South Carolina Law Review

Volume 18 | Issue 3 Article 4

1966

The Grouping of Contacts--An Innovation in the Conflict of Laws

Mary Jo Sottile

NOTES

THE GROUPING OF CONTACTS — AN INNOVATION IN THE CONFLICT OF LAWS

I. The Proper Choice of Law Rule

A. Vested Rights Doctrine — Disillusionment with this Easy Answer

Since conflict of laws is primarily concerned with the choice and application of a particular jurisdiction's law, the first step necessarily must be the establishment of rules designating when each such law will be applicable. In the area of tort law the traditional view is that the law of the place of the tort, the *lex loci delicti*, will be applied, and when the tortious conduct and the injury occur in different jurisdictions, the law of the place of injury generally will prevail. This view is founded in the vested rights doctrine that a right to recover for a foreign tort is created by, and dependent upon, the law of the jurisdiction where the tort occurred.[1] It would seem to be a wise policy to determine the legal effect of an event according to the law of the place where that event transpired, and when only one state is involved, this rule does offer a guide that may be fairly and easily applied. Further, it provides certainty of result and does not leave the courts and the attorneys the problem of working out the choice of law in each case "aided by merely a general maxim or an indicated approach."[2]

In spite of its seeming merits, strict application of this rule has been severely criticized. The rule is simple to apply because it was derived from a consideration of the situation where all elements of an occurrence are in one state. However, all cases in diverse categories, such as contracts and torts, are treated alike, and many believe it is too much to expect that a simple rule, identifying the single factor of the place of the tort, will be sufficient in every situation.[3] Further, when applied in complex, multi-state situations, the traditional view becomes inflexible

1. See Hancock, Torts in the Conflicts of Law 30-36 (1942).
2. Cheatham, *American Theories of Conflict of Laws: Their Role and Utility*, 58 Harv. L. Rev. 361, 379 (1945).
3. *Id.* at 383. See also Yntema, *The Hornbook Method and the Conflict of Laws*, 37 Yale L.J. 468 (1928). "The view of the vested rights theory is that it affects to decide concrete cases upon generalities which do not state the practical considerations involved." *Id.* at 482-83.

and ignores the interests and policy considerations which jurisdictions other than where the tort occurred may have in the resolution of particular issues.[4]

As interstate mobility increases, the inflexibility of the traditional view becomes more and more burdensome and can lead to some curious and seemingly unjust results.[5] For example, the state of injury may deny a cause of action that would have been recognized had the accident occurred a few minutes earlier or later, when the injured party was in another jurisdiction. Suppose a freight train is derailed, and the plaintiff is injured because a fellow employee negligently coupled the cars before the train began its trip. The right to recover from the employer for the fellow employee's negligence is created by statute. If the train were traveling from Florida to Texas and the cars came apart in Mississippi, the plaintiff could not recover from his employer because Mississippi has not passed this statute.[6] Had the accident occurred at any other time during the trip, the employer would have been liable as he would expect, because all other states along the route have passed the employer's liability statute. Thus, it seems unfair to base recovery on so fortuitous a circumstance as the place of the tort.[7]

In an attempt to avoid such unfair results, many courts have created exceptions to the vested rights doctrine. Thus, where the negligent act occurs in one state and the injury in another, the forum may say that the law of the place of conduct will apply,

4. Babcock v. Jackson, 12 N.Y.2d 473, 479, 191 N.E.2d 279, 285, 240 N.Y.S.2d 743, 749 (1963).

5. See Carter v. Tillery, 257 S.W.2d 465 (Tex. Civ. App. 1953) The parties, residents of Texas, took off in the defendant's plane. While they were off course over Mexico, the plane crashed allegedly because of the defendant's negligence. The Texas court held that the applicable law of Mexico was so dissimilar to the laws of Texas that the Texas court lacked jurisdiction. Since institution of a suit in Mexico would have been futile, the parties were left substantially without a remedy.

6. Alabama Great So. R.R. v. Carroll, 97 Ala. 126, 11 So. 803 (1892).

7. The instances of such curious results are numerous. See, *e.g.*, Nadeau v. Power Plant Eng'r Co., 216 Ore. 12, 337 P.2d 313 (1959). An Oregon employee brought action in Oregon against an Oregon employer for injuries sustained while performing temporary work for the employer in Washington. The court held that since the employee did not have a cause of action against his employer in Washington, he had no cause of action in Oregon. Walton v. Arabian Am. Oil Co., 233 F.2d 541 (2d Cir. 1956). The plaintiff was given an opportunity to prove the tort law of Saudi Arabia, where the injury occurred. He did not do so, relying instead on the tort law of the forum, New York, since only basic tort principles were involved. The court sustained a directed verdict for the defendant, saying the plaintiff must prove the law of a foreign country in order to sustain his cause of action. See also Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487 (1940); Jeffrey v. Whitworth College, 128 F. Supp. 219 (E.D. Wash. 1955).

rather than the usually applicable law of the place of injury. Further, where the law of the place of injury violates a strong public policy of the forum state, the forum may refuse to apply such a law. Since procedural questions are traditionally governed by the laws of the forum, some courts have circumvented the vested rights doctrine by declaring that the issue to be decided was procedural, rather than substantive. Thus, when the California court was presented with the question of survival of a cause of action, it was held that such a question was procedural and called for the application of the forum's law. If the law of the place of injury had been applied, the action would have abated. In the face of numerous authorities to the contrary,[8] the court reasoned that survival statutes did not create a new cause of action, as did wrongful death statutes. Rather, they merely prevented the abatement of a cause of action and provided for its enforcement by or against the personal representative of the deceased.[9]

Another method of circumventing the vested rights doctrine is to allow an action in contract, instead of in tort. Thus, as early as 1928 the Connecticut court declared that a person injured in Massachusetts through the negligent operation of a rented automobile was entitled to recover damages from the owner, who had rented the car to the driver in Connecticut.[10] Since Connecticut followed the vested rights rule, an action in tort brought in Connecticut would have required the application of Massachusetts law, which denied recovery. However, the court said that recovery was not based on tort, but on a contract of leasing entered into in Connecticut, and that a Connecticut statute, allowing recovery from the owner of a car for its negligent operation by another,[11] became a part of the contract when it was executed. Since the contract was made for the plaintiff and every

8. The court cited numerous cases holding that the survival of a cause of action was a substantive question. Grant v. McAuliffe, 41 Cal. 2d 859, 862, 264 P.2d 944, 946-47 (1953). Further, California case law had held that the survival statute was substantive, but the court avoided this fact by saying that a statute or other rule of law would be characterized as substantive or procedural according to the nature of the problem for which the characterization must be made. *Id.* at 863, 264 P.2d at 948 (1953).

