

# Michigan Law Review

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Volume 58 | Issue 7

---

1960

## Conflict of Laws - Release in a Tort Action - Effect of Lex Loci Delicti and Contractus

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### Recommended Citation

Stanley A. Williams, *Conflict of Laws - Release in a Tort Action - Effect of Lex Loci Delicti and Contractus*, 58 MICH. L. REV. 1066 (1960).

Available at: <https://repository.law.umich.edu/mlr/vol58/iss7/8>

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CONFLICT OF LAWS—RELEASE IN A TORT ACTION—EFFECT OF LEX LOCI DELICTI AND CONTRACTUS—Plaintiff, defendant, and a third party were involved in a three-car collision in Virginia. Plaintiff settled an action against the third party's estate by executing a release, entered into in New York, in which plaintiff reserved any claims which he might have against the defendant. He then sued defendant, a resident of Pennsylvania, in a federal district court in Pennsylvania. The lower court, applying Virginia law to determine the effect of a release of one joint tortfeasor, dismissed plaintiff's action. On appeal, *held*, affirmed. The law of the place of the tort governs the effect of a release, not the law of the state in which the release was executed.<sup>1</sup> *Bittner v. Little*, (3d Cir. 1959) 270 F. (2d) 286.

In actions solely in tort, the general rule is that the law of the place of tort prevails over the law of the forum.<sup>2</sup> Likewise, in cases solely in contract the *lex loci contractus* is controlling.<sup>3</sup> But where there are both tort and

<sup>1</sup> In diversity cases, the federal courts are bound to follow the state conflict of laws principles, *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487 (1941). But since the Pennsylvania courts have not dealt with this specific issue, the federal court must estimate the state court's position.

<sup>2</sup> *Mosby v. Manhattan Oil Co.*, (8th Cir. 1931) 52 F. (2d) 364; *Fitzpatrick v. International Ry. Co.*, 252 N.Y. 127, 169 N.E. 112 (1929); *Orr v. Ahern*, 107 Conn. 174, 139 A. 691 (1928).

<sup>3</sup> *Hartford Accident & Indemnity Co. v. Delta & Pine Land Co.*, 292 U.S. 143 (1934).

contract elements in the same action, occurring in two different foreign jurisdictions, the problem of choosing the law applicable to each element becomes appreciably more difficult, especially when, as in the principal case, the policies of the two foreign states conflict. In New York, a release of one joint tortfeasor, which expressly reserves rights to pursue other joint tortfeasors, is not technically a release but a covenant not to sue, and does not discharge the other defendants.<sup>4</sup> Virginia, however, follows the strict common-law rule that a release of one joint tortfeasor automatically releases all others.<sup>5</sup> In solving conflicts in cases involving such multiple contacts, a court may take one of two approaches. It may use two or more choice-of-law principles, the law of Virginia determining the nature and extent of the defendant's liability in tort, but the law of New York determining the effect of the release.<sup>6</sup> Or it may apply a single choice-of-law principle in such a manner as to select the law of one of the jurisdictions and completely exclude the laws of the others. Selection of the *lex loci delicti* exclusively does appear to be the majority viewpoint.<sup>7</sup> But considering the reasons usually given for observing a foreign state's laws, such as comity,<sup>8</sup> the vested rights theory,<sup>9</sup> or the insurance of conformity to the standards of conduct of the place of wrong, there seems to be no reason why any one body of law should regulate this entire series of transactions. The comity theory does not demand deference to one foreign jurisdiction at the expense of the other. Under the vested rights theory, a cause of action, created by another state, attaches to the litigants and follows them to any other state. The only source of the right is the law of the place of the act. Thus this theory cannot be reconciled with multiple contact cases like the principal case since there are two distinct acts involved, with New York and Virginia vesting conflicting rights in the litigants. As for the final argument, it is difficult to see how the effect of a release has any relation to standards of conduct, since it concerns the parties only after the negligent conduct has occurred. A better reason for observance of foreign law is to insure uni-

<sup>4</sup> *Gilbert v. Finch*, 173 N.Y. 455, 66 N.E. 133 (1903); *Bator v. Barry*, 282 App. Div. 324, 122 N.Y.S. (2d) 604 (1953).

