Conflict of Laws

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CONFLICT OF LAWS

Understand the following terms: 1) Lex fori--law of the forum (2) Lex loci sitae--law of the place where the subject matter is situated (3) Lex loci contractus--law of the place where the contract was made (4) Lex loci solutionis--law of the place of performance.

1. On January 1, 1910, A executes his note in Virginia payable on demand to B. The statute of limitations in Virginia on such a note is five years. On January 1, 1913, A moves to California where the limitation on such a note is three years, and B thereupon sues him in California. A pleads the California statute of limitations. Can he do so? Give reasons.

Yes. Here the statute of limitations is a matter of remedy rather than of substantive law. As to procedural matters the rule is that the lex fori governs. Note VI 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."

2. A New York corporation, through its Virginia agent, lends to a citizen of Virginia the sum of $1,000. The bond evidencing the loan is executed in Virginia, and secured by a deed of trust on real estate in Virginia. The bond is payable to the New York corporation at its office in the city of New York. Under the Virginia law the loan was a valid one, but under the New York law it was void because of usury. Which law governs and why?

New York law governs. Generally as to capacity of parties and matters pertaining to the existence of a contract the lex loci contractus governs. As to questions arising about performance the lex loci solutionis governs. Usury falls in the second class.

3. A childless couple domiciled in a State which permits legal adoption adopts a child in accordance with the law of that State. Subsequently the adopting parents and child remove their domicile to Virginia, and the parents are both killed in the same railway accident. They both die intestate, the father owning land in the State where the adoption occurred, and the mother owning land in Virginia. Can the adopted child inherit the land in both, or either State?

In both states. Generally as to status (married or single; legitimate or illegitimate; adopted or not adopted) the laws of the country where the status first was determined govern. Since adoption is not contrary to any public policy here, Virginia would recognize the status of adopted child if so recognized in the State where the adoption took place. As regards the descent of land the law of the State where the land was situated (lex rei sitae) would govern, and as our law would give the land to an adopted child the child would get the Virginia land.

4. W, a married woman, living in North Carolina, where the common law disabilities of married women prevail, comes to Virginia and here purchases goods, contracting in Virginia to pay for them. Then sued in Virginia for the price of the goods, she pleads the invalidity of the contract under North Carolina law. Effect of this defense?

The contract was made in Virginia. As to capacity of parties the lex loci contractus governs. Hence the defense is not good.

5. P, of Virginia, dies seized in fee of land in Tennessee. A duly qualifies as P's administrator in Virginia, but not in Tennessee. By Tennessee law the administrator is empowered to pass title to all property, real and personal of the deceased. A makes a deed in Virginia conveying the Tennessee land to C. Your client wishes to buy the land from C. Should you pass the title?

No. Matters of administration of land of deceased are governed by the law of the place where the land is situated. The statute of Tenn. means that an administrator who is an officer of Tenn. courts may pass title to Tenn. real estate. Hence an ancillary administrator would have to be appointed in Tennessee.
CONFLICT OF LAWS (continued)

A State statute enacts that if a person lends money on usurious interest, the
borrower may recover from the lender three times the amount of the entire interest
on the loan. A loan money to B in that State for two years at usurious interest,
and at the end of that time B pays A the principal and the full interest agreed upon
(amounting to $250). Six months later B sues A in Virginia for three times the in-
terest paid, or for $750. Is the interest maintainable and why?

The question involved here is whether this is a penalty. It is a well settled
rule that one country will not enforce the criminal or penal laws of another coun-
try. The U.S. Supreme Court held that this was not a penal law since the amount re-
covered goes to an individual. Taking this view the action would be maintainable.
See 15 C.J. 781, 775.

As to capacity to do or to performance of it

7. A draft is drawn in Chicago upon parties in St. Louis and is payable in St.
Louis, but the agreement to accept it when presented is made in Chicago. Suit is
brought in Illinois. Does the Missouri or Illinois law govern? Why?

Since the contract is to be performed in Missouri the laws of that state deter-
mine all questions about performance. Since made in Illinois, questions of capacity
of parties should be determined by the laws of that state.

Presumptions as to another state's unwritten & statutory law

8. In the trial in this State of a case founded upon a cause of action arising in
another State, what is the presumption? (a) As to its unwritten law? (b) As to
its statute law?

(a) That it is the same as that of the lex fori (b) There is no presumption
as to statutory law.

As to will affecting real estate, § 617, Full, Faith & Credit clause

9. A testator lived in North Carolina, but owned land in Virginia. His will was
declared void for undue influence in a court in North Carolina. It was offered for
probate in Virginia, and was shown to be executed with formalities required by our
law, and no evidence of undue influence was shown, but the party objecting to proba-
ble his cause upon a duly authenticated copy of the order in North Carolina re-
fusing the probate. That order should the Virginia probate court have entered in
the case.

It is generally held that where the title to real estate is affected the judg-
ments of foreign courts are not conclusive as each State has jurisdiction to deter-
mine questions in relation to its own real estate. The full faith and credit clause
of the U.S. Constitution was not intended to deprive the States of this power.
Hence the will should be admitted to probate in Virginia.

Void marriages valid in another state

10. A and his son's widow, both residents of Virginia, decide to marry and go for
that purpose to Raleigh, N.C. Assume that the North Carolina law allows such a mar-
rriage. They are married there, and at once return to their home in Virginia and
live as man and wife? Is their marriage legal?

No. V29-40 provides that the parties shall be as guilty as if the marriage had
been in this State, and Vp. 5 makes such marriages void from date of decree of nu-
licity or from date of conviction under V29-40. Compare this with case where persons
under 21 years of age leave State to marry.