9. Grant v. McAuliffe, 41 Cal. 2d 859, 264 P.2d 944 (1953).

10. Levy v. Daniel's U-Drive Auto Renting Co., 108 Conn. 353, 143 Atl. 163 (1928).

11. Conn. Pub. Acts 1925, ch. 195, § 21.

other member of the public, the plaintiff could enforce this contract as a third party beneficiary.[12]

Advocates of the vested rights doctrine defend its application on the ground that its choice of law will always be predictable. This has not been the case, however, as the courts have engrafted numerous exceptions on this doctrine, and it is often difficult to determine when one of them will be invoked, or a new exception created, in order to circumvent a harsh result.

B. The Inception of a New General Rule

There are not many instances where an issue can be categorized as procedural or as involving a strong local policy. Further, only a few actions for injury can be brought in contract. Thus, while these exceptions avoid some injustices, they are necessarily limited in their application, and the inflexibility of the vested rights doctrine continues to be a problem.

Various solutions have been suggested by the leading authorities in the conflict of laws field.[13] While their solutions differ in some respects, they all agree that the forum should have great-

12. See also Bowles v. Zimmer Mfg. Co., 277 F.2d 868 (7th Cir. 1960); Rubberoid Co. v. Roy, 240 F. Supp. 7 (E.D. La. 1965).

13. Cook states that where the negligent act occurs in one state and the injury takes place in another state, the forum should choose the law of the state where the "decisive portion of the events" have occurred. COOK, THE LOGICAL AND LEGAL BASIS OF THE CONFLICT OF LAW (1942).

Currie advocates the theory of "governmental interest," which places great stress on the law of the forum where the forum has a legitimate interest in the issue before it. Currie, *Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws,* 63 COLUM. L. REV. 1212, 1233 (1963).

Morris believes that a tort action should be governed by its "proper law," that is, "the law, or laws, by which the parties intended, or may fairly be presumed to have intended, the action to be governed . . . ." Morris, *The Proper Law of a Tort,* 64 HARV. L. REV. 881 (1951).

Ehrenzweig, like Currie, stresses application of the law of the forum, but he emphasizes the interests of the parties, as opposed to governmental interests, particularly whether the defendant could obtain liability insurance, adequate under the prevailing law and whether the insurer could reasonably calculate the premium. Ehrenzweig, *Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws,* 63 COLUM. L. REV. 1212, 1243 (1963).

Others would apply the law of the state having the most significant contacts or relationships with the particular issue. While they differ slightly in the way these contacts are to be evaluated, all place importance on an analysis of the policies underlying the conflicting laws and on the relation of the contacts to these policies. See GOODRICH & SCOLES, CONFLICT OF LAWS 166 (4th ed. 1964); Cheatham, *Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws,* 63 COLUM. L. REV. 1212, 1229 (1963); Harper, *Policy Bases of Conflict of Laws: Reflections on Rereading Professor Lorenzen's Essays,* 56 YALE L.J. 1155 (1942); Reese, *Conflict of Laws and the Restatement Second,* 28 LAW & CONTEMP. PROB. 679 (1963); Weintraub, *A Method for Solving Conflict Problems—Torts,* 48 CORNELL L.Q. 215, (1963).

er flexibility in choice of law questions. It is believed that this flexibility will enable the forum to weigh the significant policy considerations and interests that may arise. The courts are beginning to recognize the advantages of a more liberal rule and in the past few years have begun to formulate a new policy, generally referred to as the grouping of contacts or center of gravity theory.[14]

According to the grouping of contacts theory, a court will consider all the acts of the parties touching the transaction in relation to the several states involved and will apply, as the law governing the transaction, the law of that state with which the facts are in most intimate contact. This approach does not advocate a mere counting of the number of contacts with each state and an application of the law of the state with the greatest number. Rather, the approach is qualitative; the forum will apply the law of the state with the most significant relation to the issue or issues involved. Suppose A and B, residents of State X, take a trip through State Y, where they are involved in a collision with C, also a resident of State X. State Y has an interest in enforcing safety on its highways and in seeing that those who render medical aid are reimbursed. The cars are registered and insured in State X, and all parties are residents of that state. Thus, State X is interested in seeing that the injuried parties do not become wards of the state and in protecting the defendant and his insurer from liability greater than should reasonably have been anticipated. The forum will weigh these interests and policies, and apply the law of the state that it determines to be the most intimately concerned with the outcome.[15]

---

14. This name was coined by HARPER & TAINTOR, CASES ON CONFLICT OF LAWS 173 (1937).

15. The Supreme Court has held that when more than one jurisdiction has sufficiently substantial contact with the activity in issue, the forum, by analysis of the interests possessed by the jurisdictions involved, could constitutionally apply the law of one or another jurisdiction, having such an interest in the multistate activity. Richards v. United States, 369 U.S. 1, 15 (1962).

The full faith and credit clause (U.S. CONST. art. 4, § 1) does not require the enforcement of every right which has ripened into a judgment of another state or has been conferred by its statutes. See Broderick v. Rosner, 294 U.S. 629 (1934); Alaska Packers Ass'n v. Industrial Acc. Comm'n, 294 U.S. 532 (1934).

As to the validity of the grouping of contacts in contract actions, see Vanston Bondholders Protective Comm'n v. Green, 329 U.S. 156, 161-62 (1946). See also Watson v. Employers Liab. Assur. Corp., 348 U.S. 66 (1954); Lauritzen v. Larsen, 345 U.S. 571 (1952). The application of Danish law was favored by an overwhelming preponderance of the connecting factors which are significant in the choice of law, applicable to a claim of actionable wrong.

II. How The Grouping of Contacts Theory is Used

When a new rule of law is announced by a court, it often happens that the rule fits the facts of that particular case. As other cases arise, the rule that solved the first case is likely to be used in the solution of the next, and it will be modified and improved in the process. Thus, in order to fully comprehend the grouping of contacts theory, it is necessary to analyze the cases that have considered, adopted, modified and improved this theory. The discussion that follows will not consider all of the areas where this rule can be and has been applied. Rather, it is intended to present some of the tort areas where the rule has been used, in order to indicate its nature and scope.

