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Conflict of Laws

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CONFLICT OF LAWS

DIVORCE — JURISDICTION OVER NONRESIDENTS

Arkansas. Jurisdiction, once validly obtained by a court, is not readily relinquished, as the case of *Altshuler v. Altshuler*[1] illustrates. Separation of a New York married couple was accompanied by an order of the New York court for support of wife and child by the husband. During the following year the wife established residence in Arkansas and secured a divorce decree providing for a $200 per month support allowance for wife and child. She then returned to New York, and apart from her Arkansas stay neither of the parties had residence in any state other than New York. Some years later the wife was granted an additional allowance by the New York court, making a total in that court of $115 per month. Consideration was given to the Arkansas support decree for $200 monthly. Upon remarriage of the wife, Arkansas reduced the monthly support allowance to $150, based solely on the support of the son. The husband then obtained a reduction in New York from $115 to $50 per month. Whereupon the Arkansas court, on motion by the wife, absorbed the $65 per month reduction effected by New York into a new Arkansas decree, raising the allowance from $150 to $215 per month. The husband appealed on the grounds that the Arkansas action should have been dismissed because New York was the proper forum, and that the allowance award was excessive.

The court held that, as the trial court had obtained unquestioned jurisdiction of both parties and subject matter in the original divorce suit, the court retained jurisdiction for purposes of adjusting allowance for support and custody. The court could not say that the trial court's discretion had been abused.

Divorce proceedings are not exclusively *in personam* or *in rem*, being regarded as *in personam* for the purpose of binding

[1] .....Ark....., 258 S. W. 2d 545 (1953).

the defendant personally and *in rem* to affect the status of the parties.[2] In any event, there is continuance of jurisdiction over parties and things throughout all subsequent proceedings which arise out of the original cause of action.[3]

In what manner jurisdiction *in personam* was obtained with regard to the husband, to allow a valid judgment *in personam* for support of wife and child, was not discussed. It has been noted that if a personal judgment for support of children is entered, it would have to be upon jurisdiction of the person of the father on one of the recognized grounds, such as presence or domicile.[4]

Based on the doctrine of *forum non conveniens* some courts have refused to entertain jurisdiction where a suit is between nonresidents or aliens.[5] The reasons vary and include the belief that the matter can be tried better elsewhere. But the determination of the question whether an action should be dismissed on the ground that another forum is more convenient involves the exercise of judicial discretion.[6]

The matter of excessive allowance was dismissed after consideration of the amount necessary to support the child and the ability of the husband to pay.

FULL FAITH AND CREDIT — PENAL AND CIVIL JUDGMENTS FOR SUPPORT

Arkansas. Two Arkansas cases enunciate the distinction between full faith and credit to a civil judgment and full faith and credit to a criminal judgment.

In *Berger v. Berger*[7] a wife sought recovery for an amount due

[2] 17 AM. JUR., *Divorce*, § 9.
[3] Michigan Trust Co. v. Ferry, 228 U. S. 346 (1913); RESTATEMENT, CONFLICT OF LAWS (1934) §§ 76, 105.
[4] STUMBERG, CONFLICT OF LAWS (2d ed. 1951) 344.
[5] *Id.* at 169.
[6] 14 AM. JUR., *Courts*, § 230.
[7] .....Ark....., 261 S. W. 2d 259 (1953).

under a Connecticut judgment rendered against the husband for non-support. Recovery was denied because the judgment was unenforceable by the wife in Connecticut. The proceedings there were not instituted in the name of the wife but constituted a criminal prosecution in the name of the state.

In *Rice v. Rice*[8] a wife obtained a separate maintenance decree in New York with provision for support allowance. Five years later the husband obtained a divorce in Arkansas, following constructive service of process on the wife. After the divorce, the New York court, on petition by the wife and with constructive service on the husband in Arkansas, increased the support allowance. Two judgments then existed against the husband, one on the delinquent installments prior to the increase in allowance, and the other on the delinquent installments subsequent to the increase. Both judgments were entered after constructive service on the husband in Arkansas. The court held both judgments entitled to full faith and credit.

It is well settled in common law jurisdictions that the courts of one state do not enforce claims arising under the penal laws of another.[9] The *Restatement of Conflict of Laws* is in agreement.[10] While recovery was denied in *Berger v. Berger* because of the penal nature of the judgment, there was no penal judgment involved in *Rice v. Rice*. The suits in the latter case were instituted in the name of the wife, and the judgments were enforceable by her in New York.

