1945. - held, A.I.D.,  
if valid would not be  
a basis for divorce.

Doornbos v. Doornbos -  
(23 U.S. Law Wk., 2308)

- unreported in the  
Ill. Ct. reports. Said A.I.D.  
was okay, but that A.I.D.  
was adultery. - Ill. case  
too!

Under civil adultery, would  
H's consent estop him? No  
doubt, re crim. adultery H's  
consent is immaterial: he cannot  
consent to a crime anyway.

Bigelow, Mass. Sup. Ct., said in an  
old case that a H has an  
"inalienable right that ~~his~~ <sup>his</sup> ~~to~~ <sup>to</sup>  
bear to his bed ~~to his~~ <sup>to his</sup>  
blood and lineage."

In Hoch v. Hoch, the div.  
was granted anyhow because the  
judge said that he was not con-  
vinced w's insemin. was artificial.



So, these are the two Amer. cases on point, and both arise out of Ill. and both have reached diametrically opposite results.

Orford v. Id., 58 Dom. Law Rep. 251 (Canada) - H & W married in Canada in August. Went to England on honeymoon & during three months found that there was some phy. defect in one of them so that the marriage was never consummated. H called back to Canada on biz, and W returned later - pregnant. H v. W. for div. Judge did not believe W's allegation that H had consented to A/P. But, Judge held, even if H had consented, A/P was adultery anyway. So, support for child and W was denied.

(1948) Strnad v. Id., 78 N.W. 2d 390 - H & W granted divorce & they had had a child by A/P. Court granted H visiting rights. W objected on the ground that he



was not the father of the child because they had resorted to A/I. Ct. said "the child is not an illegitimate child." But, Ct. did not say what the child was. Further, ~~that~~ the child was sort of <sup>"potentially adopted"</sup> ~~semi-~~ adopted, and the H should have at least the same visitation rights as a foster parent if not as a natural parent under the circumstances. Ct. said it was the same as a child born out of wedlock on the parents subsequently marry, thereby legitimating the child. — This language is thoroughly confusing. The last part is not logical because the real parents of this child are the donor + W, and they did not marry. — And see 78 N.Y.S.2d 391

One German case found legitimacy of child on sole basis of presumption of legit. of child born during wedlock, and that that ~~that~~ ~~presump.~~ ~~is~~ ~~irrebuttable.~~



Most churches are strongly  
 opposed to A/E of any sort.  
 The N.Y. court is 4 Catholics  
 and 3 non-Catholics.

References

[See 39 N.C. L.R. 217 ; 35 Ind.  
 L.J. 143 ; 43 Amer. B. A. Jour.  
 1089.]

N.C.  
 and  
 to  
 by  
 of



## REVIEW

port.  
kolics

nd.  
Journ.

N.C., Ala., N. Mex., Ariz.  
and Tex. - allow div.  
to stationed servicemen  
by giving stat. presump.  
of domicile.

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F. j. v. c. applies to decisions before  
and from terr. cts. of U.S. Terr. cts.  
are bound ~~by~~ by the enabling stat.  
but they are not mentioned in the U.S.  
Const., Art. 4, sec. 1 (f. j. v. c. clause). See p. 76.

### RENUOI -

Restat. Conf. of Laws - Renuoi should be  
applicable <sup>only</sup> to land and divorce, Sec. 8.

Purpose of Renuoi is to get the same  
result regardless of the state de-  
ciding the case.

De J. does not recall ever hav-  
ing seen Renuoi applied in ex  
parte divorces.

### EQUITABLE CONVERSION -

Sec. 209 of the Restat. is up for  
reconsideration because it has created  
some real confusion. [See Toledo Society  
of Crippled Children v. \_\_\_\_\_]

Some people say eq. conv. should  
have nothing to do w/ confs. of law  
because it creates too many problems.



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Stock Certificates -

Gen., the cert. is treated as personalty (except S.C. = treated as realty by statute).

Two views:

(1) The cert. is merely evide. of the stock, and the stock is in the corp. So, the law of the domicile of the corp. should govern.

(2) The rights in the stock are embodied in the cert. because the rights cannot pass w/o the passing of the cert. Therefore, the law of the situs of the cert. should govern. Modern trend and better rule.

Dom. of corps. -

A corp. can only have one domicile — the place where incorporated.