A. Tort Liability

1. *The Pronouncement of the New Rule.* The guest liability statutes impose varying restrictions on recovery.[16] The policy basis of these statutes appears to be the avoidance or restriction of unappreciative or collusive suits by a guest against his host. These policies relate to the guest–host relationship and to the interests of the forum, rather than to the place of the injury. *Babcock v. Jackson*[17] was the first guest case to give effect to these policy considerations by adoption of the grouping of contacts, and it is considered by many authorities to be the landmark case.[18] In *Babcock* the guest–plaintiff and the host–defendant, residents of New York, took a weekend trip to Ontario, where they had an accident. Under Ontario law a guest could not recover for injuries sustained as a result of his host's negligence, the apparent purpose of this law being to prevent the assertion of fraudulent claims. New York policy, on the other hand, required that a tort-feasor compensate his guest for injuries caused by the tort-feasor's negligence. The court concluded that whether New York defendants are imposed upon or their insurers defrauded by a New York plaintiff could hardly be a valid legislative concern of Ontario, merely because the accident occurred there. Since New York was the residence of the parties, the place where the car was licensed, registered and insured, and since New York had an interest in seeing that the guest was compensated,

16. See Ehrenzweig, Conflict of Laws § 220 (1962).
17. 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963).
18. See Cavers, Cheatham, Currie, Ehrenzweig, Leflar & Reese, *Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws,* 63 Colum. L. Rev. 1212 (1963).

it was determined that the more significant contacts occurred in New York. Ontario's sole contact was as the place of the injury, a "purely adventitious circumstance."[19]

In *Babcock* the court distinguished the issue of host liability from the issue of a driver's exercise of due care in operating his automobile. Where the issue is the exercise of due care, the jurisdiction in which the conduct occurred will generally have a predominant concern. In such a case, the court recognized that it generally would be advisable to apply the law of the place of the tort in order to give effect to that jurisdiction's interest in regulating conduct within its borders.[20] On the other hand, the rights and liabilities stemming from the guest-host relationship should remain constant, rather than shift as the automobile proceeds from place to place. Such consistency is in accordance with the host's interest in obtaining liability insurance that will be adequate under the applicable law, and with his insurer's interest in reasonable calculability of the premium.[21]

Babcock took the initial step by overruling the vested rights doctrine and establishing the grouping of contacts as New York's conflict of laws rule. It was the task of later cases to interpret, modify and shape this theory.

2. *What Contacts are Significant.* The critics of the grouping of contacts approach argue that too much discretion is given to the courts, and that a forum would be disposed to apply its own law in almost every case. Suppose the host and his guest were residents of Ontario, where their trip began and ended and, while in New York, the negligence of the host caused injury to the guest. Were an action to be brought in New York, the critics feared that the court would be inclined to stack the contacts in favor of New York to take advantage of its more favorable guest statute. However, when such a factual situation arose, the New York court held that all the significant contacts were with Ontario.[22] New York's interest was the purely fortuitous circumstance that the tort occurred there.

---

19. Babcock v. Jackson, 12 N.Y.2d 473, 478, 191 N.E.2d 279, 284, 240 N.Y.S.2d 743, 748 (1963).

20. *Ibid.*

21. Ehrenzweig, *Guest Statutes in the Conflict of Laws*, 69 YALE L.J. 595, 603 (1960) as quoted in Babcock v. Jackson, 12 N.Y.2d 473, 479, 191 N.E.2d 279, 285, 240 N.Y.2d 743, 749 (1963).

22. White v. Motor Vehicle Acc. Indemnification Corp., 39 Misc. 2d 678, 241 N.Y.S.2d 566 (Sup. Ct. 1963).

If there is a concentration of contacts in one state, that state will have a paramount interest in the issue of host liability, even though it is not the domiciliary state. However, where there is no concentration of contacts in any one state, permanency of residence becomes a consideration of particular weight. Suppose a South Carolinian drives to Georgia, where he picks up another South Carolina resident. The host and his guest then proceed to Florida for a weekend trip, where the guest is injured in an accident caused by the host's negligence. Under the grouping of contacts the guest's right to recover from the host would be determined by South Carolina law, as the state of the parties' permanent residence.[23] That the accident happened to occur in Florida is merely a fortuitous circumstance. The parties were only temporarily in Florida, while the state of their permanent residence, which generally controls their rights and liabilities, is South Carolina.

In the example above, as in *Babcock*, the parties were taking only a weekend trip, and for this reason the amount of time they were out of state did not weaken the residency state's interest. However, were the host and the guest to spend any appreciable time in a state other than that of their permanent residence, the choice of law may be affected. Thus, if two South Carolina residents meet in Georgia, where they are vacationing, and the guest is injured during a short trip from Georgia to Florida, Georgia law would determine the issue of host liability.[24] True, Georgia was the place where the guest–host relationship arose and where the trip to Florida was to begin and end. But these contacts, standing alone, would not be sufficient to give Georgia the dominant interest. The additional fact that Georgia was the temporary residence of the parties is necessary in order to outweigh South Carolina's interest as the state of permanent residence.[25] What exactly is necessary to change a visit into a temporary resi-

23. Freund v. Spencer, 46 Misc. 2d 472, 474, 260 N.Y.S.2d 149, 151 (Sup. Ct. 1965).

24. See Dym v. Gordon, 22 App. Div. 2d 702, 253 N.Y.S.2d 802 (1964).

25. The permanent residence of the driver or the guest may also affect the choice of law. See Fonaro v. Jill Bros., Inc., 22 App. Div. 695, 253 N.Y.S.2d 771 (1964). The grouping of contacts required the application of New Jersey law to the substantive issues in an action arising out of a New Jersey automobile accident involving a car, owned by a New York corporation but driven by a New Jersey resident. See also Brunke v. Popp, 21 Wis. 2d 458, 124 N.W.2d 642 (1963). In an action arising out of an accident in Georgia, it was held that inspite of Wisconsin's adoption of the grouping of contacts in Haumschild v. Continental Cas. Co., 7 Wis. 2d 130, 95 N.W.2d 814 (1959), Wisconsin law would not apply because the plaintiff was not a resident of that state.

dence has yet to be determined. Merely driving through or spending a weekend[26] or attending college[27] in a particular state is not sufficient to establish that state as a temporary residence. However, the state where the parties spend their vacation does become a temporary residence, and has a paramount interest in their activities.[28]

An interest or policy of a state which is not the place of injury should be recognized only when such recognition will have little effect on the other states involved. When the issue to be resolved concerns the conduct of the defendant, the state where the tort occurred will usually have the most significant contact. To apply another state's law would greatly affect the interest of the state of injury. It is easy to see that the state in which an automobile accident occurs must protect the users of its highways and thus has a paramount interest in seeing that its laws are enforced. The residence of the parties is insignificant because the question does not involve the relationship of the parties but rather the nature of the defendant's conduct.[29] So, where an accident occurs in Georgia, involving South Carolina residents, Georgia law will be applied to the degree of negligence issue.[30] Since Georgia has an interest in seeing that its highways are used properly, its law will determine the rightness or wrongness of the defendant's conduct. Thus, the grouping of contacts has not attempted to completely overturn the vested rights doctrine. It does not stand for the proposition that the law of the place of injury never may be applied. The aim of the new approach is merely to move away from a rigid and unfair application of the traditional rule.

