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Conflicts

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2. Sam Scamper, a resident of North Dakota, orally agreed on July 7, 1957 to sell to Sid Searcher, a resident of North Dakota, one hundred shares of stock in the Eureka Uranium Mine. The contract was entered into in North Dakota at a time when both parties were residents thereof. At that time the stock was selling across the counter for \$105 a share and Searcher promised to pay Scamper \$105.50 a share at the time of delivery on July 15, 1957. Although Searcher made tender of the purchase price, Scamper refused to deliver the stock, claiming that he had changed his mind and had decided to leave for Virginia and take up his domicile in that State. In January of 1959, the stock had a market value of \$115.25. From time to time Searcher wrote to Scamper, demanding that the stock be delivered to him, but Scamper ignored his letters. However, when Eureka, in January, 1959, was awarded valuable uranium rights by the United States government, its stock soared to \$195 a share. Searcher sued Scamper in Virginia to recover damages for breach of the contract. Assume that the State of North Dakota has a one-year statute of limitations for actions on all contracts. Scamper consults you and inquires whether Searcher may recover.

What would you advise?

(CONFLICTS) I would advise Scamper that Searcher cannot recover. In the absence of statute the law of the forum governs as to procedural matters, but V#8-23 reads, "Upon a contract which was made and was to be performed in another state or country by a person who then resided therein, no action shall be maintained after the right of action thereon is barred either by the laws of such state or country or of this State". See note to 1 on p.1 of Conflict of Laws in these Notes.

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10. Fran Farley and her husband, both domiciled in the State of New York, were lawfully married in that State. The husband later obtained an absolute divorce from Fran in New York in which cause Fran was personally before the Court, and the decree of divorce also lawfully provided that Fran was forbidden to marry again, except by leave of the New York Court.

Fran then established legal domicile in Virginia and on May 1, 1959, she entered into a marriage ceremony with Sam Secund, also a Virginia domiciliary. Secund had been granted an absolute divorce from his first wife by decree of the Virginia Court entered on January 5, 1959, on the ground that before that marriage, she had been convicted of an infamous offense, of which he had no knowledge. Fran neither received nor sought permission from the New York Court to remarry.

Secund and Fran soon found that their marriage was likewise an unhappy one and Secund instituted a chancery suit against Fran for annulment of their marriage, on the grounds that (1) their marriage was a nullity because of the New York Court's prohibition against remarriage by Fran; and (2) their marriage was a nullity because it had been entered into prior to the expiration of the statutory waiting period in Virginia.

How should the Court rule on grounds (1) and (2) of Secund's Bill of Complaint? (CONFLICT OF LAWS) (Domestic Relations) (1) The New York Decree forbidding Fran's remarriage is penal in nature and has no extra-territorial effect. Virginia has the right to determine the matrimonial status of its own citizens. So the court should rule that ground (1) is no cause for annulment. (2) The Virginia four month's prohibition applies only to divorces for reasons arising after marriage. Those granted for reasons arising before marriage are really annulments despite the fact they are designated by statute as grounds for divorce. So the court should also rule that this ground is no reason to grant Secund an annulment.

2. Motorist of Richmond owned a Cadillac sedan sold to him by Vendor of Richmond by means of a conditional sales contract to secure payment of \$4,000, which contract was duly recorded on the certificate of title. Son of Motorist, wishing to fish in Canada, and without the knowledge of Vendor, borrowed his father's Cadillac to make the trip. Motorist and Son agreed that Son was to be solely responsible for any accident. While passing through New York State, the most practicable route to Canada, Son negligently struck and seriously injured Pedestrian, who immediately sued out an attachment against the Cadillac and instituted an action against Son and Motorist for \$50,000 damages.

The New York law requires all conditional sales contracts on automobiles to be recorded with its Motor Vehicle Department in order to be valid as to third parties. The New York law also provides that one lending his car to another is liable for damages done by such other person, but in Virginia he is not liable.