Wheat v. Wheat

318 S.W. 2d 793 - (Ork)

Re stat. dispensing w/ don. in div. cases in favor of residence for a period is w/in due process clause but is w/o the protection of b.f. and c.

Trinity v. Sunshine Mining Co. (p. 307)

— Even though the Wash. decree was erroneous, Idaho had to extend f.f. & c. to it because it became a final judg. The Wash. judg. should have been attacked on appeal in Wash., not by writ of prohibition in a collateral action.



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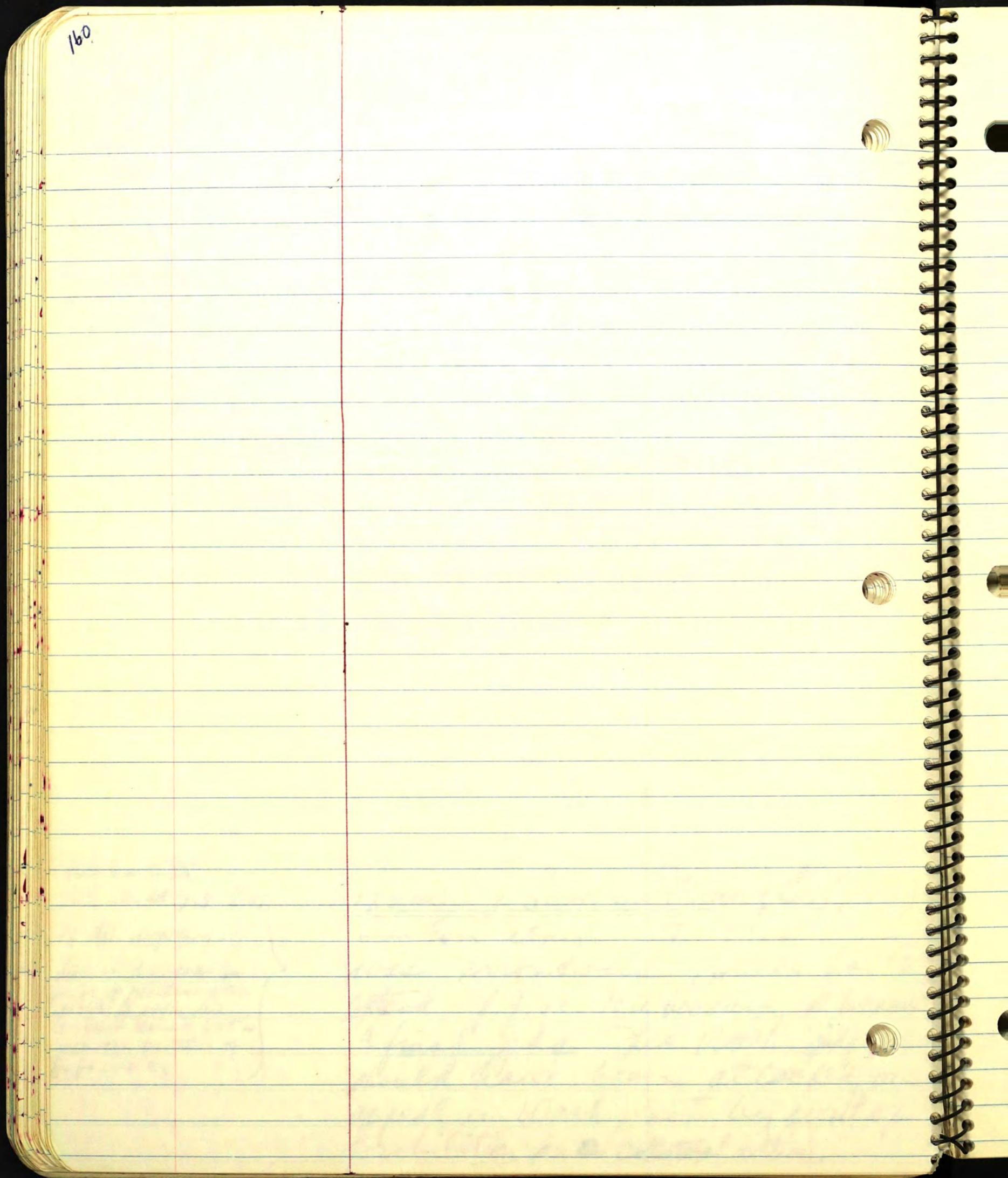
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