3. *Questionable Areas.* Thus far, the major exception to the application of the grouping of contacts has been in an action for

26. See Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963); White v. Motor Vehicle Acc. Indemnification Corp. 39 Misc. 2d 678, 241 N.Y.S.2d 566 (Sup. Ct. 1963).

27. See Freund v. Spencer, 46 Misc. 2d 472, 260 N.Y.S.2d 149 (Sup. Ct. 1965).

28. See Dym v. Gordon, 22 App. Div. 2d 702, 253 N.Y.S.2d 802 (1964).

29. See Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963); Murphy v. Barron, 45 Misc. 2d 905, 258 N.Y.S.2d 139 (Sup. Ct. 1965).

30. See Freund v. Spencer, 46 Misc. 2d 472, 260 N.Y.S.2d 149 (Sup. Ct. 1965). Where two New York residents were involved in a head on collision in Vermont with another New York resident, the New York court held that the issue of negligence was controlled by Vermont law. Brunke v. Popp, 21 Wis. 2d 458, 124 N.W.2d 642 (1963). In an action arising out of an accident in Georgia, the degree of negligence issue was held to be controlled by Georgia law.

wrongful death. In *Long v. Pan Am. World Airways*[31] an action for wrongful death arising out of a plane crash was brought in New York by the deceased's representative. The accident occurred over Maryland and involved a plane owned by a New York corporation. All other contacts, such as residence of the deceased and origin of the flight, were in Pennsylvania. While recognizing the continued validity of the grouping of contacts, the court held that this approach could not be used in an action for wrongful death. Rather, the law of the place of injury must be applied. The right to maintain an action for wrongful death is purely statutory, and the court reasoned that such statutes have no extraterritorial effect. Only those persons who are given a cause of action by Maryland law, as the place where the cause of action arose, may sue. If no cause of action for wrongful death can be maintained in Maryland, there can be no cause of action anywhere.[32] Thus, it would seem that where a right of action depends entirely on a statute, the grouping of contacts will not be used.

It is difficult to square this decision with the cases involving a guest statute. In the former case a statute creates a right of action, while in the latter a statute defines or limits a right of action. In both instances the policy considerations appear to be similar. Whether the forum refuses to deny a guest's cause of action or allows a representative's wrongful death action should not be the concern of the state where the injury occurred. The imposition of host or wrongful death liability upon a tort feasor according to the laws of his residence or place of business would permit the tort feasor to reasonably foresee the extent of his liability.[33] The distinction between a statute limiting recovery and a statute creating recovery does not seem relevant in light of the other policy factors.

Where suit is brought under a statute allowing direct action against the insurer, the *Long* decision would look to the law of the place of injury. Since this right of action is created by stat-

31. 23 App. Div. 2d 386, 260 N.Y.S.2d 750 (1965).

32. Long v. Pan Am. World Airways, 23 App. Div. 2d 386, 388, 260 N.Y.S.2d 750, 753 (1965), citing Whitford v. Panama R.R., 23 N.Y. 465 (1861), and Baldwin v. Powell, 294 N.Y. 130, 61 N.Y.2d 412 (1945).

33. Application of the law of the defendant's residence or of a place where he does business will protect his interest in obtaining liability insurance that will be adequate under the applicable law and will protect his insurer's interest in reasonable calculability of the premium. See Ehrenzweig, *Guest Statutes in the Conflict of Laws*, 60 YALE L.J. 595, 603 (1960).

ute, a direct action could be maintained only if allowed by the state where the tort occurred. This issue has not arisen since the inception of the grouping of contacts. However, an earlier case allowed a direct action based on the law of the state where the negligent conduct occurred, even though the law of the place of injury did not recognize this right.[34] Further, in almost complete contradiction to *Long*, it has been held that a direct action, based on a statute of the place of injury, could not be upheld because it violated the public policy of the forum, New York.[35] Thus, when the direct action question arises, a court will have several alternatives. It may refuse to use the grouping of contacts and apply the law of the place of tort or the law of the place where the negligent conduct occurred. It could hold that the question involved the public policy of the forum. Further, *Long* could be limited to the narrow scope of wrongful death actions, allowing a court to apply the grouping of contacts in a direct action situation.

4. *Insurer Liability.*

Where an action is brought to establish the liability of an insurer, the place of the accident generally is irrelevant. For example, the insurer's liability for breach of its duty to an insured is more significantly related to the place of residence than to the place of injury.[36] The grouping of contacts has been used in a suit for negligent delay in acting upon an application for insurance, where the court stated that while the relative weight of particular factors may vary from case to case, it must judge the totality of contacts with the parties and the subject matter.[37] In making this judgment it was determined that the residence of the intended insured was of little significance. Further, the insurer's domicile merited consideration but could not be accorded dominant importance. The significant contact on which liability would rest was found to be the location of the insurer's home

34. Burkett v. Globe Indem. Co., 182 Miss. 423, 181 So. 316 (1938).

35. Morton v. Maryland Cas. Co., 1 App. Div. 2d 116, 148 N.Y.S.2d 524 (1955). This case was overruled by Oltarsh v. Aetna Ins. Co., 15 N.Y.2d 111, 204 N.E. 2d 622 (1965).

36. See Seguros Tepeyac v. Bostrom, 347 F.2d 168 (5th Cir. 1965) (suit against insurer for breach of duty to defend or settle); LEFLAR, CONFLICT OF LAWS § 111 (1959) ("a reasonably substantial connection with and responsibility for the local activity is what is required"). *But see* Humble Oil Co. v. M/V John E. Coon, 207 F. Supp. 45 (E.D. La. 1962).

