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AMERICAN CONFLICTS LAW: AMERICAN CONFLICTS LAW

ROBERT L. FELIX*

The happy occasion for this essay is the recent publication of the third edition of Robert Leflar's treatise on the conflict of laws.¹ Professor Leflar has been busy not only in the preparation of the several editions of this treatise, but in other areas of legal writing, as well. Most of us know of his work in conflicts, but in surveying Professor Leflar's work from about the time of the last edition of the treatise, in 1968, to the present, I was very interested to see the other areas in which he has written: criminal law and taxation with particular emphasis on conflicts, torts, legal education, and one of his favorite areas, his work with state appellate judges. My own purpose here is to make some comments on the treatise and to suggest a few directions that the conflicts area seems to be taking; in sum, to propose an idea or two toward a next edition of *American Conflicts Law*.

Professor Leflar's original intention was to produce a set of Arkansas annotations to the first Restatement of Conflict of Laws.² As the work progressed, his intentions changed and he chose instead the format of a single volume treatise on the law of conflict of laws of a single state.³ As Leflar himself put it,

[i]n the middle thirties I started out to prepare Arkansas annotations for the Conflict of Laws Restatement, but after abstracting all the cases I realized that a listing of cases "contra" and in "accord" with the sections of the Restatement, however fully explained by further notes, would give an inaccurate picture of the state's law. Instead, a short treatise was written on Arkansas law.⁴

When the time came to produce a further version of his study of conflict of laws, Professor Leflar broadened the enterprise to reflect the fact that no single state can contain within its law the entire subject of conflict of laws. One must also surmise that the

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1. R. LEFLAR, *AMERICAN CONFLICTS LAW* (3d ed. 1977).

2. *RESTATEMENT OF CONFLICT OF LAWS* (1934).

3. R. LEFLAR, *THE ARKANSAS LAW OF CONFLICT OF LAWS* (1938).

4. *Preface* to R. LEFLAR, *THE LAW OF CONFLICT OF LAWS* at v (1959).

lure of a national format was irresistible to a comprehensive scholar wishing to present new slants on conflicts problems. In 1959 Leflar put the work out in the form of a general treatise and thus launched the book as we know it today.⁵ Although the law of Arkansas remained a special feature of the treatise, that feature was subordinated to a national format.⁶

In 1959 most states still adhered to the Bealian systematics of the first *Restatement*,⁷ and for one seeking to present contemporary case law, that was a fact of life. Drawing on experience as a teacher and as a Justice of the Supreme Court of Arkansas, Leflar preferred to explain the law as he found it rather than substitute developing law-school jurisprudence for judicial doctrine. While this may have frustrated some reviewers,⁸ others perceived that an explanation of the law as found would be more useful to bench and bar as an exposition of the subject, and would also provide a basis for understanding the reasons that motivate decisionmaking and that accompany change.⁹ One review put the matter neatly:

Leflar's analytical approach is not a dry conceptualism; he is very practical and he never loses sight of policy. But it is with established techniques and analysis that the policy objectives are to be achieved. This conforms to the nature of the judicial process and the development of the law. Leflar's approach is the one which can best be understood and which will likely be followed by students and lawyers and judges.¹⁰

5. *Id.*

6. [I]n this new book all the Arkansas cases up to January 1, 1959, are dealt with, but they are treated as part of an American law of Conflict of Laws, and the effort of the work is to give a fair picture of the American Law as it typically operates in any one of the states today.

Id.

7. Beale's enormous influence upon conflicts jurisprudence is not always easy for today's students of the subject to appreciate. His three-volume treatise, J. BEALE, *THE CONFLICT OF LAWS* (1935), and his forceful management as reporter of the first *Restatement*, represent the high-water mark of the territorial vested-rights theory of the law of conflict of laws. The paradox, however, is obvious, for the revolution was already in the making. The "local law" theory that is at the heart of modern choice-of-law thinking was already in motion. See 3 ALI *PROCEEDINGS* 222-81 (1925); W. COOK, *THE LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS* (1942); E. LORENZEN, *SELECTED ARTICLES ON THE CONFLICT OF LAWS* (1947). The proceedings clearly reveal opposition by Cook, Lorenzen, and others to the Bealian jurisprudence.