<sup>5</sup> *First and Merchants Nat. Bank of Richmond v. Bank of Waverly*, 170 Va. 496, 197 S.E. 462 (1938). The rationale of the common law rule is that the injured party should not be entitled to recover double compensation. Of course, no one would allow the plaintiff a double recovery, but it ought to be a question of fact whether the amount received by the plaintiff in settlement was payment in full for his injuries. If defendant has proof that the settlement was in full, he can protect himself from incurring unnecessary costs by moving for a summary judgment.

<sup>6</sup> See *Conklin v. Canadian-Colonial Airways*, 266 N.Y. 244, 194 N.E. 692 (1935); *O'Regan v. Cunard Steamship Co.*, 160 Mass. 356, 35 N.E. 1070 (1894).

<sup>7</sup> *Preine v. Freeman*, (E.D. Va. 1953) 112 F. Supp. 257; *Goldstein v. Gilbert*, 125 W.Va. 250, 23 S.E. (2d) 606 (1942); *Lindsay v. Chicago, B. & Q. R. Co.*, (7th Cir. 1915) 226 F. 23.

<sup>8</sup> See *Whitford v. The Panama R. Co.*, 23 N.Y. 465 (1861).

<sup>9</sup> See *Loucks v. Standard Oil Co. of New York*, 224 N.Y. 99, 120 N.E. 198 (1918); *Slater v. Mexican Nat. R. Co.*, 194 U.S. 120 (1904); 3 BEALE, A TREATISE ON THE CONFLICT OF LAWS 1968 (1935). Justice Holmes refers to an "obligation" theory in the Slater case, but this is, in essence, just a variation of the vested rights theory.

formity of result in order to avoid the possibility that the choice of forum might prove decisive. The defendant should be protected no matter what forum is chosen by the plaintiff, if he has relied on the law of the place of tort and was in fact justified. But the defendant has not relied on any law in regard to the release. Rather, it is the plaintiff and the third party whose expectations are jeopardized. In such a situation, more flexibility would insure greater justice to all the parties. Such adaptability is facilitated by the local law theory, which recognizes that no state actually enforces the laws of another place.<sup>10</sup> Instead, in adjusting the rights of suitors, the court imputes to them rights and duties similar to those which arose in the places where the relevant transactions occurred, and, under this theory, the public policy of the forum may be a factor in selecting the appropriate rules of law.<sup>11</sup> In the principal case, if the court had looked to the public policy of the forum, they would have found that Pennsylvania by adopting the Uniform Contributions Among Tortfeasors Act<sup>12</sup> has clearly shown its policy to be similar to that of New York. Concededly, public policy should be used sparingly in ignoring a foreign state's law, but here it could serve the useful function of aiding the forum in choosing between two foreign laws. Following this view the court should have allowed New York law to control the effect of the release.

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<sup>10</sup> This theory was expounded by Judge Learned Hand in *Direction der Disconto-Gesellschaft v. U.S. Steel Corp.*, (S.D. N.Y. 1924) 300 F. 741, *affd.* 267 U.S. 22 (1925). It seems to have the support of CONFLICT OF LAWS RESTATEMENT, §6, comment *a* (1934), which says: ". . . The application of the rules of Conflict of Laws . . . is an application by the court of its own law to facts which include foreign events and foreign law." Under such a theory, there is no reason why a court must consider fact A (the law of Virginia) but not fact B (the law of New York).

<sup>11</sup> Certainly quite a few of the writers in the area recognize the propriety of such action. HANCOCK, *TORTS IN THE CONFLICT OF LAWS* 64 (1942); RABEL, *THE CONFLICT OF LAWS: A COMPARATIVE STUDY*, 2d ed., 96 (1958); Lorenzen, "Tort Liability and the Conflict of Laws," 47 L.Q. REV. 483 (1931); Yntema, "The Hornbook Method and the Conflict of Laws," 37 YALE L.J. 468 (1928). *Contra*, STUMBERG, *PRINCIPLES OF CONFLICT OF LAWS*, 2d ed., 199 (1951). In a few cases the courts have tacitly or expressly approved such procedure. *Fox v. Postal Telegraph-Cable Co.*, 138 Wis. 648, 120 N.W. 399 (1909); *Galef v. United States*, (E.D. S.C. 1928) 25 F. (2d) 134; *St. Louis-San Francisco Ry. Co. v. Cox*, 171 Ark. 103, 283 S.W. 31 (1926).

<sup>12</sup> Uniform Contributions Among Tortfeasors Act, Pa. Stat. Ann. (Purdon, 1951; Supp. 1958) tit. 12, §2085.