(A) Vendor intervened in the attachment and claimed his debt as superior thereto. Is this claim sound?

(b) Motorist defended on the grounds that the New York law (1) as to the owner's liability for damages did not apply; and (2) was unconstitutional as depriving him of due process of law and the equal protection of the law. How ought each of these defenses be decided?

(CONFLICTS--Constitutional Law) (A) Yes. Vendor has done everything he was able to do in Virginia where the sale took place, and the car did not acquire a New York situs by merely being driven in or through New York.

(B) (1) The New York rule as to damages applies. The tort was committed in New York and the law of the place where the tort was committed determines Motorist's personal liability. (2) The law is constitutional. It applies to all cars being driven in New York so Motorist has equal benefits and burdens. See 289 U.S.253.

2. Henpecked and Love-Bird, residents of Virginia, entered into a separation agreement which, after settling their property rights, contained the following clause:

"Love-Bird agrees to proceed forthwith to effect legal proceedings in Virginia or elsewhere to procure a legal termination of the marriage relation heretofore existing between the parties."

Subsequently, Love-Bird instituted a suit for divorce in Nevada, in which suit Henpecked appeared by counsel and filed an answer. A factual finding of bona fide residence of Love-Bird in Nevada was had and she was granted a divorce. The above agreement was ratified, approved and made a part of the court's decree.

Differences have now arisen between Henpecked and Love-Bird with respect to their rights in certain real estate in Pittsylvania County, Virginia; said property having been included in the above-mentioned agreement.

Henpecked consults you as an attorney and wants to know whether he can have the portion of the divorce decree settling their property rights declared null and void by a Virginia court on the ground that the agreement which incorporated the property rights facilitated divorce and was unenforceable. What would you advise?

(CONFLICTS) I would advise that since there has been a judicial finding that there was a bona fide residence of Love-Bird in Nevada and since Henpecked appeared in that case Virginia must, give full faith and credit to the Nevada decree as the void contract is merged into a valid decree. Virginia's public policy must yield to federal constitutional requirements. See 196 Va.117 on p.1221 of the cases on domestic relations in these notes.

2. Bert Nuckols is a travelling salesman for a large corporation and has resided in the City of Roanoke for the past several years. In July of 1958, while on one of his mid-western tours, Nuckols was in Omaha, Nebraska, with nothing to do over the weekend. He telephoned his friend Harry Handsome and invited Handsome to drive with him as his guest on a social visit to Lincoln, Nebraska. The invitation was accepted. While Nuckols was driving on the trip, an automobile without warning suddenly pulled out of a side road, collided with the automobile of Nuckols and caused injury to Handsome. After making certain that Handsome was receiving proper medical care, Nuckols returned to Roanoke. To the great surprise of Nuckols, on June 19, 1961, he was sued in the Circuit Court of the City of Roanoke by Handsome who sought \$20,000 in damages as a result of the accident. Nuckols now seeks your advice.

Assuming that the law of Nebraska makes the operator of a motor vehicle an insurer of the safety of his guest passengers, and that such law further provides that an action for personal injury may be brought at any time within three years after the cause of action accrues, what defenses, if any, are available to Nuckols?

(CONFLICTS) Assuming that the phrase "such law" refers to the general law of Nebraska with respect to claims for personal injuries of all sorts, then the Nebraska statute of limitations is procedural. Matters of procedure are determined by the law of the forum, so Nuckols has the defense of the Virginia two year statute of limitations on action for personal injuries when sued in Virginia. See 200 Va. 173 in the Conflicts cases of these notes.

2. Red Heart and Sharp Spade, while in Virginia, entered into a gambling contract. Spade did not pay the gambling debt when it was due, and Heart sued Spade in the state in which Spade was a resident to recover the amount due under the contract. The court of Spade's state awarded judgment to Heart on the contract. Later Spade moved to Virginia and acquired some valuable real estate, whereupon Heart sued Spade in Virginia on the judgment that had been obtained in Spade's former state. Spade defends upon the ground that the former judgment was entered upon a claim unenforceable in Virginia, and that the Virginia court should not award judgment to Heart. Assume that a gambling contract is void in Virginia. How should the Virginia court rule?