Exception to rule - § 617, Full, Faith & Credit clause

11. Are there any exceptions to the rule that a contract valid by the law of the
place where made is valid everywhere?

Yes. If the contract violates the public policy of this State it will not be
valid here. Example—Contract to marry between persons of Negro and Caucasian races

5/1 here is a matter of right and remedy

12. A person is ill in West Virginia by the negligence of a Virginia corporation.
Both West Virginia and Virginia have statutes on the subject. Can suit be main-
tained in Virginia? If so, what statute governs?

Since such actions are not contrary to our public policy there is no reason why
our courts should not entertain the suit. It would apply the West Virginia statute
for that is the statute that measures the statutory right. Note that where, as
here, the statute of limitations is a matter of right and not of remedy the statute of
limitations is a matter of right and not remedy the statute of the foreign State
should govern. Burks 3rd edition, p. 152 #89.
13. In what cases do foreign laws prevail in our own tribunals?

By what is known as comity Virginia gives effect to the substantive laws of other jurisdiction (not penal or criminal, not in violation of its public policy or statutes, not affecting title to Virginia real estate, and not discriminating against its own citizens) wherever these rights arose out of such foreign laws, and justice requires such action.

Note 1: Everyone has a domicile, and only one domicile. It determines allegiance, distribution of personal property, and is often important in connection with problems of taxation, divorce, citizenship and the rights incident thereto. Domicile is the fixed place where one expects to live. In order to change domicile two things are necessary (1) a physical act of moving from the old to the new (2) an intention to abandon the old for the new. Otherwise the old remains the domicile.

Note 2: Again, in the distribution of real property at one's death the lex rei sitae governs; in the distribution of personal property, the law of the domicile which the testator or intestate had when he died.

Attachment of personal property in Va. v. Mortgage of same recorded in N.C.

14. Jones, a contractor residing in North Carolina, gives White a mortgage on a large number of mules and other personal property then situated in North Carolina, where the mortgage was executed. The mortgage was valid under the laws of North Carolina and was properly admitted to record in Rockingham county that State. Afterwards the property covered by the mortgage was removed to Henry county, Va., but the mortgage was never properly admitted to record in Henry county. The property covered by the mortgage was attached in Henry county by Smith, for a debt which he held against Jones. Under the present law of Virginia, has the attachment or mortgage priority?

The attachment has priority. W§55-99 provides that no mortgage or deed of trust upon personal property in another state shall be a valid incumbrance upon said property after it is removed into this state as to purchasers for valuable consideration without notice and creditors unless and until the said mortgage, or deed of trust be recorded according to the laws of this state.

Jurisdiction for divorce

15. Bryan, a wealthy citizen of the State of Maryland, lends large sums of money, on notes secured by deeds of trust on real estate in Fauquier county, Va. He has no agent in Fauquier county. The examiner of records for Fauquier count has the debts secured by Mr. Bryan's deeds of trust listed for taxation. Can the Virginia authorities collect the tax?

"The situs of a debt for purpose of taxation is the domicile of the creditor. The creditor cannot be taxed in the place of the domicile of the debtor unless he resides there, nor has the legislature power to tax choses in action held by non-residents. 9 Dig. 458." (unless such choses in action have a business situs in the taxing state).

16. A man marries a woman in New York, but never lives with her. She remains in New York, and he deserts her, going to Connecticut and remaining there long enough to acquire a domicile. He sues in Connecticut for a divorce, serving process by publication. The wife afterwards sues in New York for a judicial separation and obtains personal service. Can the husband vouch his Connecticut decree in defense?

Since by hypothesis H actually acquired a domicile in Connecticut that state had jurisdiction to determine his status and all other states would be bound by the decree at least as to the validity of a new marriage. If the husband did not have a bona fide domicile in Connecticut the decree need not be recognized by other states because of lack of jurisdiction. The fact that the Connecticut court took the case is not conclusive, but does create a rebuttable presumption that it did have jurisdiction. But even in this case if the wife contests the suit she will be bound by the result thereof.
17. Vendor and vendee do business in different States. Vendor offers certain goods to vendee by mail, and vendee accepts by mail, in which State is the contract made?

In vendee's state as posting the letter of acceptance was the last act necessary to the creation of the contract and that act took place in the vendee's state.

Note: If by telephone contract (according to Restatement of Contracts #65) is made in the state where the words of acceptance are heard on the analogy of contracts made by parties talking face to face (and not where words of acceptance are spoken on the analogy of post and telegraph.

18. A married woman in Ohio executed a mortgage on land in Indiana. In a suit on the mortgage her capacity to execute it is questioned. Is her capacity to be determined by the Ohio or Indiana law?

As a general rule the formal requisites of a transaction are governed by the law of the place where it occurs. However the formal requirements of instruments affecting the title to property are usually so closely interwoven with the essential requirements of such instruments that in the case of deeds of real property the law of the land where the property is situated governs. See 12 C.J. 480-481.


Yes. The court of the forum applies its own statute of limitations in the absence of statute to the contrary, wherever, as here, it is a matter of procedure and not a matter of right.

20. Harvey Brown, of New York, is killed in Charleston, W.Va., by the negligence of the C.&O. R.R. Co., leaving a widow and children. John Hanks qualifies in New York as his executor, and at once institutes a $30,000 damage suit against the R.R. Co., in Richmond, Va., (where is the principal office of the Co.), for the death of his testator. The law of West Virginia requires such a suit to be brought by the widow or children, the law of Virginia permits the personal representative to bring it. The law of which State should control?

Since this is a right created by statute and exists solely because of the West Va. statute the law of the place where the injury is inflicted should determine (1) in whose name the action should be brought (2) the time in which it should be brought (3) who are the beneficiaries (4) the measure of recovery (5) distribution of the damages and (6) questions touching the effect of contributory negligence, fellow servants, etc.