8. See, e.g., Paulson, Book Review, 12 *STAN. L. REV.* 707 (1960); Weintraub, Book Review, 45 *CORNELL L.Q.* 611 (1960).

9. Dainow, Book Review, 14 *ARK. L. REV.* 183 (1960); Shuman, Book Review, 35 *N.Y.U.L. REV.* 1105 (1960).

10. Dainow, *supra* note 9, at 186.

By the time the second edition came out in 1968,¹¹ much had changed, particularly in the area of choice of law. To reflect change in the subject, Professor Leflar abandoned the traditional term "conflict of laws" and adopted the vernacular "conflicts." As Leflar put it: "The new title is intended to be characteristic of the book, representing a mild break with the past, a recognition that the law requires both new language and new analysis if it is to be described, or explained, in realistic fashion."¹² A brief survey of developments in the subject in the years between the two editions is in order.

As Leflar points out, the promulgation and use of long-arm statutes extending state-court jurisdiction in a manner consistent with the due process clause of the federal constitution became routine.¹³ Although he expressed continuing concern over the uncertainty regarding the ultimate reach of state-court jurisdiction, it was in choice of law that change was most evident. A catalogue of a few of the developments illustrates the point.

In 1959 the Supreme Court of Wisconsin, in a case involving interspousal immunity,¹⁴ abandoned the traditional rule of *lex loci delicti* for torts and adopted a rule of *lex domicilii*. In 1961 the New York Court of Appeals struggled to avoid the application of the Massachusetts limitation on damages for wrongful death by characterizing the issue as procedural, thus enabling the court to apply its own rule, implementing the forum's policy of full compensation.¹⁵ Two years later, the court of appeals adopted a more suitable method for choice of law in torts in the landmark case of *Babcock v. Jackson*.¹⁶ Commenting on the New York promulgation of a "center of gravity" or "grouping of contacts" approach for choice of law in tort cases, Professor Leflar stressed the need to identify the real reasons for such decisions, including forum preference.¹⁷ He praised the flexibility indicated in *Babcock* and looked forward to the development of a practical approach to meet changing policies and changing fact patterns.

11. R. LEFLAR, *AMERICAN CONFLICTS LAW* (2d ed. 1968).

12. *Preface to id.* at v.

13. *Id.*

14. *Haumschild v. Continental Cas. Co.*, 7 Wis. 2d 130, 95 N.W.2d 814 (1959).

15. *Kilberg v. Northeast Airlines, Inc.*, 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961). The procedural characterization of the wrongful-death damages was soon abandoned in *Davenport v. Webb*, 11 N.Y.2d 17, 183 N.Y.2d 902, 230 N.Y.S.2d 17 (1962).

16. 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963).

17. Leflar, *Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws*, 63 COLUM. L. REV. 1212, 1247 (1963).

(The denouement in New York is discussed by Professor Rosenberg in this symposium, and the exchange of views between him and Professor Leflar will give the reader a chance to decide for himself what directions ought to be taken in the choice-of-law process.)

In *Bernkrant v. Fowler*,¹⁸ a contracts case decided by the Supreme Court of California in 1961, Chief Justice Traynor discussed the "governmental interests theory," which he later applied in a 1967 wrongful-death case, *Reich v. Purcell*.¹⁹ In calling *Reich v. Purcell* "a wise and useful decision," Leflar observed that the propriety of the result would have been even plainer if all the relevant choice-influencing considerations had been taken into account.²⁰ Explaining the application of choice-influencing considerations to the law-fact patterns of decided cases was a technique Professor Leflar had previously used in two law review articles in which he sought to refine the identification and utilization of the real reasons for choice-of-law decisions.²¹

In the first of the two articles, Professor Leflar asserts that "[t]he major considerations that should influence choice of law have always been present and operative in the cases."²² Leflar's preference for evolutionary analysis is evident from his candid accounting of the prior scholarly assessment of the factors that underlie choice-of-law decisions. Particular attention is drawn to the enumeration of policy factors by Cheatham and Reese.²³ Professor Leflar also acknowledges the works of Yntema and Cavers as important to the formation of his methodology.²⁴ In the first article, Leflar arrived at a synthesis of "the considerations that have, expressly or impliedly, always underlain common-law choice-of-law decisions . . . : A. Predictability of results; B. Maintenance of interstate and international order; C. Simplifica-

18. 55 Cal. 2d 588, 360 P.2d 906, 12 Cal. Rptr. 266 (1961).