(CONFLICTS) The Court should rule in favor of Heart. While the judgment may be wrong it is not void. It was rendered by a court of competent jurisdiction. The void contract was merged into a valid judgment and Heart's suit is on the valid judgment which the Virginia Courts must recognize under the full faith and credit clause of the federal Constitution. See Restatement Conflict of Laws #446 and Illustration 1.

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1 Dec. 1962.

1. Wayfarer, going along a public road in Lee County, Va., was attacked by McCoy, who would have killed him unless prevented by the immediate interposition of some superior force. Martin, out deerhunting, saw the situation and shot at McCoy in an attempt to prevent the murder, but unfortunately McCoy moved just as the shot was fired and the bullet missed him and wounded Hatfield, who, unknown to Martin, was on a deer stand across the State line in Kentucky.

Assume that by Virginia law Martin was justified in shooting at McCoy, but under Kentucky law he was not. Is Martin liable to Hatfield for damages?

(CONFLICTS) No. While it is ordinarily wrong to shoot another intentionally, Martin's conduct was privileged in Virginia as an exception to the general rule that such conduct is tortious. Conflicts Restatement #382(2) reads, "A person who acts pursuant to a privilege conferred by the law of the place of acting will not be held liable for the results of his act in another state." See Illustration 4 and comment C. Note:

There appears to be no authority on this point one way or another either for or against the Restatement view so that answers based on the theory that Martin constructively followed the bullet, or that the law of the State where the act took effect applied, are not necessarily wrong.

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2. Susan Potter instituted a chancery suit in the Circuit Court of Lee County against Simon Lester, seeking to compel Lester to specifically perform an alleged contract between them whereby he had contracted to sell to Susan the tract of land known as "Tri-State Acres." Lester answered, and the cause came on for hearing before the chancellor ore tenus. Susan offered proof that Lester had inherited "Tri-State Acres" from his late father; that the property contained 1,000 acres, most of which lay in Lee County, Virginia, but a few acres of which lay in Bell County, Ky., and a few lay in Claiborne County, Tennessee; and she introduced into evidence a written contract by which Lester agreed to sell the same to her for a consideration specified therein. She testified that on the date provided in the contract for the settlement she had tendered the purchase price to Lester, but that he had refused to sell, giving as his reason that he had changed his mind.

Lester then proved that the law of Kentucky provided for transfer of land only by the grantor and grantee going on the land together and jointly declaring transfer of the title thereto. He further proved that the applicable law of Tennessee for conveying was the same as that in Virginia. Conceding that he had no defense to the suit as it pertained to the Virginia land, Lester urged the court to dismiss the bill with respect to the Kentucky and Tennessee acreage.

Should the court specifically enforce the contract as to (a) the Tennessee land, (b) the Kentucky land?

(CONFLICTS) (a) The court should specifically enforce the contract as to the Tennessee land since equity in this case acts in personam and has jurisdiction over the defendant. (b) But it should refuse that remedy as to the Kentucky land as it will not generally compel anyone to do an act in another state, nor should it enter a decree it cannot enforce.

In the case of the Tennessee land a deed executed in Virginia can pass title to land in Tennessee, but no act done in Virginia can pass title to the Kentucky land. See Restatement (Conflict of Laws) §§94 (comment B) and 97.

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2. Brand, an Illinois citizen, was injured in Bath County, Va., by a motorist named Titus, a citizen of Kentucky. Brand brought an action in Kentucky against Titus for the recovery of damages for his personal injuries. The action was instituted in Kentucky more than one year after the accident and the statute of limitations for such action in Kentucky was one year. Upon a plea of the statute of limitations filed by Titus, the action was dismissed. Subsequently, but within two years from the date of the accident, an action was instituted by Brand against Titus, in the Circuit Court of Bath County to recover damages for his injuries. Titus filed a plea of res adjudicata. How should the Virginia court rule on the plea?

