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Conflict of Laws-Law Applicable in Federal Courts-Federal Law Applied to Contractual Relations of Admiralty Lawyer

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CONFLICT OF LAWS—LAW APPLICABLE IN FEDERAL COURTS—FEDERAL LAW APPLIED TO CONTRACTUAL RELATIONS OF ADMIRALTY LAWYER—Plaintiff attorney was retained by a Spanish seaman to prosecute personal injury claims under the Jones Act[1] and the general maritime law. Defendant shipping company induced the seaman to fire his lawyer and to recover instead under his Spanish employment contract. Plaintiff sued the shipping company in tort for interference with contractual relations. In a federal diversity suit, *held,* for plaintiff. Federal common law should be applied to determine the validity of the contract and the claim of tortious interference with it. *Greenberg v. Panama Transp. Co.,* 185 F. Supp. 320 (D. Mass. 1960).

The general rule since *Erie R.R. v. Tompkins*[2] has been that federal courts, when exercising jurisdiction based solely upon diversity of citizenship, must apply state law to all "substantive" issues.[3] The doctrine is buttressed by a belief that uniformity is desirable within a given state, and that the outcome of a case should not depend upon the mere accident of the parties' citizenship.[4] Despite the sweeping pronouncement in the

1 41 Stat. 1007 (1920), 46 U.S.C. § 688 (1958).
2 304 U.S. 64 (1938).
3 Guaranty Trust v. York, 326 U.S. 99, 108-09 (1945). See also HART & WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM 577-708 (1953).
4 See Comment, 59 HARV. L. REV. 966 (1946).

Erie opinion that there could be no "federal general common law,"[5] *Erie* has been almost completely limited to its diversity of citizenship context.[6] Even within the diversity area, however, an important exception has been etched. In diversity cases where the issues involved are intimately connected with an area of extensive federal regulation, the courts have felt it necessary to apply federal law in order to attain a different uniformity—national uniformity. Thus in *Sola Elec. Co. v. Jefferson Elec. Co.*,[7] a breach of contract suit, the defendant claimed that certain patents were invalid and that therefore the contract violated the Sherman Act.[8] Plaintiff contended that the applicable state law estopped the defendant to deny the validity of the contract. The Supreme Court declared that the Sherman Act dominated the entire area, and decided the case by applying a federal rule.[9] Again, in *O'Brien v. Western Union Tel. Co.*,[10] where the cause of action grew out of a defamatory telegram transmitted from Massachusetts to Michigan, the court held that the telegraph company's privilege should be determined by reference to federal common law. It reasoned that since the company was so highly regulated by the Federal Communications Act,[11] a uniform rule on privilege must necessarily be formulated.[12] Recently the Supreme Court, in *Textile Workers Union v. Lincoln Mills*,[13] applied federal substantive law in granting specific performance of an arbitration clause in a collective bargaining contract. The Court declared that this substantive law would be formulated with reference to the policies expressed by federal labor legislation.[14] Although *Lincoln Mills* was not a diversity case,[15] it is nevertheless relevant because the Court applied federal decisional law to a contract matter not specifically covered by any federal

[5] 304 U.S. at 78. See generally Mishkin, *The Variousness of "Federal Laws": Competence and Discretion in the Choice of National and State Rules for Decision*, 105 U. PA. L. REV. 797 (1957); Reifenberg, *Federal Common Law*, 30 ORE. L. REV. 164 (1951); Comments, 40 CORNELL L. Q. 561 (1955); 53 COLUM. L. REV. 991 (1953).

[6] See Freund, *Federal-State Relations in the Opinions of Judge Magruder*, 72 HARV. L. REV. 1204 (1959); Clark, *State Law in the Federal Courts*, 55 YALE L.J. 267, 280 (1946); Comments, 69 YALE L.J. 1428 (1959); 59 HARV. L. REV. 966 (1946).

[7] 317 U.S. 173 (1942).

[8] 26 Stat. 209 (1890), as amended, 15 U.S.C. §§ 1-7 (1958).

[9] "[A] federal statute may not be set at naught, or its benefits denied, by state statutes or . . . rules. [The *Erie* doctrine] is inapplicable to those areas of judicial decision within which the policy of the law is so dominated by the sweep of federal statutes that legal relations which they affect must be deemed governed by federal law. . . ." 317 U.S. at 176.

[10] 113 F.2d 539 (1st Cir. 1940).

[11] 48 Stat. 1064 (1934) (codified, as amended, in scattered sections of 15, 47 U.S.C.).

[12] *Accord*, Vaigneur v. Western Union Tel. Co., 34 F. Supp. 92 (E.D. Tenn. 1940) (federal law applied in action for negligence in delivering a telegram).

[13] 353 U.S. 448 (1957), 57 COLUM. L. REV. 1123 (1957).

[14] 353 U.S. at 456.

[15] It was brought pursuant to Labor-Management Relations Act § 301 (a), 61 Stat. 156 (1947), 29 U.S.C. § 185 (a) (1958), which allows suits between employers and labor organizations to be brought in federal district courts without regard to diversity of citizenship.

statute on the grounds that the rights of the parties were intimately connected with the scheme of federal legislation in the area.[16]

In the cases thus far discussed, the issues in question were found to be so closely connected with the sweep of some federal statute that resolution of these issues required resort to a federal rather than a state rule. In the principal case, however, the tortious interference with the attorney-client contract was related to a federal statute only because the lawyer was to prosecute a client's claim under that act. Certainly this relationship was far more remote from a federal act than was the issue of defamation in *O'Brien* or the contract in *Sola*.[17] But even should *O'Brien* require application of federal law to the issue of the validity of the contract in the principal case, the *tortious interference* with that contract remains another step further removed from the realm of federal regulation.