19. 67 Cal. 2d 551, 432 P.2d 727, 63 Cal. Rptr. 31 (1967).

20. Leflar, *Comments on Reich v. Purcell*, 15 U.C.L.A. L. REV. 551, 637 (1968).

21. Leflar, *Choice-Influencing Considerations in Conflicts Law*, 41 N.Y.U.L. REV. 267 (1966); Leflar, *Conflicts Law: More on Choice-Influencing Considerations*, 54 CALIF. L. REV. 1584 (1966).

22. Leflar, *Choice-Influencing Considerations in Conflicts Law*, 41 N.Y.U.L. REV. 267, 267 (1966).

23. *Id.* at 279 (discussing Cheatham & Reese, *Choice of the Applicable Law*, 52 COLUM. L. REV. 959 (1952)). See also Reese, *Conflict of Laws and the Restatement Second*, LAW & CONTEMP. PROB. 679, 682 (Spring 1963).

24. Leflar, *supra* note 22, at 280-82 (discussing D. CAVERS, *THE CHOICE OF LAW PROCESS* 139-203 (1965) and Yntema, *The Objectives of Private International Law*, 35 CAN. BAR REV. 721, 735-36 (1957)).

tion of the judicial task; D. Advancement of the forum's governmental interests; E. Application of the better rule of law."²⁵

Had the general applicability of Leflar's choice-influencing considerations remained merely an academic exercise, one could still have praised the insight and clarity of expression that mark the chapter on choice-influencing considerations that is the heart of the 1968 edition of the treatise. Much added dimension, however, is given to these considerations by the imprimatur of Judge Kenison's 1966 opinion in *Clark v. Clark*.²⁶ This first judicial adoption of the Leflar methodology led other states to do likewise, either as the exclusive basis of rationalization or in combination with other modern methodologies.²⁷

In the nine-year interval between the second and third editions, change in the choice-of-law process has been less spectacular. Professor Leflar has observed that the change, though statistically impressive,²⁸ has been for the most part a matter of following a few leading cases adopting new methodologies and blending those methodologies into an eclectic pattern.²⁹ Thus, the latest edition of the treatise reflects this assessment. The general chapters on choice of law are titled "Choice-of-Law Theories" and "The Combination of Modern Approaches." The former chapter contains a section on choice-influencing considerations and the latter a series of sections explicating and correlating them.

Again, Professor Leflar has kept pace with his subject.³⁰ The result is a comprehensive, authoritative, and judicious compilation and analysis of authority in American conflicts law. The care

25. Leflar, *supra* note 22, at 282.

26. 107 N.H. 351, 222 A.2d 205 (1966).

27. *Milkovich v. Saari*, 295 Minn. 155, 203 N.W.2d 408 (1973); *Mitchell v. Craft*, 211 So. 2d 509 (Miss. 1968); *Heath v. Zellmer*, 35 Wis. 2d 578, 151 N.W.2d 664 (1967). For an account of subsequent adoptions and a discussion of the interplay of modern choice-of-law methodologies and eclecticism in contemporary case law, see Leflar, *Choice of Law: A Well-Watered Plateau*, LAW & CONTEMP. PROB. 10 (Spring 1977).

28. More than half of the states have abandoned the traditional choice-of-law method, especially in tort and contract cases, and have embarked on some version of the several modern approaches. Professor Leflar's home state of Arkansas has recently undertaken a blend of his and other choice-of-law methodologies in *Williams v. Carr*, 263 Ark. 326, 565 S.W.2d 400 (1978) and *Wallis v. Mrs. Smith's Pie Co.*, 261 Ark. 622, 550 S.W.2d 453 (1977). The cases are sternly criticized in Hogue, *Arkansas' New Choice-of-Law Rule for Torts: A Critique of Wallis, Williams, and the "Better Rule of Law,"* 1978 WASH. U.L.Q. 713.