(CONFLICTS) The plea of res adjudicata is not good. The Kentucky Court did not pass on the merits of the case but only held that it could not be maintained in Kentucky because of a Kentucky procedural statute. Restatement of the Law of Judgments #49.

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10. By the law of one of the States of the Union (herein referred to as State X), a corporation is forbidden to hold an interest in land not actually used for corporate purposes. By the law of another State of the Union (herein referred to as State Y), a corporation may hold for any purpose land valued at less than \$1,000,000, but may not for any purpose hold land of a greater value. Blue Sky, Inc., a corporation of State X, but domesticated in State Y, holds land in State Y valued at \$600,000, and uses this land for the purposes for which it is chartered. The corporation has an opportunity to buy additional land in State Y valued at \$250,000. The directors of the corporation consult you as to the right of the corporation to make the purchase, advising that the corporation cannot use this land in the performance of its corporate purposes, but they are confident that it can hold the property for three or four years and then sell it at a substantial profit. How would you advise the directors?

(CONFLICTS) I would advise the directors that while the corporation had the power to own the land in State Y (as the law of the state in which the land is situated governs) it is not privileged to do so under its charter and hence might run the risk of losing its State X corporate rights and privileges if it made the purchase.

2. Brutus Appleseed is a resident of Bristol, Tennessee. On the evening of Nov. 14, 1963, his 17 year old son Johnny asked permission to use the family automobile so that he could take his date Sarah Cling, who lived in nearby Kingsport, Tennessee, to a dance to be held in Gate City, Virginia. Brutus gave his permission and Johnny got in the automobile, drove to Kingsport where he picked up Sarah and proceeded on toward Gate City. On entering Gate City, Johnny drove through a partly concealed stop sign and collided with a passing automobile, such collision causing Sarah to suffer a broken arm. Sarah has now brought an action against Brutus Appleseed in a proper court of Bristol, Tennessee, alleging that Johnny was guilty of ordinary negligence which caused her injury, that Brutus is liable to her as the owner of the family automobile, and seeking damages of \$5000.

In defense of the action, Brutus pleads (a) that while Tennessee recognizes the family purpose doctrine, such doctrine is not recognized in Virginia where the accident occurred, and (b) that while Tennessee recognizes that a host driver is liable to his guest passenger for only ordinary negligence, yet in Virginia where the accident occurred gross negligence must be shown. Are these defenses good?

(CONFLICTS) The defenses are good. They involve matters of the substantive law of torts. As to such matters the law of the place where the alleged tort took place governs. See Restatement Conflicts, #378, #384, #387. Note: An answer stating that Tennessee Law would apply on the theory that all contacts involved Tennessee persons has support of the revised Restatement and some recent non-Virginia decisions.

2. ^{D.C.} Goodbidder Construction Corporation, a Virginia corporation, was engaged in construction work in Tennessee pursuant to a contract with Owner. During the progress of the work, Sourgrapes Construction Company, a Virginia corporation with its principal office in Richmond, which had been an unsuccessful bidder on the job, committed certain tortious acts on the job site which directly interfered with Goodbidder's completion of its contract with a resultant loss to Goodbidder. Goodbidder sued Sourgrapes in the Circuit Court of the City of Richmond, and the evidence established the liability of Sourgrapes. Among other damages, Goodbidder claimed out-of-pocket expenses for wages paid certain workers who could only stand by during the trouble and not work, and Goodbidder also claimed punitive damages.

Under the facts presented, Tennessee law would allow recovery of the "paid wage" claim but Virginia law would not, and Virginia law would allow recovery of punitive damages but Tennessee law would not.

In this action, is Goodbidder entitled to recover (1) the "paid wage" claim and (2) the punitive damage claim?