21. New York has abolished the distinction between law and equity procedure. Virginia has not. C., of Richmond, enters into a contract with D, which is made in New York and to be there performed. D afterwards discovers that C obtained his consent to the contract by fraud and institutes proceedings in Richmond, Va., to annul the contract on that ground. Should the method of procedure follow the New York or the Virginia law?

Procedural matters are governed by the law of the forum, in this case, Virginia.

22. A negotiable note is executed in Virginia, payable at the Broadway National Bank, New York, and by that bank it is discounted. In a suit brought in Virginia against the maker, what law generally will govern as to matters affecting the validity of the instrument?

Headnote 1 to Poole v. Perkins 126 Va. 331, 101 S.E. 240, "Every contract as to its validity nature, interpretation and effect--the right, in contradistinction to the remedy is governed by the law of the place where made, unless to be performed in another place, when it is governed by the law of the place of performance." In the
CONFLICT OF LAWS (continued)

23. A resident of Montana owns real estate in Virginia. He makes a will (not holograph) in Montana and executes it there in accordance with the laws of Montana. The will, however, is not executed in accordance with the Virginia statute on the subject. Will it pass title to the Virginia real estate?

No. instruments that affect title to land must satisfy the law of the place in which the land is situated.

24. "A", a citizen of Virginia, goes to Florida and there borrows from a resident of that state $5,000.00, at ten per cent. interest, which is a valid rate of interest in Florida. He gives a deed of trust upon real estate in Virginia to secure the debt and interest. Upon suit brought in Virginia to foreclose the mortgage "A" pleads usury. How shall the court decide?

In mortgages and deeds of trust the debt is the principal thing and the mortgage or deed of trust is taken for security and is regarded as a mere incident of the debt. As this debt is payable in Florida and is a valid debt there, Virginia will treat the debt as valid, and as the debt is valid it is treason for foreclose the security if it is not paid.

26. S, a citizen of Iowa, dies in that State, leaving personal property worth $2,000. He leaves a mother, one brother and three sisters, all of whom live in Virginia. Under the laws of which State will his estate be distributed?

Since the estate consists of personal property it will be distributed as per the laws of the state in which deceased was domiciled at the time of his death, in this case, Iowa.

29. Boyd and William Holmes, of Winchester, Va., agree to purchase jointly a farm in Jefferson county, W. Va. Boyd goes there and buys the farm and takes a conveyance of it in his own name. Holmes brings suit in the Corporation Court of Winchester to compel Boyd to convey a half interest in the farm to him. Has the court jurisdiction?

Yes. Equity here is acting in personam and it has jurisdiction of defendant. Its decree does not act directly on land in another state (which it cannot do) but on the person of the defendant. Note that if this had been a partition suit (which is a proceeding in rem) the Va. court would not have had jurisdiction.

Proof of Testator's Domicile

27. A will is probated in Maryland. In a subsequent proceeding in Virginia to construe the will, it is open to the parties to offer other proof of testator's domicile, or is the probate of the will in Maryland conclusive as to his domicile?

Headnote to Smith v. Smith, 122 Va. 341, 94 S.E. 777. #4--Where a will had been probated many years previously in an orphan's court in Baltimore, with ancillary probate in Va., its validity could not be questioned or attacked, as full faith and credit must be given to the judgment of that court. #5--The probate of a will is not evidence in a collateral proceeding of the domicile of the testator, and other tribunals are not precluded from inquiring into the real domicile. #7--In a suit for the construction of a will, evidence held to show that the testator, dying in Baltimore, and describing himself of that city, was domiciled in Va. at his death.

29. A domestic corporation acquires stock in a foreign corporation. Is the liability of the domestic corporation as stockholder to the creditors of the foreign corporation regulated by the State of the domestic or the State of the foreign corporation?

The organic law of the corporation, as contained in its charter or a general statute under which it is created, controls as to the nature and extent of the liability of its stockholders to its creditors, and hence where a domestic corporation becomes a stockholder in a foreign corporation the liability of the domestic corporation to creditors of the foreign corporation must be determined by the laws of the foreign state. See 14 C.J. 991-992.
29. A citizen of Virginia, while temporarily in North Carolina, is killed by negligence. In suit brought in Virginia, does the Virginia or North Carolina death statute govern? Since the wrong was done in North Carolina all matters of substantive law with respect to the wrong should be controlled by the law of North Carolina.

30. Plaintiff sues in Massachusetts and recovers a money judgment for breach of covenant of warranty in a deed given for land in Florida. The legal interest rate in Florida is 8%, in Massachusetts, 6%. Which rate should the judgment bear? The cause of action is merged in the judgment and hence extinguished. The only obligation left is the Massachusetts judgment and the law of Massachusetts determines the interest rate on the judgments obtained in its courts. Hence the 6% rate should prevail.

31. Henry Jones, after the death of his wife, falls in love with his mother-in-law. Both are residents of Virginia, where a marriage between them is prohibited. They go to Maryland, where such a marriage is permitted, are there married, and then return to their homes in Virginia, where they live as husband and wife. Is the marriage recognized in Virginia as legal, and reason? V#20-40: any persons, resident in this state, and within the degrees of relationship mentioned in V#20-38 shall go out of this state for the purpose of being married, and with the intention of returning, and be married out of it, and afterward return to and reside in it, cohabiting as man and wife, they shall be as guilty, and be punished, as if the marriage had been in this state. V#20-45 provides that all marriages which are prohibited by law on account of consanguinity or affinity between the parties shall be void from the time of the conviction of the parties under V#20-40 (supra) or from the time of being declared void by a decree of divorce or nullity.