In the *Rice* case the Arkansas court was faced with the problem of determining whether the New York court had jurisdiction *in personam* over the husband to increase the support allowance and enter valid judgment with respect to delinquent installments of the increased allowance. The leading case of *Michigan Trust*

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[8] .....Ark....., 262 S. W. 2d 270 (1953).

[9] GOODRICH, CONFLICT OF LAWS (3d ed. 1949) 24.

[10] § 443.

Co. v. Ferry[11] was cited and quoted by the court: ". . . if a judicial proceeding is begun with jurisdiction over the person of the party concerned, it is within the power of a state to bind him by every subsequent order in the cause." The New York statutes in fact authorized the court to retain jurisdiction over the husband in separate maintenance actions.

It was held that the Arkansas divorce decree, based upon constructive service, could not, for want of personal service, affect the wife's right to support by the husband under New York law. This view is in accord with a relatively recent United States Supreme Court decision.[12]

TESTAMENTARY CHARITABLE GIFTS — INVALIDITY IN STATE OF TESTATOR'S DOMICILE — EFFECT ON GIFTS OF LAND IN OTHER STATES

Texas. In the case of *Toledo Society for Crippled Children v. Hickock*[13] petitioners, an Ohio charitable institution and others, attempted to establish rights under the will of an Ohio resident with respect to land and mineral estates in Texas. An Ohio statute invalidates gifts to charitable institutions made in wills executed less than one year prior to the testator's death. There is no such statute in Texas. The trial court held the gifts valid with respect to the Texas property. The court of civil appeals reformed the judgment,[14] denying relief to the petitioners on the ground that their interest was contingent rather than vested. The Texas Supreme Court held that Texas law applied and the gift to the Ohio charity was valid.

A portion of the Texas land was partnership property. Under a partnership agreement this land was to be transferred, in ex-

[11] 228 U. S. 346, 353 (1913).
[12] Estin v. Estin, 334 U. S. 541 (1948).
[13] ____Tex____, 261 S. W. 2d 692 (1953).
[14] 252 S. W. 2d 739 (Tex. Civ. App. 1952).

change for corporation stock, to a corporation to be organized by the partners. The agreement referred to the possibility of death of the partners and provided that such occurrence would not preclude incorporation. Two weeks after the death of the testator-partner, incorporation was effected, and a short while thereafter the properties were transferred and the stock certificates issued.

The children of the testator contended that there had been an equitable conversion from realty to personalty by virtue of the agreement to transfer the Texas property into corporation stock, and that all reference in the will was to "funds" rather than "real property." It was argued that no interest in "real property" descended under the will, but rather an interest in "personalty;" consequently, the law of the domicile, Ohio, should have been applied, and the gift to the charity held invalid. The petitioners maintained that it was a matter of simple devise of real property, the law of the situs applying.

The court was of the opinion that the issue of equitable conversion is determined by the law of the land, in this case Texas. There is no dispute on that point. The writers and the cases are in almost unanimous agreement that it is the law of the situs that determines whether equitable conversion has changed realty into personalty or personalty into realty.[15] The misunderstanding and confusion exists with the consideration of the situation arising directly after the situs determines that equitable conversion has transformed the realty into personalty. Does such a conversion mean that the situs court must then look to the law of the domicile on the theory that the law of the domicile applies with regard to personalty? The court in the present case held in the negative. Although it admitted that Texas recognizes the doctrine of equitable conversion, such conversion was said to be immaterial where

[15] See Clarke v. Clarke, 178 U. S. 186 (1900); 2 BEALE, CONFLICT OF LAWS (1935) § 249.1; GOODRICH, CONFLICT OF LAWS (3d ed. 1949) 509; RESTATEMENT, CONFLICT OF LAWS (1934) § 209.

there was a conflict of laws consideration; where the question was which state law to apply. The reasoning advanced was:

> ... this body of law is really private international law and not merely a system for operation between the common or English law states of the United States or between these and common or English law nations. Thus to use as a basis for selection of a particular law between conflicting laws a doctrine which may not even exist in some jurisdictions is obviously less desirable than a more realistic basis such as the movable or immovable character of the object in question. As argued by the petitioners, it would in some cases result in state or nation A deferring to the law of state or nation B, when the latter in a converse situation would not reciprocate.[16]

The court compared the equitable conversion doctrine with the movable-immovable consideration as a basis for a choice of laws and preferred the latter. Is this not really a choice between realty-personalty and immovable-movable, two concepts so often used interchangeably? It would appear so, since what the equitable conversion doctrine ultimately decides is whether the interest involved is realty or personalty.