(CONFLICTS) Either of the two answers below: (1) Since Goodbidder is suing for damages for a tort committed in Tennessee and since the law as to the measure thereof is substantive rather than procedural the Virginia Court should apply Tennessee Law and allow a recovery of the "paid wage" claim but not for punitive damages. Restatement Conflicts §§412 and 421, or (2) In accordance with recent thinking the law of the state where the major contacts are involved should apply. Here we have a Virginia plaintiff, a Virginia defendant, and a Virginia court. No one in Tennessee is affected. Hence Virginia law is applicable and Goodbidder can recover punitive damages but not the "paid wage" claim.

2. Ambitious and Homebody were married and lived very happily in Louisville, Ky., until Glamorous cast her sultry eyes in the direction of Ambitious. At first Ambitious trod the path of rectitude, but finally succumbed to the enticements of Glamorous and left with her for Richmond, Virginia, where, strange to say, Glamorous owned extensive properties. Homebody consults you as to her right to sue Glamorous for alienating her husband's affections. Upon looking into the matter you discover that the only locality in which you can obtain service of process on Glamorous is Richmond, Virginia.

Assume that by statute Virginia, "in recognition of the changing social and legal status of women, and of the broad social trend of opinion, and finding that the abolition of such actions would tend to improve the public morals and serve the best interests of the State," had abolished such actions. Also assume that such actions are still recognized by the laws of Kentucky. How ought you to advise Homebody? (CONFLICTS) She should be advised that a Virginia court will refuse any remedy which it is against the public policy of this Commonwealth to recognize. A Kentucky plaintiff should not have a greater right than a Virginia plaintiff in Virginia courts. See 136 P.2d 116 and 88 Va.971. What Virginia's public policy is, is substantive law, and not a mere matter of procedure.

665. Section 1, Dec.1,1965.

1. Edna and Eddie, residents of Virginia, decided to go their separate ways after having been married 10 years. Not bothering about a divorce, Edna moved to an adjoining county in Virginia, where she lived in adultery with another man. Eddie was thereafter killed in an automobile accident in North Carolina. The driver of the other vehicle, Donald, was also a resident of Virginia.

An action was instituted in a proper court in Virginia by the personal representative of Eddie's estate against Donald under the North Carolina death-by-wrongful act statute. Donald defended on the ground inter alia that the action could not be maintained because the North Carolina statute specifically provided that a spouse living in adultery could not receive or share in the recovery under the death-by-wrongful-act statute. Moreover, under the North Carolina statute there were no other persons who could receive the recovery in the instant case. The Virginia death-by-wrongful-act statute does not preclude a widow living in adultery from sharing in a recovery. Should the defense be sustained?

(CONFLICTS) Yes, the defense is valid. Edna would have no rights but for the statute and the statute(North Carolina Death by Wrongful Act Statute) gives her none.

9. ⁵⁶⁶In January of 1960, Miles Stone, an elderly widower of the City of Fredericksburg, moved from that City to Charleston, South Carolina where he established his domicile. During the latter part of 1965, Stone married Sarah Stevens, a young lady of Charleston. Stone died during the month of April, 1966, and there was found among his effects a paper written entirely in his own handwriting, and reading as follows:

"December 25, 1965

"I hereby devise and bequeath my farm known as Redacre lying outside the City of Fredericksburg, Virginia, and all household furniture stored thereon to my beloved wife Sarah. All the rest and residue of my property I devise and bequeath to my son Herman, my only child.

"Witness my hand and seal.

"Miles Stone(Seal)"

A controversy has arisen between Sarah and Herman in a suit in the Circuit Court of Spottsylvania County, Virginia, wherein each claims the right to receive both Redacre and the household furniture stored there. Assuming that the law of South Carolina does not recognize a holographic will as a valid testamentary instrument, and that, under the intestate laws of South Carolina, children of a decedent are the first class entitled to receive both real and personal property, which of Sarah and Herman are entitled to receive both real and personal property, (a) Redacre, and (b) the household furniture?