32. R was domiciled in Norfolk, Va., and there contracted during his last illness hospital, drug and medical bills of more than $50.00 each. He was also indebted to the Union Bank of Washington, D.C., on a note for $500. He died intestate, leaving personality in Washington, administration of which was there granted. By the law in force in the District of Columbia all debts are of equal dignity in administration, but by the law of Virginia, where R was domiciled, debts incurred in last illness for hospital, drugs, and medical attention up to $50.00 are preferred. The assets in the hands of the administrator are insufficient to discharge all debts. What law should govern?

Harrison 317--"It is also to be noted that the order of priority for the payment of debts is fixed by the law of the state of the administrator, and not by the law of the domicile." This is because the rights of the creditors are fixed by the law of the forum and not by the law of the descent or distribution. The right of the creditor is paramount to the law of distribution. Hence the administrator in Washington should pay creditors pro rata and the administrator in Virginia should give the statutory preferences.
CONFLICT OF LAWS

187 S.E. (N.C.) 588

X of N.C. bought a saw-mill and equipment. He gave back a purchase money chattel mortgage. This mortgage was recorded in N.C. X brought the property into Virginia. Y purchased it, and took it back to N.C. In a contest between the chattel mortgage and Y:

Held: that Va. law governed and since chattel mortgage was not recorded in Va., by V55-07 Y got a good title as against Chattel mortgages; also that the statute was constitutional.

CONFLICT OF LAWS

193 S.E. 534

P of Virginia is the beneficiary of a trust in N.Y. P.V. levies an income tax on the trust income in New York. Is P also amenable to the Virginia income tax on the same income?

Yes. Virginia is not taxing property whose situs is in N.Y. (which she cannot do) but is levying a tax upon P measured by the net income received and enjoyed by her here. "She is subject to this tax in Virginia because she resides and is domiciled in this State, because she enjoys the protection of the laws of this State in the receipt and enjoyment of this income, and because she should bear her proportionate part of the expense of the government which affords this protection to her."

CONFLICT OF LAWS

198 S.E. at p.918

"It seems too generally settled, certainly in Virginia, that the (1) operative effect of a will and (2) its construction as to personality, is governed by the law of the testator’s domicile, but that (3) as to the disposition of real estate, or (4) the creation of any interest therein, the law of the place where the property is situated at the time of the testator’s death governs — that is the lex loci situs."

"It is a principle firmly established that to the law of the state in which the land is situated we must look for both the rules which govern its descent, its alienation and for the effect and construction of wills and other conveyances.

CONFLICT OF LAWS

189 A.Pa. 492

X of Pa. owned real estate in Richmond. He mortgaged this real estate to Y of Va. Later X desired an extension of the mortgage. Y agreed to this extension provided Mrs. X would sign the renewal note which she did as surety for her husband. The renewal note is payable in Richmond.

By the laws of Pa. a married woman cannot be surety for her husband. Is she liable?

Held: By V55-35 a married woman may be surety for her husband. "As the agreement related to real estate in Virginia and was delivered, accepted and to be performed in that State", Virginia law governs.

CONFLICT OF LAWS

3 S.E. 2d 190

X bought a truck in Carolina and gave back a chattel mortgage which was properly recorded in S.C. X came to Virginia to get some money. When he arrived the truck was attached by a Va. creditor, Who has priority?

Held: The Chattel Mortgage has priority in spite of Code 5197 which reads in part, "No mortgage, deed of trust or other encumbrance created on personal property which is located in another state shall be a valid encumbrance upon property after it is removed into this State as to purchasers for value without notice and creditors unless and until the said mortgage... be recorded according to the laws of this state in the county or corporation in which the said property is located in this State."

The truck was not removed to this State. It has not gained a situs here. Renewal means more than just bringing in. It means a re-establishment. A car in transit has not been removed into Va. (135 S.E. 655).

But a sawmill set up and operated in Va. after having been brought from N.C. has been removed here. (187 S.E. 588)
CONFLICT OF LAWS

DOMESTIC RELATIONS

Mrs. "M" married L. Later she left L and married T without divorcing L. Both marriages took place in West Virginia. A bigamous marriage is not void in West Virginia but only voidable from date of decree avoiding same. Mr. and Mrs. "M" later moved to Virginia where T was killed while at work. Mrs. "M" claimed workmen's compensation. Held: A bigamous marriage violates our fundamental public policy and hence need not be recognized in Virginia. One State cannot force its marriage laws on another state. Otherwise a state would be deprived of the very essence of its sovereignty, the right of supremacy within its own borders. The judicial proceedings of West Virginia are entitled to full faith and credit. But this is not a case of faith and credit. It is an attempt to apply the law of West Virginia in the courts of Virginia, in substitution for the law of Virginia. The law in question is repugnant to our statutes, and its substitution for our statutes would be an invasion of the sovereignty of this state.

General Rule: A marriage valid where celebrated is valid everywhere.

Exceptions: (1) Farrings dooms contrary to the laws of nature as generally recognized in Christian countries such as polygamous and incestuous marriages.

(2) Farrings positively forbidden by statute because contrary to local public policy such as marriages between colored people and white people in Virginia.

CONFLICT OF LAWS

EQUITY in payment of debts and in title.

H married W. After the marriage H lent W $15,000 which W spent in improving his real estate at Virginia Beach. H also owned real estate in N.C. The Virginia real estate amounted to $105,310 or 70% and the N.C. real estate to $45,330 or 30%.

H died intestate and without issue leaving W, and brothers surviving. Under N.C. law W gets dower in one-third; under Va. law she gets a life estate in the whole subject to the rights of creditors as to the excess 2/3. W claims that the N.C. land should be made to pay off 50% of the debt due her. The heirs claimed that since the money was spent in improving Virginia land, and (b) Since a Virginia court cannot charge N.C. land, that the N.C. land is exempt.

