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Conflict of Laws-Torts-Application of Whole Law, Including Choice-of-Law Rules, of State of Negligent Act Under Federal Tort Claims Act

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CONFLICT OF LAWS—TORTS—APPLICATION OF WHOLE LAW, INCLUDING CHOICE-OF-LAW RULES, OF STATE OF NEGLIGENT ACT UNDER FEDERAL TORT CLAIMS ACT—Representatives of passengers killed in an airplane crash in Missouri, due in part to the alleged negligence of government personnel in failing to enforce certain regulations of the Civil Aeronautics Act at an American Airlines' overhaul depot in Oklahoma, sued the United States under the Federal Tort Claims Act¹ in the Federal District Court for the Northern District of Oklahoma. 28 U.S.C. § 1346(b) (1958), section 410(a) of the Tort Claims Act of 1946, provides that the Government shall be liable for the tortious conduct of its employees, "under circumstances where the United States, if a private person, would be liable to the claimant *in accordance with the law of the place where the act or omission occurred.*"

¹ 28 U.S.C. §§ 1291, 1346, 1402, 1504, 2110, 2401-02, 2411-12, 2671-80 (1958).

(Emphasis added.) The district court, interpreting section 1346(b) to require the application of the whole law, including the choice-of-law rules, of the place of negligence,² dismissed the complaint³ on the ground that Oklahoma law referred the court to the Missouri Wrongful Death Act,⁴ and since 15,000 dollars, the maximum recovery allowed by that act,⁵ had been previously given or tendered to decedents' representatives, further recovery was precluded. The Court of Appeals for the Tenth Circuit affirmed, one judge dissenting.⁶ On certiorari to the United States Supreme Court, *held*, affirmed. In order to effectuate the congressional intent that the United States be treated as an individual would be treated under like circumstances, section 1346(b) requires the application of the whole law, including the choice-of-law rules, of the state where the negligence occurs. *Richards v. United States*, 369 U.S. 1 (1962).

The *Restatement* rule and the rule typically asserted by commentators is that in tort cases the internal law of the place where injury is first inflicted determines the rights and liabilities of the parties.⁷ Where, however, the state of the forum has significant contacts with the occurrence and the litigants, and its own laws conflict with the relevant laws of the place of injury, some courts have applied the internal law of the forum state.⁸ This deviation is widely known as the "public policy" exception, a common explanation for its use being the refusal of courts to enforce laws obnoxious to the policy of the state in which they sit.⁹ The general rule, coupled with this exception, allows a court flexibility in selecting the law applicable

² This construction had been given § 1346(b) in *Landon v. United States*, 197 F.2d 128 (2d Cir. 1952).

³ Unreported. As an alternative ground for the dismissal, the court ruled that if § 1346(b) required the application of the internal law of the place of negligence, the Oklahoma Wrongful Death Act, OKLA. STAT. tit. 12 §§ 1051-54 (1961), could not be applied extraterritorially where injury and death occurred outside the state. This construction had been given § 1346(b) in *Voytas v. United States*, 256 F.2d 786 (7th Cir. 1958) and *Eastern Air Lines, Inc. v. Union Trust Co.*, 221 F.2d 62 (D.C. Cir.), *cert. denied*, 350 U.S. 911 (1955).

⁴ MO. REV. STAT. § 537.080 (1959).

⁵ Mo. Laws 1945, § 3654, at 846. Oklahoma had no limitation on the amount of recovery. Subsequent to the commencement of these actions, the Missouri limitation was raised to \$25,000. MO. REV. STAT. § 537.090 (1959).

⁶ *Richards v. United States*, 285 F.2d 521 (10th Cir. 1960).

⁷ GOODRICH, CONFLICT OF LAWS §§ 92-93 (3d ed. 1949); RESTATEMENT, CONFLICT OF LAWS §§ 377-78 (1934); STUMBERG, CONFLICT OF LAWS 182 (2d ed. 1951).

⁸ *E.g.*, *Schmidt v. Driscoll Hotel, Inc.*, 249 Minn. 376, 82 N.W.2d 365 (1957); *Mertz v. Mertz*, 271 N.Y. 466, 3 N.E.2d 597 (1936); *Haumschild v. Continental Cas. Co.*, 7 Wis. 2d 130, 95 N.W.2d 814 (1959).