29. Leflar, *supra* note 27, at 10.

30. This has been a consistent feature of Leflar's work. See Felix, Book Review, 34 Mo. L. Rev. 304 (1969).

with which the author distinguishes the presentation of authority and the presentation of his own approach makes the book of great value to academic and professional students of the subject. In discussing the second edition, the late Professor Ehrenzweig referred to Leflar's work as the best American treatise, pointing particularly to its accomplishments in dealing with jurisdiction and the conflict of laws in the area of criminal law and taxation.³¹ He noted, however, that the work needed to be beefed up on history and theory. While Professor Ehrenzweig might not have agreed entirely that his advice has been followed, it is apparent that the evolution of the theories of American conflicts law is admirably presented in the present edition.

After the third edition had gone to the printer and had been proofread, the United States Supreme Court handed down its decision in *Shaffer v. Heitner*.³² This case has been the subject of extensive law review commentary,³³ and was the topic for the Conflicts Section roundtable at the December 1977 meeting of the Association of American Law Schools.³⁴ *Shaffer* extended the due process requirement of "fair play and substantial justice" announced by the Court in *International Shoe Co. v. Washington*³⁵ for in personam jurisdiction to apply to in rem and quasi in rem judicial jurisdiction.³⁶ More particularly, *Shaffer* held that the sequestration of stock in a Delaware corporation owned by a non-resident director violated the due process clause when the purported seizure was unrelated to the underlying causes of action.³⁷ Leflar had anticipated both the extension of the *International Shoe* formula and the application of it to disestablish *Harris v. Balk*³⁸ and its progeny. He earlier called our attention to the "persistent doubt" about jurisdiction by foreign attachment or garnishment and built upon the Third Circuit's invalidation of a somewhat comparable Delaware garnishment.³⁹ Of further inter-

31. Ehrenzweig, Book Review, 16 AM. J. COMP. L. 615, 619 (1968).

32. 433 U.S. 186 (1977).

33. For a collection of citations to discussions of *Shaffer v. Heitner* and for Professor Leflar's further thoughts on the case, see Leflar, *Conflict of Laws*, 1979 ANNUAL SURVEY AM. L. 1, 2-7.

34. For a published version, see *Symposium: State Court Jurisdiction After Shaffer v. Heitner*, 63 IOWA L. REV. 991 (1978).

35. 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

36. 433 U.S. at 207.

37. *Id.* at 215-17.

38. 198 U.S. 215 (1905). The abandonment of *Harris v. Balk* is indicated in *Shaffer*, 433 U.S. at 212 n.39.

39. *United States Indus., Inc. v. Gregg*, 540 F.2d 142 (3d Cir. 1976), *cert. denied*, 433

est, especially here in the presence of Professor Rosenberg from New York and Justice Todd from Minnesota, are the post-*Shaffer* expressions by those two states indicating continued use of the attachment of contingent claims of nonresident defendants against their liability insurance carriers.

It will be remembered that in *Seider v. Roth*⁴⁰ the New York Court of Appeals upheld the attachment by a New York plaintiff of the obligation of an insurer subject to in personam jurisdiction in New York to indemnify and defend its nonresident insured in the matter of an out-of-state automobile accident. Professor Leflar's assessment of the impact of *Shaffer v. Heitner* on the *Seider* procedure is unequivocal: "Now that *Heitner* has done away with *Harris v. Balk*, it should follow that *Seider v. Roth* and its progeny are unconstitutional also."⁴¹ He stresses the practical unfairness of *Seider* from the viewpoint of both the garnishee insurance company and the nonresident defendant. In spite of the pre-*Shaffer* constitutional hedging about *Seider* by the Second Circuit in *Minichiello v. Rosenberg*,⁴² Leflar sees continuing constitutional problems in *Seider* regarding both judicial and legislative jurisdiction. Taken literally as a garnishment of the property of a nonresident defendant, the *Seider* process is even more objectionable than the simple seizure of a conceded debt in *Harris v. Balk*. If *Harris* falls in light of *Shaffer*, so must *Seider*. Taken as the judicial equivalent of a direct-action statute, *Seider* raises a choice-of-law problem. There is no direct-action statute available. As Leflar points out:

in the New York garnishment cases there were no direct action statutes in the states where the accidents happened, nor in any other state that had substantial contact with the facts. If there were a New York direct action rule, it could not be substantively applied since New York's only connection with the facts was

U.S. 908 (1977). See R. LEFLAR, *supra* note 1, § 24.