37. Lowe's No. Wilkesboro Hardware, Inc. v. Fidelity Mut. Life Ins. Co., 319 F.2d 469, 473 (4th Cir. 1963).

office, where the application and all information was sent and the only place where the policy could be acted upon.[38]

5. *The Splitting of Issues.* It is possible that different states will have significant contact with various issues presented in one case. For instance the place of injury may be more significantly related to the issue of the defendant's conduct, while the place of residence may have the dominant interest in host liability. There is no reason why the law of one state should be applied to all aspects of a case.[39] When this situation has arisen, the courts have applied to each issue the law of the jurisdiction having the most significant contacts with that issue. In one case the law of the place of injury was applied to the determination of gross negligence, while the forum's law decided the adequacy of damages.[40] In another the existence of actionable negligence was held to be determined by the *lex loci delicti*, while questions relating to who could maintain the action, for whom, and the measure of damages were determined by forum law.[41]

B. Defamation

The disadvantages of the inflexible vested rights doctrine are reflected in the area of multi-state defamation. Since the traditional rule is rooted in the single state tort, defamations occurring in nationwide publications and broadcasts raise choice of law problems that cannot be adequately handled by this simple rule. This is especially true in jurisdictions that follow the older substantive law view that a cause of action arises each time the defamatory statement is published, that is, communicated to a third person. Fortunately, the trend in the substantive law area is toward the single publication rule that each statement gives rise to only one cause of action regardless of the number of actual publications.[42] The choice of law problem, however, still remains. While the recent cases do not specifically adopt the grouping of contacts by name, the courts generally apply the law of the state that has the predominant relationship to the issues.[43]

38. *Id.* at 474.
39. See Wilcox v. Wilcox, 26 Wis. 2d 617, 133 N.W.2d 408 (1965); Babcock v. Jackson, 12 N.Y.2d 473, 479, 191 N.E.2d 279, 285, 240 N.Y.S.2d 743, 749 (1963).
40. Parchia v. Parchia, 24 Wis. 2d 659, 130 N.W.2d 205 (1964).
41. Fabricius v. Horgen, 132 N.W.2d 410 (Iowa 1965).
42. 69 HARV. L. REV. (1956). See HARPER & JAMES, THE LAW OF TORTS § 5.16 (1956).
43. GOODRICH & SCOLES, CONFLICT OF LAWS § 93 (4th ed. 1964).

Most of the cases dealing with nationwide publications have applied the law of the forum.[44] Because of the nature of this tort, it seems probable that the forum would have the most substantial contacts with the transaction. Where the forum is also the defendant's domicile, it has an interest in regulating the tortious conduct. Where the forum is also the plaintiff's domicile or the place where the plaintiff conducts most of his business, it has an interest in seeing that the injured party is properly compensated. Thus, it may be said that the law of the forum is applied not because it is the forum, but because it has the most significant relationship to the issues of the case.[45] In applying the forum's law *Insull v. New York World Tel. Co.*[46] stated that the choice of law must be "that state which bears the most substantial relationship to all communications to third parties in all states in which communication occurs."[47] It is essential that the forum determine in each case whether its law bears the most significant relationship to the proceedings. To apply forum law merely because it is the situs of the legal proceedings would encourage the plaintiff to shop for the forum whose law is the most favorable.[48]

A few writers have expressed the view that the preferable choice of law would be the state of the defendant's conduct.[49] However, this position is almost entirely unsupported by case law. The few courts which have adopted this view have done so only where other factors pointing to a choice of that state's law were also present.[50] The grouping of contacts generally would place little significance on this state's interest. However, where the action is for criminal libel, the state of the defendant's conduct would have a definite interest in regulating his defamatory activities and thus could conceivably have the most dominant

44. See, *e.g.*, Insull v. New York World Telegram Corp., 172 F. Supp. 615 (N.D. Ill. 1959); Nebb v. Bell Syndicate, Inc., 41 F. Supp. 929 (S.D.N.Y. 1941); Baker v. Halderman—Julius, 149 Kan. 560, 88 P.2d 1065 (1939); Butler v. Hoboken Printing and Publishing Co., 73 N.J. 45, 62 Atl. 272 (1905); EHRENZWEIG, CONFLICT OF LAWS § 216 (1962); 36 MINN. L. REV. 1 (1951) and cases therein cited.

45. GOODRICH & SCOLES, CONFLICT OF LAWS § 93 (4th ed. 1964).

46. 172 F. Supp. 615 (N.D. Ill. 1959).

47. *Id.* at 633.

48. 69 HARV. L. REV. 876, 955 (1956).

49. Ehrenzweig, *The Place of Acting in International Multistate Torts*, 36 MINN. L. REV. 1 (1951); Prosser, *Interstate Publication*, 51 MICH. L. REV. 959 (1953).

50. See, *e.g.*, Grant v. Reader's Digest Ass'n Inc., 151 F.2d 733 (2d Cir. 1945) (law applied was also that of the forum and the state of primary impact); Trammell v. Citizens News Co., 285 Ky. 529, 148 S.W.2d 708 (1941).

contacts with the action. The same situation could arise over the issue of punitive damages. For the purpose of most defamatory actions it would seem more appropriate to consider the impact on the plaintiff rather than the regulation of the defendant's conduct.[51]

To determine the choice of law question by applying the law of the plaintiff's domicile would be a rather uncomplicated solution. However, it may frequently happen that the state of domicile is not the state with the greatest interest. Take for example the case of a corporation incorporated in State A but doing most of its business in State B. Were this corporation to be defamed, the state of its incorporation would have very little contact with the action. The undesirability of this solution is reflected by the fact that only one state seems to have adopted it without qualification.[52] Under the grouping of contacts approach, domicile would have to be combined with other factors in order to be considered the state with the most significant interest.

In choosing the applicable state law, it would seem appropriate to consider mental distress, loss of reputation, economic loss, and interruption of social relationships.[53] The state where most of these damages are centered would be the state where the plaintiff suffered his greatest injury. Since this state would have the greatest interest in seeing that the plaintiff is protected and compensated, it appears that the grouping of contacts approach would favor this choice of law. Another merit of this choice is that it focuses directly on the injury suffered by the plaintiff, which is the basis of the action.

Of course, it is inevitable that in cases involving the defamation of a multi-state corporation or a nationally known individual, the injury will not center in any one jurisdiction. While the application of one state's law in such a case will be somewhat arbitrary, this problem is inherent in the substantive law's single publication rule, which always has been arbitrary to some extent. However, the criteria of the state of greatest injury will in most

51. See 69 HARV. L. REV. 876, 955-56 (1956).

52. Dale System, Inc. v. Time Inc., 116 F. Supp. 527 (D. Conn. 1953) (this was also the place of the plaintiff's business). See also Fouts v. Fawcett Publications, 116 F. Supp. 535 (D. Conn. 1953). *Cf.* Zuck v. Interst Publishing Corp., 317 F.2d 727 (2d Cir. 1963).