⁹ The soundness of this rationale of the "public policy" exception has been questioned. It has been suggested that in most cases, though the laws of the state of injury conflict with those of the forum state, there is no significant policy clash. Rather, the courts are moved to apply the local law because of the significant contacts which the forum state has with the parties. See Paulsen & Sovern, "Public Policy" in the Conflict of Laws, 56 COLUM. L. REV. 969 (1956).

in a given case. The Court in the principal case was bound, however, to select a choice-of-law rule consistent with the congressional directive in section 1346(b). Because of that section's specific reference to the law of the place where the act or omission occurred, the Court could not adopt the traditional choice-of-law rule. It was instead forced to select either the internal law or the whole law of the place of negligence.¹⁰

It is unlikely that Congress intended to replace the generally followed choice-of-law rule with either of these alternatives. In support of this conclusion, the legislative history of the act reveals two significant facts. First, the draftsmen expressly intended the United States to be subjected to liability in the same manner as an individual.¹¹ Secondly, Congress did not expressly consider choice-of-law rules in the context of the multistate torts.¹² The specific reference in the act to the law of the place of the act or omission was evidently inserted only to insure that the Government's liability would be determined by state law rather than federal law.¹³

That the rigid application of the internal law of the place of negligence would be contrary to the congressional desire that the Government be treated as an individual according to local law would be illustrated where the negligence occurs in State *A*, the injury in State *B*, and the United States is sued as a joint tort-feasor with a private individual. The liability of the Government would be determined according to the law of State *A*, while that of the individual, after applying the general conflict of laws rule, according to the law of State *B*.

Justification for the internal-law construction of section 1346(b) might be found, however, in the unique position of the Government as a de-

¹⁰ A third construction of § 1346(b) was made in *United States v. Marshall*, 230 F.2d 183 (9th Cir. 1956). It was held that § 1346(b) required the application of the internal law of the place where the negligence had its operative effect. Although this construction would seem to affect the result of the general choice-of-law rule, the "public policy" exception would be unavailable. Moreover, "it would be difficult to conceive of any more precise language Congress could have used to command application of the law of the place where the negligence occurred than the words it did employ in the Tort Claims Act." Principal case at 9.

¹¹ "The liability of the United States is to be the same as that of a private individual under like circumstances and is to be determined under the local law" S. REP. No. 1196, 77th Cong., 2d Sess. 6 (1942).

¹² See generally Goodrich, *Yielding Place to New: Rest Versus Motion in the Conflict of Laws*, 50 COLUM. L. REV. 881 (1950); 43 GEO. L.J. 688 (1955); 68 HARV. L. REV. 1455 (1955); 45 IOWA L. REV. 125 (1959).

¹³ The Federal Tort Claims Act was drafted over a period of years. In its initial form, the act did not contain the specific reference in question. It was first inserted in H.R. 6463 and remained unchanged throughout the remainder of the drafting. Assistant Attorney General Francis Shea, appearing before the House Committee on the Judiciary, stated: "Under the other bill [H.R. 5373] it was not specifically provided that local law should govern. . . . I should think the earlier bill [H.R. 5373] would probably be construed as applying the local tort law, but this bill [H.R. 6463] specifically covers it. . . ." *Hearings on H.R. 5373 and H.R. 6463 Before House Committee on the Judiciary*, 77th Cong., 2d Sess. 30 (1942).

fendant in tort actions. Government employees are normally subjected to numerous regulations, some of which are based upon the local law of the employment area. By applying the internal law of the place of negligence, the Government's liability would be determined by the law to which its employees had adapted their conduct.¹⁴ No mention having been made of this in the legislative history, however, there is no basis for the conclusion that Congress intended such a deviation from the traditional choice-of-law rule followed by the states.

The whole-law interpretation—selected by the Court—is preferable to the internal-law interpretation, since when suit is brought at the place of negligence, the application of the whole law of that state will lead to the same determination of liability that would be reached under the traditional choice-of-law rule. Under the venue provision of the act, however, suit may also be brought where the plaintiff resides.¹⁵ Thus, suppose that the negligence occurs in State *A* and the injury in State *B*, in which plaintiff resides and brings suit. An individual defendant's liability would be determined by the internal law of State *B*. That of the United States would be determined by the whole law of State *A*. To be sure, the court would normally be referred to State *B*'s internal law. If the case were such, however, that a conflict between the laws of States *A* and *B* gave rise to the "public policy" exception in State *A*, the court would be forced to apply the internal law of State *A*. This result would be aberrant in view of the fact that the exception is normally used only to justify the application of the forum state's law. Finally, when both the negligence and injury occur in the same state, but plaintiff brings suit at his residence, a second state, the desirable flexibility of the "public policy" exception, recognized by the Court in the principal case, would be unavailable.

It is clear that neither of the two constructions open to the Court could provide a choice-of-law rule which would fully effectuate the congressional intent that the United States be treated as an individual. Nor could either alternative fully achieve the flexibility of the "public policy" exception. To obtain such a rule, Congress could strike from the statute the rigid reference to the "place where the act or omission occurred," and insert, "in accordance with the whole law, including the choice-of-law rules, of the place where the action is brought."

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¹⁴ In the interests of fairness to the tortfeasor, it has been suggested that the internal law of the place of negligence be applied generally in tort cases. See Rheinstein, *The Place of Wrong: A Study in the Method of Case Law*, 19 TUL. L. REV. 4 (1944).

¹⁵ 28 U.S.C. § 1402(b) (1958) provides in part that "any civil action on a tort claim . . . may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred."