

William and Mary Review of Virginia Law

Volume 2 (1954-1956)
Issue 1

Article 6

May 1954

Conflict of Laws - Allowance of Punitive Damages Under the law of a Foreign Jurisdiction

Peter Shebell Jr.

Follow this and additional works at: <https://scholarship.law.wm.edu/wmrval>



Part of the [Conflict of Laws Commons](#)

Repository Citation

Peter Shebell Jr., *Conflict of Laws - Allowance of Punitive Damages Under the law of a Foreign Jurisdiction*, 2 Wm. & Mary Rev. Va. L. 25 (1954), <https://scholarship.law.wm.edu/wmrval/vol2/iss1/6>

Copyright c 1954 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmrval>

CONFLICT OF LAWS—ALLOWANCE OF PUNITIVE DAMAGES UNDER THE LAW OF A FOREIGN JURISDICTION

The Laburnum Construction Corporation was a Virginia Company under contract with the Richmond Building and Construction Trades Council, an affiliate of the American Federation of Labor, whereby it agreed to employ, if obtainable, only members of that federation when working in an area over which a union of that federation had jurisdiction. Pond Creek Pocahontas Company awarded the plaintiff a contract for the construction of mining facilities in Breathitt County, Kentucky. The necessary labor was supplied by, and with the consent of, the nearest local member of the American Federation of Labor. The United Construction Workers, a member of the United Mine Workers, threatened plaintiff that, unless an agreement be made with the United Construction workers, they would close down all of the plaintiff's work in Breathitt County. Because of the prior contract with the American Federation of Labor no agreement was made with the defendants, who then so intimidated the plaintiff's employees that work ceased and the coal companies, fearing action by the United Mine Workers, cancelled the construction contracts with Laburnum. A tort action was instituted against the United Construction Workers, and the jury awarded plaintiffs \$175,437.19 compensatory damages and punitive damages of \$100,000.00, making a total of \$275,437.19. On appeal, *held*, that \$146,111.10 of the award for *compensatory* damages was not supported by the evidence, but the balance of the judgment, in the amount of \$129,326.09, affirmed with interest. *United Construction Workers v. Laburnum Construction Corporation*, 194 Va. 872, 75 S.E.2d 694 (1953).

The point meriting consideration is the manner in which the Supreme Court of Appeals proceeded to award punitive damages to the plaintiffs. In the basic analysis this case involves a conflict of laws problem, which the court recognized¹ but improperly treated. The primary element completely overlooked was the proper characterization² of the problem.

Characterization has been defined as the "determination of the nature of the problem."³ Robertson, who has written a book on

1. 194 Va. 872, 886, 75 S.E.2d 694, 704 (1953).

2. Also sometimes referred to as "qualification" or "classification".

3. *Cormack, Rensvi, Characterization, Localization and Preliminary Question in the Conflict of Laws*, 14 So. Cal. L. Rev. 221, 223 (1941).

this subject,⁴ states, "The function of primary characterization is to put upon the facts a legal complexion, or allot them to a legal category, which will have a choice of law rule available for the disposition of the case."¹⁶

It is a well-settled rule that one jurisdiction will not enforce the penal laws of another.⁵ Thus, the initial question that should have been considered in this case is whether exemplary damages are penal.⁷ This question must be answered by the conflict of laws rule of each state for itself and not by looking to the jurisdiction whose law will be applied.⁸ Characterization is important only when there is a conflict of authority as to the nature of the problem,⁹ and whether exemplary damages are penal or not involves such a conflict.¹⁰ Once the proper approach has been taken to the problem, the real nature of exemplary damages must be considered. Whether a particular jurisdiction will find such damages penal depends upon the definition of penal accepted by that jurisdiction.¹²

In *Adams v. Fitchburg Railroad Co.*¹³ the court held a statute of Massachusetts to be penal, using in substance the test that whether a statute is penal depends upon whether the main purpose of the statute is to give compensation or to inflict punishment.¹⁴ "A statute may be penal although the entire amount recovered be given directly to the party injured."¹⁴ The second definition that has been given to the term "penal" was set forth by the United States Supreme Court in the leading case of *Huntington v. Attrill*,¹⁵ wherein it is stated, "The question whether a statute of one State, which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another State, depends upon the question whether its purpose is to punish an offense against the public justice of the State, or to afford a private remedy to a person injured by the wrongful act."¹⁶

4. Robertson, *Characterization in the Conflict of Laws* (Harvard University Press, 1940).

5. *Id.* at 61.

6. *The Antelope*, 10 Wheat. 66, 123 (U.S. 1825); 3 Beale, *Conflict of Laws* §611.1 (1935); Restatement, *Conflict of Laws* §611 (1934).

7. Cormack, *supra* note 3, at 223.

8. Robertson, *supra* note 4, at 186.

9. Cormack, *supra* note 3, at 227.

10. See Goodrich, *Conflict of Laws* §12 (3rd ed. 1949); 2 Beale, *Conflict of Laws* §421.1 (1935).

11. Minor, *Conflict of Laws*, pp. 22-25 (1901); Goodrich, *Conflict of Laws* §12; 3 Beale, *Conflict of Laws* §611.3; Leflar, *Extraterritorial Enforcement of Penal and Governmental Claims*, 46 Harv.L.Rev. 193, 203 (1932).

12. 67 Vt. 76, 20 A. 687, 48 Am.St.Rep. 800 (1894).

13. See *Nelson's Adm'r. v. Chesapeake & Ohio R. Co.*, 88 Va. 971, 974, 14 S.E. 838, 15 L.R.A. 583, 586 (1892).

14. 67 Vt. 76, —, 30 A. 687, 688, 48 Am.St.Rep. 800, 803 (1894).

15. 146 U.S. 657 (1892).

16. *Id.* at 673.

Virginia, in *Chesapeake & Ohio Ry. Co. v. American Exchange Bank*,¹⁷ apparently accepted the latter view. The court states, "In order to come within the scope of that principle, the action or suit must be in the nature of a proceeding in favor of the State whose laws have been violated."¹⁸

Let us assume that a cause of action is brought in Virginia upon a death caused by an accident in Massachusetts, whose laws covering this type of mishap are construed by the Massachusetts courts to be penal.¹⁹ Using the reasoning applied in the *Laburnum* case, the court upon analyzing the law to be penal in Massachusetts would not give effect to the statute. Yet the test as set forth in *Nelson's Adm'r. v. Chesapeake & Ohio Ry. Co.* is, "Is the foreign statute contrary to the known policy, or prejudicial to the interests, of the state *in which* the suit is brought? [Italics added] And if it is not, then it makes no difference whether the right asserted be given by the common law or by statute."²⁰ The court went on to apply West Virginia's death by wrongful act law in this case. Thus, by following the *Laburnum* reasoning the court would have reached a result contra to the expressed rule.

The famous case of *Loucks v. Standard Oil Co. of New York*²¹ presents an excellent example of characterization where the issue was whether a statute which allowed exemplary damages for a wrongful death was penal. The statute in question was that of Massachusetts and had been determined penal in several jurisdictions, while in others it had been considered remedial. Judge Cardozo in handing down the decision had this to say: "The courts of Massachusetts have said that the question [whether penal or not] is still an open one. . . No matter how they may have characterized the act as penal, they have not meant to hold that it is penal for every purpose. . . Even without that reservation by them, the essential purpose of the statute would be a question for our courts."²² The court went on to hold the law not penal and permitted damages to be assessed.

17. 92 Va. 495, 23 S.E. 935 (1896).

18. *Id.* at 502, 23 S.E. 935, 937. No mention is made of the *Nelson* case (*supra*, note 13) wherein the court stated ". . . the statute is not penal, but compensatory in its nature, its object being to give a remedy for certain injuries, not as a punishment to the defendant . . ."

19. See *Arnold v. Jacobs*, 316 Mass. 81, 54 N.E.2d 922 (1944).

20. 88 Va. 971, 975, 14 S.E. 838, 839, 15 L.R.A. 583, 586 (1892); *Norfolk & Western Ry. Co. v. Denny's Adm'r.*, 106 Va. 383, 56 S.E. 321 (1907).

21. 224 N.Y. 99, 120 N.E. 198 (1918).

22. *Id.* at 103, 120 N.E. 198, 199.

The court in the *Laburnum* case, *supra*, did cite two cases²³ which presented the Virginia rules as to the grounds for the imposition of punitive damages on the wrongdoer.²⁴ However, neither involves a conflict of laws question. The fact that Virginia does award punitive damages shows that the allowance of them is not contra to our public policy, but this does not say that the use of another state's rule as to such damages is not penal when applied in Virginia. For example, our criminal laws express our policy as to unlawful acts. However, even though another state's criminal law is similar and its policy therefore the same, Virginia courts would not enforce the foreign law.²⁵

It is submitted that the Supreme Court of Appeals should properly characterize conflict of laws problems, where a conflict of authority as to the nature of the problem exists, and it is to be hoped that in an appropriate case it will answer the question as to whether or not punitive damages are penal. A decision such as that arrived at in the *Laburnum* case could be justified in Virginia by applying the meaning of a penal action as set forth in *Chesapeake & Ohio Ry Co. v. American Exchange Bank*, *supra*. The court would do well to consider the entire question of extra-state enforcement of penal law. As a result, the rule against such enforcement might be eliminated,²⁶ but in any event such an examination would go far in helping the court to arrive at a proper conclusion.²⁷

Peter Shebell, Jr.

-
23. *Anchor Co. v. Adams*, 139 Va. 388, 124 S.E. 458 (1924); *Stubbs v. Cowden*, 179 Va. 190, 18 S.E.2d 275 (1942).
 24. 194 Va. 872, 894, 895, 75 S.E.2d 694, 708, 709 (1953).
 25. *Nelson's Adm'r. v. Chesapeake & Ohio R. Co.*, 88 Va. 971, 974, 14 S.E. 838, 15 L.R.A. 583, 586 (1892).
 26. See Leflar, *Extrastate Enforcement of Penal and Governmental Claims*, 46 Harv.L. Rev. 193 (1932). It is suggested in this article that no really sound reasons exist for refusal to enforce another jurisdiction's laws because they are penal, *per se*.
 27. See 3 Beale, *Conflict of Laws* §611.3, wherein he states, "In considering the problem of extra-state enforcement of penal law the courts have unfortunately placed the entire emphasis on an attempt to define the meaning of the term. In most of the cases at least it would seem that an elaboration of the reason for the rule would not only have been more enlightening generally but also more helpful to the court in arriving at the proper result." See also Cheatham, *Internal Law Distinctions in the Conflict of Laws*, 21 Cora.L.Q. 570 (1936).