53. Mattox v. News Syndicate Co., 176 F.2d 897 (2d Cir. 1949); Caldwell v. Crowell—Collier Publishing Co., 161 F.2d 333 (5th Cir. 1949); Insull v. New York World Telegram Corp., 172 F. Supp. 615 (N.D. Ill. 1959); Bernstein v. National Broadcasting Co., 129 F. Supp. 817 (D.D.C. 1955).

cases be less arbitrary than the other previously mentioned choices.[54]

C. Interference with Relationships

In an alienation of affections suit, the grouping of contacts generally would recognize the state of matrimonial domicile as having the most significant relationship. This state would be most concerned with protecting the social order within its borders. However, in *Gordon v. Parker*[55] the court felt that additional factors required a different result. This case involved an action by a Pennsylvania husband against an alleged Massachusetts paramour for conduct that occurred in Massachusetts. The court recognized that the social order of both states was implicated. Pennsylvania had an interest in whether conduct was held to adversely affect a marriage relationship between its domiciliaries. Massachusetts was concerned with conduct within its borders which lowered the standards of the community where it occurred. Since Massachusetts was the place where the misconduct occurred and where the wrongdoer lived, it was held that Massachusetts had the more significant relationship, and thus, its law should be applied.[56]

Interference with the marital relationship is stamped as wrongful because it is regarded as sinful, offensive to public morals, and likely to arouse the public. Since such laws are aimed at the regulation of public order, the state where the misconduct occurs was viewed in *Gordon* as having the most substantial interest. In many cases the matrimonal domicile and the place of the misconduct will be the same, and the choice of law will be easily determined. However, where these contacts occur in different states, the most significant relationship will be determined, as it must be, by the facts in the particular case and by the relevant local policies and interests.

D. Defenses

1. *Statutes of Limitation.* Since the full faith and credit clause[57] does not compel a state to adopt any particular set of

54. See 69 HARV. L. REV. 876, 957 (1956).
55. 83 F. Supp. 40 (D. Mass. 1949).
56. *Cf.* Wawrzin v. Rosenberg, 12 F. Supp. 548 (E.D.N.Y. 1935). *But cf.* Sestito v. Knop, 297 F.2d 33 (7th Cir. 1961); Jordan v. States Marine Corp., 257 F.2d 232 (9th Cir. 1958); Thome v. Mackin, 58 Cal. App. 2d 76, 136 P.2d 116 (1943).
57. U. S. CONST. art. 4, § 1.

conflict rules,[58] a forum is free to apply the limitation statute of the state having the most significant relationship to that issue. Recognizing the impact of *Babcock* on New York conflict laws, the court in *George v. Douglas Aircraft Co.*[59] stated that each choice of law question must turn on the law of the jurisdiction which has the strongest interest in the resolution of the particular issue presented. While the injury to Texas crew members had occurred in Florida, the court reasoned that the California statute of limitation applied because within the meaning of the New York borrowing statute, this action "arose" in that state,[60] California being the place where the plane had been manufactured and delivered. In a wrongful death action, it was held that the place of injury had no relevant interest to the limitation question. Rather, the court applied the law of the state of the parties' residence, which was also the place where the defendant's negligent conduct occurred.[61]

It would seem that the same rationale used to determine host liability or amount of damages should apply here. Where the place of injury is merely a fortuitous circumstance, it will not have a relevant interest in the issue. Statutes of limitation regulate individual rights within a state's borders. Thus, the state that has the most significant relationship to the parties, for example where it is the parties' residence, should generally have the dominant contacts.

2. *Intra-Family Immunity.* The prevailing view is that the law of the place of wrong controls the question whether one spouse is immune from suit by the other.[62] However, the trend is away from this view. It has been recognized as both sensible and logical to have disabilities to sue and immunities from suit arising from a family relationship determined by reference to the law of the state of family domicile. The courts that adopted this view prior to the advent of the grouping of contacts held

58. Wells v. Simonds Abrasive Co., 345 U.S. 514 (1952).

59. 332 F.2d 73 (2d Cir. 1964).

60. As to which law would apply to the substantive issues, the dictum indicates that the court would apply Florida law. "An accident caused by a defective product threatens the 'general security' of the state where the injury occurs rather than of the state of delivery... or even the state of manufacture." George v. Douglas Aircraft Co., 332 F.2d 73, 76 (2d Cir. 1964).

61. Gianni v. Fort Wayne Air Serv., Inc., 342 F.2d 621 (7th Cir. 1965) citing Watts v. Pioneer Corn Co., 343 F.2d 617 (7th Cir. 1965) (grouping of contacts applied to the issue of damages).

62. See Annot., 22 A.L.R.2d 1248, 2151-53; RESTATEMENT (SECOND), CONFLICT OF LAWS §§ 378, 384(2) (1958).

that this was not a question of tort, but one of capacity to sue and be sued. As to this question the place of injury was both fortuitous and irrelevant. The domiciliary state has the primary responsibility for establishing and regulating the family relationship. Moreover, it is undesirable that the disabilities and immunities conferred on this relationship should constantly change as the family crosses state boundaries. If any other choice were followed, the *lex loci* would seriously interfere with a status and a policy which the state of residence is primarly interested in maintaining.[63] The grouping of contacts also would give significance to these factors, and generally would apply the law of the domicile.[64]

While the cases applying domiciliary law do not use the grouping of contacts by name, their decisions are based on the fact that this state has the dominant interests and the primary responsibilities. Further, the incidents of the status of marriage should not be determined by a mere fortuitous circumstance, such as the place where the parties chanced to have an accident. More justice can be done to the litigants by the application of their domiciliary law.[65]

South Carolina is among the states that have not chosen to recognize the trend, but have adhered instead to the old view. The only case in this jurisdiction which was presented with the grouping of contacts approach was *Oshiek v. Oshiek*.[66] In spite of South Carolina's policy of allowing interspousal suits,[67] the court held that no cause of action could be enforced where such action was not recognized by the law of the place of injury. The weight of this decision is questionable, however, because reliance was placed on the North Carolina case of *Shaw v. Lee*.[68] In adhering to the *lex loci delicti* rule, *Shaw* relied primarily on cases

63. See Haumschild v. Continental Cas. Co., 7 Wis. 2d 130, 95 N.W.2d 814 (1959); Koplik v. C. P. Trucking Corp., 27 N.J. 1, 141 A.2d 34 (Sup. Ct. 1958); Emery v. Emery, 45 Cal. 2d 421, 289 P.2d 218 (1955); Mertz v. Mertz, 271 N.Y. 466, 3 N.E.2d 597 (1936).