Held: The wife, as a creditor, should be treated as any other creditor and that equity should require 50% of the debt to be paid by N.C. land and 70% paid by Va. land. It is immaterial what H did with the money.

Courts in many ways, through action upon or constraint of the person, affect property in other states, and by requiring the N.C. heirs to pay their own share of H's debt to W as a condition precedent to sharing in the distribution of the Virginia land justice can be accomplished.

CONFLICT OF LAWS

DOMICILE in va: inheritance tax.

Miss H once lived in Richmond. About 40 years ago she left for Rome, Italy. She liked it there much better than in Richmond and made only a few short visits back to Richmond. She lived in an apartment in Rome. Then she visited Richmond she registered as Miss H, Rome. The State Pluritas Bank handled her estate for her which consisted of investments in the United States. When she last left Richmond she made a will which described herself as Miss H of Richmond. When she left last she said she would probably never return. She died in Rome in 1958 and was buried there. She was always an American citizen but had no pride in that fact. Is Virginia entitled to an inheritance tax on her intangible property? Held: No. Domicile not citizenship, governs. She has given up her Virginia domicile for one in Rome. (On page 631 there is a concise discussion of the difference between domicile and residence.)
sold a truck on the conditional sales plan. The contract was made and recorded in Georgia. D used the truck to transport oysters from Virginia to Georgia. The truck had only a Georgia license. Since it visited Virginia on business more than 4 times a month our statutes required a temporary registration, and if there be no such temporary registration then the car is to be regarded as any other Virginia car. In the case of Virginia cars the conditional sales contract need only be "recorded" on the certificate of title, and if not on the certificate of title the rights of levying or attaching creditors are superior.

Held: That an attaching creditor of the Georgia car while the car (truck) was in Virginia had priority over the conditional vendor who had properly recorded in Georgia. It was argued that this holding would work a great hardship on innocent licencors. "The obvious reply is that this is one of those risks a licensor necessarily assumes when he lends money on a motor vehicle which every one knows may be frequently removed from one state to another."

CONFLICT OF LAWS

J, a resident of Virginia, was driving his car in the City of D in Maryland and in a snow storm. His windshield became obscured and he stopped his car in the travelled portion of the highway, got out, and was wincing the snow and ice from the windshield when 5, also a resident of Virginia, negligently ran into J's car. J was killed. He left a widow and five children.

Under the Maryland death by wrongful act statute the State of Maryland brings the action. There is no limit upon the amount that may be recovered. Maryland courts do not allow suits in Maryland under death by wrongful act statutes of other states. The State of Maryland sued 5 in Accomack County in Virginia. C demurred claiming (1) that the Virginia court had no jurisdiction and (2) that Plaintiff's declaration showed on its face that deceased was born by his contributory negligence.

Held: The action was transitory and could not be instituted wherever Defendant could be found at common law. There is just as much reason to allow an action in Virginia upon a right created by statute as upon a right existing at common law. Since the injury occurred in Maryland the law of that statute governs the substantive rights of the parties. The Maryland view as to jurisdiction is a minority one. C's remedy does not rest solely on reciprocity but rather on the just rights of the litigants.

As to contributory negligence one cannot kill a man merely because he is negligent. The last clear chance doctrine applied. If C saw deceased, or should have seen him he should have steered to one side as others did.

CONFLICT OF LAWS

( Domestic Relations )

A prostitute gave birth to twin girls in Norfolk. The mother said she did not want them so she gave them to Elsie Morse, the operator of a chain of houses of prostitution. Elsie was sentenced to the Federal penitentiary for selling narcotics, so she gave the children to her mother-in-law in North Carolina who had no idea (?) what a bed daughter-in-law she had. After Elsie served her sentence she returned to Norfolk. Her mother-in-law sent $1000 on the children and became greatly attached to them, but she took them for a day or two to visit Elsie and left them there while she visited a sick daughter. The natural mother, having reformed (?) sought the custody of the children. But since she was living with a man not her husband, she was not allowed the custody of the children. The court gave the Norfolk Children's Bureau the custody over the objection that North Carolina Courts alone had jurisdiction. Was this proper?

Held: Yes. Bastard children are domiciled at the domicile of their mother, in this case Norfolk. Also § 242 expressly authorizes any local juvenile and domestic relations court to determine the custody of any neglected child who is actually within a city or county of this State. Since it appeared that Elsie Morse was working hard in good with her mother-in-law, it was not for the best interests of the children to be given to Elsie's mother-in-law.
CONFLICT OF LAWS

M of Tennessee died intestate. P qualified as his administrator. S of Virginia owed M $800 on a note. P sued S in Virginia on the $800 note. Result?

Judgment for Defendant unless P qualifies as administrator in Virginia, too. Unless he does this he has no authority in Virginia but only in the state in which he has qualified. Note: The right of the Tenn. administrator to sue in Virginia, however, must be properly and seasonably challenged. Otherwise Defendant would win on a technicality that Plaintiff could have remedied.

CONFLICT OF LAWS

Divorce - Jurisdiction

P and S lived in Tennessee. P obtained a divorce from S in Tennessee. 
P then married X in Illinois. He later died and his estate was probated in Illinois. S was living in Virginia at the time of P's death. S claimed that P and X were married in Tennessee. P claimed that the marriage was invalid because X was married to M in Virginia at the time of P's death. Which state has jurisdiction to decide the validity of P's marriage to X?

Held: P can sue S in Virginia. S is liable for damages for breach of contract for the balance of the contract price for X's stock in a partnership of which she was a member.
child: that X's status as to legitimacy is determined by the law of South Carolina; and that the Virginia statute providing that the issue of marriages deemed null in law shall nevertheless be legitimate had no extra-territorial effect.

 Held: For X, Virginia has the right and power to determine the status of its own citizens no matter where they are born. By the Va. statutes X is entitled to the money wherever her status may be elsewhere.

CONFLICT OF LAWS Ancillary Admin. + Guardianship "Removal" (Bar Exam) Dec. 1943

Q.5 A, who is a resident and domiciled in Clarke County, Va., dies intestate leaving as his sole heir and distributee an infant son. His estate consists of bonds, notes and household property in Clarke County, and a large farm located wholly within Jefferson County, Pa., Va. Upon the farm there is considerable livestock and farm machinery. B qualifies in the Circuit Court of Clarke County as the guardian of the infant. B consults you with reference to his rights and authority concerning his ward's estate. What would you advise?

A. A guardian has no authority outside the State in which he qualifies. Besides, before the guardian would have authority, an administrator of A would have to be appointed as personal representative. This is a case in which there must be ancillary administration and ancillary guardianship.

CONFLICT OF LAWS "Removal" (Bar Exam) Dec. 1943

Q.6 X, who is a resident of Berkeley County, W. Va., executed a deed of trust on his automobile to secure a loan from the Bank of Berkley. This deed of trust is properly recorded in Berkeley County. X also owns the Bank of Perryville, Virginia, $1,000 which is not due. X and his family drive the automobile to the Perryville Horse Show in Clarke County, Virginia, and while the automobile is parked at the horse show ground, the Bank of Perryville causes an attachment to be levied on it for the amount of its debt. As between the two banks, which has priority?

A. Since the car was brought into Virginia for a temporary purpose, it has not been removed to Virginia within the meaning of §5137, and hence the West Virginia bank has priority.

CONFLICT OF LAWS "Removal and Practice"

Joseph Morgan, while a resident of Iowa, took out a policy of life insurance for $2,000, payable to his estate in the Royal Insurance Co., a corporation of that State. Later, Morgan moved to Caroline County, Va., establishing his legal residence there, and after some years died there intestate. The administrator's demand of payment of the policy was refused by the Insurance Co. on the ground of alleged breach of warranty by Morgan. The administrator then took steps to collect the policy by subjecting, by attachment and garnishment proceedings, brought in the Circuit Court of Caroline County, Va., first lien, mortgaged deed of trust loan for $2,000 which the Insurance Co. held on real property located in Caroline Co. of Samuel Golsen, a resident of that county. The Insurance Co. appeared specially in the proceedings and moved to quash the attachments, for lack of jurisdiction in the court to subject the Golsen debt to the payment of the policy, claiming particularly that the Golsen debt was assets in its hands in Iowa, where it had been required to be included with other property in a return for taxation in that State. Should its motion be sustained?

The motion should not be sustained. Attachment proceedings are actions quasi in rem, that is against the thing, in this case, the debt due the Insurance Co. Since the Insurance Company would normally have to resort to the Virginia courts in order to collect the debt (if the debtor did not pay it), the situs of the debt for procedural purposes in Virginia.

CONFLICTS OF LAWS Suggested by 127 Va. 275 "Heinz v. Buehler" 129 Va. 275 at p. 283

A Tennessee Corporation in the undertaking business exhumed X's body in Tennessee but buried it in Virginia. The Corporation had no license to practice undertaking in Tennessee.
Virginia. The above act was the only time the corporation had buried anyone in Virginia, and was due to special circumstances. The Corporation was fined for illegally engaging in the profession of embalming. Was this proper?

Held: No, a single isolated act is not conducting a business. A.L.I. Conflict of Laws, ¶ 167 at page 284 defines "doing business" within the purview of foreign corporation law as "doing a series of similar acts for the purpose of thereby realizing pecuniary benefits, or doing a single act for such purpose with the intention of thereby initiating a series of such acts." Case dismissed.

CONFLICT OF LAWS Domicile

D was one of the county supervisors of A county. He had operated a business in A County in a rented store. It became unprofitable and he moved to B County until (as he testified) he could make new arrangements to re-establish himself in A county. He continued to vote and pay taxes in A County. The Commonwealth's Attorney of A County instituted quo warranto proceedings against him on the ground that having removed his residence from A County he was no longer eligible to be a member of the A County Board of Supervisors.

Held: Residence in this case means domicile. D kept his old domicile until he acquired a new one. Temporary absence even though of indefinite duration will not cause one to lose his old domicile. Here it is a question of D's intent. If there is conflicting evidence on that fact it is for the jury to determine the issue. (Note: it was held that the action of the warrant is a proper one to oust a person who intrudes into, usurps, or unlawfully holds the same although ¶ 58-857 refers to intrusion and usurpation only, since the section was meant as a codification of the common law. In the instant case D had not intruded into or usurped the office as he had been duly elected.)

CONFLICT OF LAWS Taxation

M while domiciled in North Carolina but residing in England, by an irrevocable trust indenture transferred to the 6 Trust Co. of New York securities he had acquired while living outside the United States. He was at all times an American citizen. By the terms of the trust he divested himself of all control of the corpus, but the income therefrom was payable to him for life, and then to his wife for life. Later M became domiciled in Virginia and ten years later M died. By ¶ 50-152 inheritance taxes are levied upon the shares of the respective beneficiaries in all property within the jurisdiction of the Commonwealth which shall pass by a transfer under which the transferor has retained for his life the possession or enjoyment of the property. Is any Virginia inheritance tax due? Is the value of the property part of M's estate under the federal statutes?

Held: No Virginia inheritance tax is due. Our tax, unlike the Federal estate tax, is a tax on the right to receive the property. Our tax only applies to property actually or constructively within the Commonwealth. M's interest was too slight to apply the principle of mobilia sequitur personam. The securities have a tax situs in New York. The corpus never came from Virginia earnings. M has no control over the corpus. The trust was created before it came to Virginia. However, the securities are part of his estate for purposes of the Federal estate tax for in that case there are no state lines to cross nor any sovereigns competing with the United States.
CONFLICT OF LAWS

Gift Tax

H and W were domiciled in California, a community property state. H saved $19,000 from his earnings there, and then both H and W moved to Virginia. H bought a home with the $19,000 and took title thereto in the name of W only. Should the gift tax be computed on $19,000 or on $9,500 (disregarding exemptions).

Held: Community property already acquired does not cease to be such just because H and W move from a community property state to a common law state. Hence we must examine the law of California to see what W's rights were there. If by that law she has a vested right in half then the gift tax should be computed on $9,500. But an examination of the community property law of California indicates that the husband is the only one with a vested right. W has "a mere expectancy as heir if she survive him" except that H cannot give community property away, without any consideration. Community property in California (except earnings of the wife) is liable in its entirety for the debts or torts of the husband. Hence the gift tax should be computed on $19,000.

CONFLICTS--Wills

200 Va.173.

The Tennessee death by Wrongful Act statute (unlike the Virginia one) contains no time limit specifically applicable to actions for death, but has been consistently construed to be subject to the general one year statute of limitations with reference to actions for damages growing out of personal injuries. P's intestate was killed in Tennessee as a result of D's negligence, having been injured in June of 1953, and having died in November of that year. The Tennessee one year statute started to run from the time of the injury. D moved to Virginia in April of 1954. P sued D in Virginia in October of 1954. Does the Virginia death by Wrongful Act statute of limitations apply, or the Tennessee personal injury statute of limitations, or the Virginia personal injury statute of limitations?

Held: The Virginia personal injury statute of limitations (at that time one year from date of injury) is the one to be applied. P's substantive rights are to be determined by the law of Tennessee and under that law the cause of action is for the personal injury, and (unlike Virginia's law) damages may be recovered for the pain, suffering, mental anguish, and medical expenses of the deceased. But the law of the forum governs procedural matters. Where the statute imposing liability and creating the remedy does not itself limit the time within which an action to enforce it must be brought, but leaves the matter to be governed by the general statute of limitations the law of the forum will govern * * * since general statutes of limitation (not involving adverse possession) relate to the remedy and have no extra-territorial force.

CONFLICTS--Wills


Deceased resided and was domiciled in Bristol, Tennessee, in Sullivan County. He had an interest in a partnership located in Bristol, Virginia. He also had a bank account in a Bristol, Virginia, Bank and a note and United States bonds in a lockbox in that Bank. On June 8, 1959 the will of deceased was admitted to probate in an ex parte proceeding by Bank in the Clerk's office of the City of Bristol, Virginia. Two days later, J, a daughter of deceased, qualified as administrator in Tennessee. She then appealed from the action of the Clerk in admitting the will to probate in Virginia. The Court, on appeal from the Clerk's action, held (1) that it had jurisdiction to admit the will to probate because, for probate purposes, there is an exception to the rule that personal property, debts, notes, and bonds have the situs of the place of the owner's domicile, and hence deceased did have an estate in Virginia which under Va.6-72 gave the court jurisdiction, and (2) that despite this fact, absent any special reason to the contrary, it would refuse to accept jurisdiction in deference to the superior right of the Court of domicile. Bank appealed urging (1) that jurisdiction was mandatory, and (2) that since the Virginia probate in the Clerk's office was before the Tennessee proceedings it had priority.

Held: Decision of Court below affirmed in toto. It had jurisdiction, but absent any special reason such as debts owing to Virginia residents or Virginia realty disposed of by the will, it was proper for the Virginia Court to defer to the Court of domicile. On appeal from Clerk, case is heard de novo, and date of hearing on appeal rather than date of probate in Clerk's office determines priority.
CONFLICT OF LAWS--Adoption--Intestate Succession 307

X died intestate in Richmond. He was born in Greece of Greek parentage but was a naturalized citizen of the United States. He left no children, widow, or brothers or sisters or descendants thereof. P, a citizen of Greece, claimed to be his distributee in that she was a legally adopted child of X's father, and hence X and she were adoptive brother and sister. At the time P was adopted pursuant to Greek law she was 14 years of age. X's father was 86 years of age and X's mother 68 years of age and a bedridden paralytic. The reason for the adoption was that the adoptive parents had need of a child for their attendance, consolation and support. P was not required to consent to the adoption. P's mother was not required to consent and no investigation was made as to whether or not this would be for P's best interests. The question was whether or not it was for the adoptive parents' best interests.

Held: P is not entitled to the status of an adopted child. The laws of Greece are repugnant to our fundamental public policy on the matter of adoption. Comity does not require Virginia to recognize laws against her settled public policy. Nor does America's treaty with Greece require Virginia to favor Greece over other countries' nationals.

CONFLICT OF LAWS--Pleading and Practice--Venue 203 Va.670

P of Virginia was driving her car in Tennessee when an unknown party negligently drove his car into the highway directly in front of P's approaching car. P, in order to avoid a collision, turned her car sharply, lost control of it, and was injured when the car struck a tree. Tennessee does not have an uninsured motorist law. Does Tennessee or Virginia law govern, and if the latter, what is the venue of an action against John Doe, the unknown motorist?

Held: The Virginia Uninsured Motorists Law governs. It has no territorial limitations. Since the action against John Doe, an unascertained person, is only for the purpose of fixing liability and amount of damages which, in a proper case, will be paid by P's insurance company, the action will be treated, for venue purposes, as if P's insurance company were the defendant. Hence a plea in statement on the ground that the action must be brought in Tennessee which failed to give P a better writ by stating that P's insurance company might be found in Bristol, Virginia, and which negated only one basis for venue (where cause of action arose) when there was also another basis (where P's insurance company resided) was bad on demurrer. Mr. Justice Whittle dissented on the ground that the John Doe action is ex delicto and P's insurance company is not a party. Hence the only venue would be Tennessee where all the witnesses (other than P) would normally live and where the cause of action arose.