The court does not, however, rest its decision on *O'Brien* reasoning alone. Judge Wyzanski gives considerable weight to the fact that the retainer contract was also to prosecute the client's claim under the general maritime law.[18] In *Garrett v. Moore-McCormack Co.*[19] the Supreme Court indicated that state law may not be applied to affect rights arising under admiralty law. It has also been suggested that the *Erie* doctrine should not apply even in diversity cases when maritime issues are concerned[20] since these matters vitally affect the "interests, powers and relations of the Federal Government [such] as to require uniform national disposition rather than diversified state rulings."[21] The difficulty with the application of these arguments to the principal case, however, is that the attorney-client contract there is simply not a "maritime issue."[22] In *United Fruit Co. v.*

[16] Mr. Justice Frankfurter, dissenting, contended that § 301 is a grant of jurisdiction only, and implies neither the existence nor the establishment of a body of federal substantive law. He had expressed a similar view while writing for the majority in Westinghouse Salaried Employees v. Westinghouse Elec. Corp., 348 U.S. 437 (1955).

[17] *Cf.* Dickinson v. Stiles, 246 U.S. 631 (1918) (state law governs existence of attorney's lien on judgment under FELA); Great Lakes Transit Corp. v. Marceau, 154 F.2d 623 (2d Cir. 1946) (state law assumed to apply to govern attorney's lien on judgment under Jones Act); Roe v. Sears, Roebuck & Co., 132 F.2d 829 (7th Cir. 1943) (liability under attorney-client contract to prosecute federal tax refund claim determined by state law).

[18] Principal case at 324. See generally Romero v. Int'l Terminal Operating Co., 358 U.S. 354 (1959); Kurland, *The Romero Case and Some Problems of Federal Jurisdiction*, 73 HARV. L. REV. 817 (1960).

[19] 317 U.S. 239 (1942).

[20] Stevens, *Erie R.R. v. Tompkins and the Uniform General Maritime Law*, 64 HARV. L. REV. 246 (1950).

[21] United States v. Standard Oil Co., 332 U.S. 301, 307 (1947). See generally Stevens, *supra* note 20; Comment, 59 HARV. L. REV. 966 (1946).

[22] See SPRAGUE & HEALY, ADMIRALTY 90-91 (1950). See generally GILMORE & BLACK, ADMIRALTY 48 (1957); Stevens, *supra* note 20; Knauth, *The Landward Extension of Admiralty Jurisdiction*, 35 CORNELL L.Q. 1 (1949). Although not alluded to by the court in the principal case, the doctrine that seamen are "wards of admiralty" might well have aided its argument for applying federal law to the validity of the contract. The doctrine likens seamen's contracts to those of ". . . young heirs, dealing with their expectancies, wards with their guardians, and *cestuis que trustent* with their trustees," and asserts a broad power in admiralty courts to oversee such contracts. See the Supreme Court's discussion of the doctrine in Garrett v. Moore-McCormack Co., 317 U.S. 239, 246-47 (1942).

United States Shipping Bd. Merchant Fleet Corp.,[23] the court pointed out that in order to be a maritime contract an agreement must relate closely to a ship in its use, or to commerce on navigable waters.[24] For example, a contract *of* insurance is maritime, but a contract *to procure* insurance upon a cargo is non-maritime.[25] Again, even if the attorney's contract in the principal case could be said to have maritime character, it would certainly seem that a shore-side tortious interference with it could not.[26]

Thus neither the reasoning of *O'Brien* nor that of *Garrett* can support the court's conclusion. Yet the court seemed to feel that combined they could accomplish that which separately they could not.[27] In spite of broad language in the opinion,[28] it is doubtful that the decision will result in application of federal law to all contractual relations of "federal lawyers" or to any tortious interference with these relations. Since the present case relies not only upon the proximity of a federal statute, but also upon the applicability of maritime law, it seems much more likely that its result will be confined rather closely to its facts.

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[23] 42 F.2d 222 (D. Mass. 1930).

[24] *Id.* at 225.

[25] *Ibid.*; Home Ins. Co. v. Merchants Transp. Co., 16 F.2d 372 (9th Cir. 1926).

[26] *Cf.* United Fruit Co. v. U.S. Shipping Corp., 42 F.2d 222, 224 (D. Mass. 1930). It is well settled that admiralty *jurisdiction* in matters of tort depends on locality, *i.e.*, whether the act was committed on navigable waters.

[27] The court further supports its conclusion by resorting to a conflict of laws rationale usually applied only in a different context. In Gordon v. Parker, 83 F. Supp. 40 (D. Mass.), *aff'd*, 178 F.2d 888 (1st Cir. 1949), a case involving alienation of affections, the normal conflict of laws rule would have demanded that the law of the state of the matrimonial domicile be applied to substantive issues. The court found, however, that contrary public policy of the state of the forum was sufficiently strong to override the general rule. Thus because of policy it applied the law of the *state* of the forum rather than that of the *state* of domicile. Citing the *Gordon* decision, the court in the principal case decided that the policy favoring national uniformity required that *Erie* be ignored, and that *federal* law be applied rather than that of the *state*. Principal case at 324-25. This would seem to be a novel circumvention of the *Erie* doctrine.

[28] "The controlling principles of substantive law should be enunciated on a national basis applicable to anyone who is said to have interfered with a professional relation between an officer of a national court and his client." Principal case at 324-25 (citing *O'Brien*).