64. The decision to apply the domiciliary law further eliminates the possibility of a circular chase. Under the old view the forum would apply the law of the place of wrong, State B. If State B law says that the law of the domicile, State A, controls the question of interspousal immunity, the forum is sent right back to the law of State A to establish standing to sue. But State A law requires the application of the law of the place of wrong. Thus, the forum would be involved in an endless chase. See Haumschild v. Continental Cas. Co., 7 Wis. 2d 130, 135, 95 N.W.2d 814, 819 (1959).

65. Thompson v. Thompson, 105 N.H. 86, 193 A.2d 439 (1963).

66. 244 S.C. 249, 136 S.E.2d 303 (1964).

67. S.C. CODE ANN. § 10-216 (1962).

68. 258 N.C. 609, 129 S.E.2d 293 (1963).

from other jurisdictions, which had espoused this traditional view. Since then, these other jurisdictions have reversed their positions and now apply the law of the state with predominant interest.[69] In further criticism of *Oshiek*, it has been noted that "a more practical analysis of the interest of [South Carolina] would reveal that a blind adherence to the rule of *lex loci delicti* in cases such as *Oshiek* could result in an increased welfare state."[70] The state of domicile may be responsible for the maintenance of a wife who is not compensated for injuries caused by her spouse.

3. *Charitable Immunity.* While cases dealing with charitable immunity have applied the *lex loci delicti*, this defense has not been raised since the advent of the grouping of contacts. Where a South Carolina resident takes a field trip under the auspices of this state's Junior League and is injured while the league's bus is traveling through North Carolina, the traditional rule would require application of North Carolina law.[71] The charity is incorporated in South Carolina, where the injured party resided and where the trip was to begin and end. It was fortuitous that the accident occurred in North Carolina. Charitable immunity, like interspousal immunity, is the predominant concern of the state where the charity is located. Whether this state chooses to deny charitable immunity is not the concern of another state, whose only connection is as the place where the injury occurred. When *Babcock* was decided, the dissent stated that the effect of the grouping of contacts would be to overrule the application of *lex loci delicti* to the defense of charitable immunity. When this issue is raised, it seems very likely that the law of the parties' residence will be found to have the most dominant contacts.

---

69. See Haumschild v. Continental Cas. Co., 7 Wis. 2d 130, 95 N.W.2d 814 (1959) overruling Buckeye v. Buckeye, 203 Wis. 248, 234 N.W. 342 (1931). The *Shaw* court maintained that *Haumschild* did not overrule *Buckeye* because the former dealt with the capacity to sue rather than the existence of a cause of action. The language of *Haumschild* seems to indicate otherwise. Both cases involved the right of the wife to sue her husband. See Thompson v. Thompson, 105 N.H. 86, 193 A.2d 439 (1963), overruling Gray v. Gray, 87 N.H. 82, 175 Atl. 508 (1934).

70. Comment, 17 S.C.L. REV. 305, 313 (1965).

71. See Jeffrey v. Whitworth College, 128 F. Supp. 219 (E.D. Wash. 1955); Kaufman v. American Youth Hostels, 5 N.Y.2d 1016, 158 N.E.2d 128, 185 N.Y.S.2d 268 (1959).

E. Damages

Numerous states have enacted statutes which limit the amount of damages that may be recovered in a particular action. If two South Carolina residents were involved in an accident while driving through or flying over Massachusetts, should the amount of the injured party's recovery be determined by the Massachusetts limiting statute? The traditional vested rights doctrine would apply this statute because the law of the place of injury determines all issues.[72] However, the grouping of contacts would probably determine that the place of injury was merely fortuitous.[73] Indeed, Massachusetts could have little interest in the measure of damages to be recovered in a South Carolina court unless it could be said that the defendant acted in reliance on the limitation statute. Where the tort is unintentional, the reliance argument is untenable.[74] On the other hand, South Carolina's interest is great. It is the place where the relationship and the trip were to begin and end, and where the injured party and his family are domiciled. Were the accident to cause permanent injury or death, South Carolina would be vitally concerned with the well-being of the surviving dependents.

The domicile of the dependents may be a determinative factor in the choice of law, as indicated by recent damage cases. In an action for wrongful death arising out of a plane crash in Arizona, the forum applied the law of Pennsylvania, where the dependents resided.[75] However, where the dependents moved out of the forum state soon after the decedent's death, the forum ap-

72. Even prior to its adoption of the grouping of contacts, the New York courts held that they were not required to apply foreign statutes *limiting* the amount of recovery. This decision was predicated on New York's strong public policy on this question. See Pearson v. Northeast Airlines, Inc., 309 F.2d 553 (2d Cir. 1962) (combining grouping of contacts and public policy rationales); Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961); Riley v. Capital Airlines, Inc., 13 App.Div. 2d 889, 215 N.Y.S.2d 295 (1961).

The application of these cases was restricted to situations involving New York's strong public policy with respect to *limitations* on the amount of recovery. Davenport v. Webb, 11 N.Y.2d 392, 183 N.E.2d 902, 230 N.Y.S.2d 17 (1962) (prejudgment interest authorized by New York statute would not be allowed in New York action for deaths which resulted from accident in Maryland). This case, however, was decided prior to *Babcock*.

73. Griffith v. United Air Lines, 416 Pa. 1, 203 A.2d 796 (1964) The decedent, a resident of Pennsylvania, was killed when his flight from Pennsylvania to Arizona crashed in Colorado. It was held that the grouping of contacts required application of Pennsylvania law, and that Arizona law, limiting the amount of recovery, did not apply.

74. Weintraub, *A Method for Solving Conflict Problems—Torts*, 48 CORNELL L.Q. 215, 220, 227 (1963).

75. Griffith v. United Air Lines, 416 Pa. 1, 203 A.2d 796 (1964).

plied the law of their new residence as the state having the most dominant contacts with the issue of damages.[76] In *Watts v. Proneer Corn Co.*[77] the Indiana limitation statute was applied in an action for wrongful death. That state was found to have a more significant relationship to the damage issue because the five potential beneficiaries as well as the two defendants were all Indiana residents. The place of the tort as well as the state of decedent's residence were held not to have a sufficiently substantial interest in the damage question.

F. Summary

It is not the purpose of the grouping of contacts approach to completely eliminate the possibility of applying the *lex loci delicti.* Rather, this approach is designed to meet the criticism of the traditional view by allowing some flexibility in the choice of law. The applicable law will be that of the state with the most significant relationship to the issue involved. This is a qualitative, rather than a quantitative approach, and it permits a consideration of the interests, responsibilities and policies of all the states connected with the litigation. Further, it permits the laws of different jurisdictions to be applied to the various issues, depending on which state has the most significant contact with each issue. By the use of this approach, curious and unfair results can be avoided, creation of exceptions based on local policy or procedural labels will be unnecessary, and the interests of justice can best be furthered.