CONFLICT OF LAWS--Conditional Sales--Title (Holder)--Defence 205 Va.531

M purchased a car in Georgia on the conditional sales contract. The seller and M assigned the conditional sales contract to the F Finance Co., which duly recorded same. Thieves stole the car and sold it to A in Atlanta. A sold to B in Tennessee. B secured a Tennessee registration. B sold to D (defendant) in Virginia, who, on the strength of B's registration, secured a Virginia registration. The car was traced to D whereupon F brought an action in detinue against D in Virginia. What law governs as to what title D has, and what law governs all questions of procedure, burden of proof and sufficiency of evidence.

Held: (1) The law of Georgia determines the title. Under Georgia law a thief has no title and can pass no better title to personal property than he has. If the conditional sale was recorded, that would constitute constructive notice of F's rights, and there could be no bona fide purchaser. (2) The law of the forum (Virginia) governs all procedural matters. The Supreme Court of Appeals held that F fulfilled all the requirements of detinue as set forth in my question and answer 2 on p. 30 of the text materials of Pleading and Practice. Note that it is still called an action in detinue despite the fact that procedure is now by notice of motion for judgment under the Rules.
In his application to the State Corporation Commission for vehicle registration cards and identification markers, D described himself as a Delaware resident. After an investigation by a suspicious state trooper, the State Corporation Commission held a hearing and found that D was in reality a Virginia resident and cancelled his cards and markers. Though D had introduced but little evidence that he was not a Virginia resident, he appealed as a matter of right under Va. Const. Section 156(d).

Held: Affirmed. The S. C. C.'s finding and its order are "prima facie just, reasonable, and correct." (Va. Const. Section 156(f).) It was D's burden to establish that he had in good faith changed his domicile from Virginia to Delaware. The facts and circumstances effectively contradict his assertion. It is a well-settled rule that evidence of expressed intent has no controlling weight if such an intent is inconsistent with the acts and general conduct of the person.
I

Explain the differences between the principle of renvoi and the so-called "borrowing statutes."

II

A statute of State X provides (1) that under certain circumstances the shareholders of corporations chartered in X are liable for all the corporation's debts in proportion to the amount of their shareholdings and (2) that this liability may be enforced by a creditors' bill brought against the corporation and all the shareholders. A corporation of X becoming insolvent, a creditors' bill is brought in State Y to enforce the shareholders' liability. The courts of State X would be open to the plaintiff. Personal service of process is made upon those shareholders who are found in Y, and the remainder are served by publication. There is a challenge to the jurisdiction of the court in State Y. How should the court rule on the question of jurisdiction and the bill?

III

Blast-It Corp., an excavating firm, is under a contract with a Virginia landowner to remove several tons of rock from the prospective route of a private access road connecting the builder's property with an interstate highway. The corporation is chartered in Delaware and has no agent or certificate to do business in Kentucky. The corporation's insurer is chartered in New York and likewise has no agent in Kentucky. The blasting occurs on a mountain on the Virginia-Kentucky border, and due to an excessive charge of dynamite one exceptionally large boulder is thrown from the Virginia location onto a structure in Kentucky, causing $50,000 damage.

Under a Kentucky statute such an incident may be construed as gross negligence and treble damages may be assessed. May a court in Kentucky take jurisdiction of the case? Or, in the alternative, where might the injured party bring suit? Would the Kentucky statute be applicable? How would an judgment be executed?

IV

William Wildcat lives in Bristol, Tenn., and his 17-year-old son Willie goes steady with Daisy Hillside who lives in Bristol, Va. Daisy spends the summer with her grandmother in Tennessee, and Willie frequently picks her up in the Wildcat family car and carries her back to Virginia to see her parents. On one occasion, while driving Daisy back from Virginia and before crossing the state line, Willie drives through an amber traffic light and collides with another car, causing Daisy to sustain a broken arm.

Daisy's grandmother retains a Tennessee attorney and prepares to sue Wildcat senior for $5,000. Daisy's parents call their family lawyer and discuss an alternate suit in Virginia. The two lawyers consult each other on the more advantageous forum in which to bring the action, in view of two facts: (1) The family purpose doctrine with reference to the use of automobiles, while recognized in Tennessee, is not recognized in Virginia where the accident occurred. (2) The Tennessee guest statute fixes liability for ordinary negligence but the statute in Virginia where the accident occurred requires proof of gross negligence. How would you prepare plaintiff's case for suit in Tennessee? In Virginia?
X sues Y on a promissory note in Colorado and obtains a default judgment. X later brings an action in Oklahoma on the judgment, and Y defends on the ground that the Colorado court had no jurisdiction over him. The Oklahoma court upholds Y and gives judgment for him. Still later, X goes into Texas and brings an action against Y on the Colorado judgment. Texas has a leading case involving a similar factual situation, in which A sued B in Colorado, obtained a default judgment, and sued on the judgment in Texas where the court ruled that Colorado had jurisdiction and sustained A's suit. How should the Texas court rule on the present suit between X and Y? Explain or discuss.

VI

O. Fuller Twaddle is an attorney domiciled in Chattanooga, Tenn., who is dickering with a Georgia state commission concerning a permanent appointment as the commission's legal adviser. A newspaper in northeastern Alabama, which also circulates in Georgia and Tennessee, publishes a defamatory news item about Twaddle. Twaddle sues the newspaper for libel, alleging (1) general injury to reputation, (2) loss of a valuable client in Alabama and (3) failure to obtain the appointment in Georgia as a result of the story. Which state law will govern the trial of the first cause of action? The second? The third? Discuss.