Stumberg asserts that the problem of choice of laws rests on the determination, by the court of the situs, of the interest under the will as "movable" or "immovable" and that such classification is not the same as that of personalty or realty.[17] The courts of the situs are said to have the final control in determining whether an interest is movable or immovable. Once determined to be an immovable, or interest in an immovable, reference should be made to the law of the situs alone. The immovable, being of a fixed, unchanging location, is so closely identified with the situs as to preclude application of the law of another state.

However, the view has also been noted that where there is an equitable conversion of realty into personalty or personalty into realty, the property is, *for the purpose of the choice of laws,* to be

[16] 261 S. W. 2d at 701.
[17] CONFLICT OF LAWS (2d ed. 1951) 409.

regarded as of that species into which it is converted by the will.[18] This is supported by the case of *Ford v. Ford*,[19] which held that directions in a will to sell Wisconsin land and invest the proceeds in Missouri land resulted in a double conversion from Wisconsin land to money to Missouri land, with the Wisconsin Rule Against Perpetuities then being inapplicable.

Professor Cook ascribes much of the confusion regarding the effect of the equitable conversion doctrine to loose and inaccurate use of terminology.[20] He considers the expressions of the courts to the effect that when a valid contract for the sale of land has been made, the land is converted into personal property and the personal property, or money, is converted into land. This is described, not as a "legal fiction," but as a misleading description of results. The "conversion" does not take place at all, in actuality or in fiction; what the cases actually decide is that the right which the vendor had against the vendee for the purchase price has vested in his personal representative. The legal title vests in the heir, but, since the vendor was in equity holding the title primarily as security for the payment of the purchase price, the benefit of the "lien" passes to the vendor's personal representative along with the right to the purchase price.

Although Goodrich is noted by the court as being alone among the text writers to accept the conversion thesis, he too states that interests in property are classified, for the purpose of applying rules of conflict of laws, as either movables or immovables.[21] Immovables are said to be generally considered as equivalent to realty, but the term also includes other interests which, in other fields of law, may be treated as personalty. The *Restatement of Conflict of Laws* is apparently in agreement, although there is some ambiguity in the use of the word "law" when it is said in

[18] 11 AM. JUR., *Conflict of Laws*, § 96.

[19] 70 Wis. 19, 33 N. W. 188 (1887).

[20] *"Immovables" and the "Law" of the "Situs,"* 52 Harv. L. Rev. 1246 (1939).

[21] CONFLICT OF LAWS (3d ed. 1949) 24.

Section 249, "A will of an interest in land is governed by the law of the state where the land is in spite of a direction in the will to convert the land into personalty." Does this law include the conflict of laws rule of the state of the situs, or is it the law that would be applied in purely domestic situations? This expression should be considered in conjunction with Section 8, which states, "All questions of title to land are decided in accordance with the law of the state where the land is, including the Conflict of Laws rule of that state." The ambiguity of Section 249 appears resolved by Section 8: in the present case Texas should apply its conflict of laws rule, which can only mean that it must apply Ohio law if that is the choice dictated by the status of the interest descending under the will. What was the status of this interest under Texas law? It was personalty, as the court readily admitted. Should Texas then have held that Ohio law governed? The answer is in the negative if it is remembered that the issue determining which law governs is not that of realty or personalty but that of immovable or movable. The classification of personalty did not alter the immovable character of the interest. Thus it would appear that despite the court's insistence that application of its conflict of laws rule takes effect independent of the doctrine of equitable conversion, the same result would be reached by applying the Texas conflict of laws rule after consideration of the true effect of the doctrine.

If there is fault to be found with the opinion, it lies not with the holding but with the supporting argument. The court contended that to apply a doctrine which may not even exist in other jurisdictions would result in state *A* deferring to the law of state *B* when the latter in a converse situation would not reciprocate. Was this attitude law or politics? When state *A* holds, for example, in a case involving citizens of state *B* that its tort law does not recognize responsibility without fault in a particular situation, should it be concerned whether state *B* would recognize the same doctrine? The rules of conflict of laws of a state are not affected by the atti-

tude of another state towards rights or other interests created in the former state.[22]

The Ohio judgment was denied full faith and credit on the ground that Texas need not give full faith and credit to a judgment rendered by a state which is not the situs of the land.

A leading United States Supreme Court case,[23] cited by the court, holds that, for purposes of full faith and credit, the courts of South Carolina could not decide that an interest in Connecticut land was personalty and thereby cause Connecticut courts to lose jurisdiction thereof. The theory was that to hold otherwise would violate the rule that the law of the situs governs testamentary succession to land.

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[22] RESTATEMENT, CONFLICT OF LAWS (1934) § 6.
[23] Clarke v. Clarke, 178 U. S. 186 (1900).