(CONFLICT OF LAWS) Realty should pass under lex situs and therefore the holographic will is valid so as to pass Redacre to wife, Sarah. Personalty passes under the laws of the domicile state at time of death and therefore the holographic will, invalid under South Carolina law, cannot give her the household furniture and the same will pass to Herman under the intestate laws of South Carolina. Restatement of Conflicts, #249, #306; Rice, 4 Call. 89; Smith, 122 Va. 341; 171 Va. 327.

2--Conflicts ^{D66}

Horace Bailey, a citizen of and domiciled in State X, was bequeathed the sum of \$50,000, in securities for life by his uncle, a citizen of and domiciled in State Y. The uncle's will gave Bailey the right to appoint by will the sum bequeathed to him. One year after the uncle's death Bailey died, domiciled in State X, and leaving a paper purporting to be his will. That paper made no mention of the securities bequeathed to him for life, but it did contain a general residuary clause. By the law of State X, the paper purporting to be Bailey's will was ineffective as a will and was denied probate. Under the law of State Y the paper by Bailey was valid as a will, and the residuary clause was effective as an exercise of the power of appointment. The residuary legatee, named in the paper purporting to be Bailey's will, commenced a suit in State X against Bailey's administrator to recover the securities that had been left to Bailey for life. May he recover?

The residuary legatee will recover as the law of State Y governs. An appointment by a will which conforms to the law of the donor's domicile at the time he created the powers, though not valid as a will because not conforming to the law of the donee's domicile, is a valid exercise of the power of appointment. The appointor-donor is seen as merely the instrument by which the original testator designates the beneficiary, and the appointee takes under the original will and not from the donee of the power. See Restatement of Conflicts § 287 f

10. ³⁶⁷ Scrounge was in the salvage business in Virginia and had for sale fifty rare cuspidors from a famous sporting house. On October 10, he wrote Wheeler of Rome, Georgia, and Delk of Atlanta, Georgia, identical letters offering for sale to each one twenty-five cuspidors at a stated price and advising that his offer could be ^{accepted} by their dating and signing the letter of offer and mailing it back to Scrounge. Both Wheeler and Delk dated and signed the letters on October 12. Wheeler mailed his letter direct to Scrounge, and Delk sent his to his branch office in Virginia and Delk's agent delivered the same to Scrounge, both being received by Scrounge on October 14. Meanwhile, Scrounge had disposed of the cuspidors under such circumstances that under Georgia law, he would be liable for a breach of contract but under Virginia law, he would not be liable for a breach of contract.

Is Scrounge liable to either Wheeler or Delk or to both?

(CONFLICTS) The answer preferred is that Scrounge is liable to Wheeler as the contract with Wheeler was accepted in Georgia and Georgia law governs as to the existence of a binding contract. Conversely, Scrounge would not be liable to Delk because Delk's acceptance took place in Va. and under Va. law he would not be liable.

Note: An answer considering the Conflict of Law Rules applicable to the place of performance is worthy of substantial credit. Under this approach it would appear that Va. was the place of performance and that Scrounge is not liable under either contract by reason of Va. law being applicable. 16 Am.Jur.2nd #36 & 37.

10. ^{D67} Decedent, a resident of Maryland, was killed in an automobile collision in Virginia when his car was struck by one driven by Defendant, a resident of North Carolina. Assume that contributory negligence is not a defense in Maryland and that in North Carolina it may be shown in diminution of damages only, that the action for wrongful death was brought in North Carolina, and that Decedent was guilty of negligence proximately contributing to cause the accident.

What effect, if any, would the negligence of Decedent have on the right of recovery?

(CONFLICTS) Since the place of the tort was Virginia, under traditional rules of conflicts of law Virginia law would govern this case. Under Virginia law contributory negligence proximately contributing to cause an accident will act as a complete bar to the wrongful death claim by decedent's administrator. See Rest. #385 and the cases cited in 1965 supplement.