III. ACCEPTABILITY OF THE GROUPING OF CONTACTS THEORY

A. Is There a Need for a New Rule?

In order to determine whether a new rule of law should be accepted, it is necessary to answer several questions. The primary query is whether a new rule is needed. It has been indicated in the preceding sections that the traditional view has been subject to much criticism. It is inflexible and its application often re-

76. Gore v. Northeast Airlines, Inc., 222 F. Supp. 50 (S.D.N.Y. 1963). The decedent boarded a plane in New York, which crashed in Massachusetts. The court refused to follow previous cases denying the application of the Massachusetts limitation statute, *supra* note 72, because the dependents had moved to Maryland after the accident. Since Maryland had the most dominant contact, its law requiring application of the Massachusetts statute was applied. Thus, if the plaintiff had delayed the move to Maryland until after this action was brought, the amount of recovery would not have been limited.

77. 342 F.2d 617 (7th Cir. 1965).

sults in injustice. Further, it fails to consider the special interests a particular jurisdiction may have in the outcome. For these reasons it is obvious that a more flexible rule is desirable.

When the grouping of contacts theory is suggested to meet this need, one must inquire whether this approach is predicated on an objective theory of conflicts. Is it jurisprudently consistent with the general attitude of the local courts? Those who oppose this theory seem to base their objections either on the theory of stare decisis or on the apparent unpredictability of result under a new theory. The dissenting judge in *Griffith* stated that the *lex loci delicti* was the settled law in that jurisdiction. There had been no new circumstances, no change of circumstances, and no irreconcilable decisions to warrant a change in the law.[78] However, an unsound theory which compels the application of one particular law as the only "proper" one ought not blind the courts to the fact that "a more flexible treatment of the matter is not only desirable from the point of view of business convenience and fairness but is also entirely 'logical.'"[79] Further, the increased incidents of multi-state torts in recent years has made apparent the inadequacies of the traditional view.

Some writers and judges argue that the more flexible rule does away with certainty and predictability. Also, the argument adds, the old rule is much easier to apply and facilitates the task of the attorney in advising his client.[80] It is conceded that this new theory, at least in its formative years, will not be as predictable or as easy to apply as the traditional view. Although predictability is important in that it facilitates the lawyer's task of advising his client, "it is not an all-important value in torts since this is an area where persons will rarely, if ever, give advance thought to the legal consequences of their actions. In any event, continued adherence to a bad rule is a high price to pay for predictability."[81] Furthermore, a bad rule is not likely to provide predictability in all cases since the courts will be inclined to engraft exceptions upon it, and many courts have done just

78. Griffith v. United Air Lines, 416 Pa. 1, 203 A.2d 796 (1964).

79. COOK, LOGICAL AND LEGAL BASIS OF THE CONFLICT OF LAWS 341 (1942).

80. See Friday v. Smoot, 211 A.2d 594 (Del. 1965); Griffith v. United Air Lines, Inc., 416 Pa. 1, 14, 203 A.2d 796, 807 (1964) (dissenting opinion); Sparks, *Babcock v. Jackson, A Practicing Attorneys Reflections Upon the Opinion and Its Implications,* 31 INS. COUNSEL J. 428 (1964); Reese, *Comments on Babcock v. Jackson,* 63 COLUM. L. REV. 1212, 1251, 1254 (1963).

81. Reese, *Comments on Babcock v. Jackson,* 63 COLUM. L. REV. 1212, 1253 (1963).

this.[82] One authority noted that he found it "a bit ironical that we should grow concerned by the prospect of adding this occasional increment of uncertainty to that vast judicial roulette game, personal injury litigation."[83] While the courts may not be able to provide absolute certainty, they are likely to attain a much closer approximation to justice than the past decisions that have rubber-stamped the place of injury rule.[84]

Adoption of the grouping of contacts rationale by the Restatement of the Conflict of Laws and by the Uniform Commercial Code indicates further that it is jurisprudently consistent with the general attitude of the authorities. The Restatement provides that the rights and liabilities of the parties will be determined by the law of the state "which has the most significant relationship with the occurrence."[85] The Uniform Commercial Code states that its provisions shall apply "if the transaction bears 'an appropriate relation' to the state enacting the Code."[86] Thus, the Code and the Restatement reject the vested rights theory and adopt a new and liberal principle much in line with the grouping of contacts theory.

B. The Scope of the Grouping of Contacts

The last area of inquiry deals with the scope of the new theory. *Babcock* and other recent cases lay the groundwork by making it clear that choice of law rules should initially be confined to the issue before the court. In so fluid a field as choice of law, progress can best be made through constant experimentation on a case by case basis. For the time being at least efforts to find short cuts and syntheses should be discouraged. As experience

82. *Ibid.*
83. Cavers, *Comments on Babcock v. Jackson*, 63 COLUM. L. REV. 1212, 1227 (1963).
84. *Ibid.*
85. RESTATEMENT (SECOND), CONFLICT OF LAWS § 379 (Tent. Draft No. 9, 1964). This section continues:
> (2) Important contacts that the forum will consider in determining the state of most significant relationship include:
> (a) the place where the injury occurred
> (b) the place where the conduct occurred
> (c) the domicile, nationality, place of incorporation and place of business of the parties, and
> (d) the place where the relationship, if any between the parties is centered.
> (3) In determining the relative importance of the contacts, the forum will consider the issues, the character of the tort, and the relative purposes of the tort rules of the interested states.

86. UNIFORM COMMERCIAL CODE § 1-105. See Cheatham, *Comments on Babcock v. Jackson*, 63 COLUM. L. REV. 1212, 1232 (1963).

develops, it will be possible to determine whether a rule adequate for one issue can properly be applied to others. The courts regularly "solve one problem at a time and count themselves lucky if they get the easy one first."[87] As other problems arise, "the rule that solved the first is likely to be used in the solution of the next, and will probably be modified and improved in the process. After a score of years, or a century, the rule as ultimately stated may resemble but slightly its first formulation."[88] What is the scope of the grouping of contacts theory? The recent cases give some indication, and on the basis of the above observation, only the courts and time can tell.

MARY JO SOTTILE

87. Leflar, *Comments on Babcock v. Jackson,* 63 COLUM. L. REV. 1212, 1248 (1963).
88. *Ibid.*