40. 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).

41. R. LEFLAR, *supra* note 1, § 25.

42. 410 F.2d 106 (2d Cir.) (en banc), cert. denied, 396 U.S. 844 (1969). In *Minichiello*, Judge Friendly bases the constitutionality of the *Seider* process on use by a forum resident and on the nonresident's limited appearance and immunity from any unfavorable judgment being given collateral estoppel effect beyond the limits of the policy attached. 410 F.2d at 111-12. In so doing, Judge Friendly may have overread the functional assertion that the *Seider* process operates as a judicial equivalent of a direct-action statute and may have interpreted too broadly the constitutional permissibility of direct-action statutes expressed in *Watson v. Employee Liab. Assur. Corp.*, 348 U.S. 66 (1954). *Watson* dealt with an accident within the forum state, not merely with a plaintiff forum resident.

that the plaintiff is a New York resident, which is probably not enough to satisfy the constitutional due process of law requirement for legislative jurisdiction. It was New York's procedure, and only New York's, that created the semblance of a direct action statute, when in fact none existed. The failure of the direct action analogy results not from any inherent unfairness in trying the transitory action in New York, but rather from a constitutionally impermissible choice of substantively governing law.⁴³

In spite of such analysis, courts continue to be seduced by the lure of *Seider v. Roth*, as is illustrated by post-*Shaffer* adherence to the *Seider* procedure by the Second Circuit in *O'Connor v. Lee-Hy Paving Corp.*⁴⁴ and by the Supreme Court of Minnesota in *Savchuk v. Rush.*⁴⁵ In *O'Connor* there may have been factors that made attachment by a New York forum less constitutionally objectionable than in *Seider* itself. Even so, the denial of certiorari by the United States Supreme Court was not without dissent arguing for at least a full consideration of the constitutional issues.⁴⁶ It is not surprising that *Savchuk* has had an even closer brush with the Supreme Court. The first Minnesota decision was vacated and remanded for consideration in the light of the *Shaffer*⁴⁷ decision. Undaunted, the Minnesota court again affirmed *Savchuk* and another appeal was attempted. Now that probable jurisdiction has been noted,⁴⁸ Professor Leflar and those who agree with him may be vindicated. Plainly, the Minnesota contacts in *Savchuk* are slight.⁴⁹ The post-accident acquisition of residence in Minnesota seems only barely to satisfy the *Minichiello* restriction of *Seider* to use by forum residents. Further, choice-of-law consequences, disadvantageous to the forum resident plaintiff if the action is brought elsewhere,

43. R. LEFLAR, *supra* note 1, § 25 (citing *Home Ins. Co. v. Dick*, 281 U.S. 397 (1930)) (other footnotes omitted).

44. 579 F.2d 194 (2d Cir.), *cert. denied*, 99 S. Ct. 639 (1978) (work-related wrongful death in Virginia involving a New York contract of employment).

45. 311 Minn. 480, 245 N.W.2d 624 (1976), *vacated and remanded in light of Shaffer v. Heitner*, 433 U.S. 902 (1977), *aff'd on rehearing*, *Savchuk v. Rush*, 272 N.W.2d 888 (Minn. 1978), *prob. juris. noted*, 99 S. Ct. 1211 (1979), *oral argument heard*, *Rush v. Savchuk*, 48 U.S.L.W. 3238 (Oct. 9, 1979).

46. 99 S. Ct. at 639 (Powell & Blackmun, JJ., dissenting).

47. 433 U.S. 186 (1977).

48. 99 S. Ct. 1211 (1979).

49. At the time of the single-car accident in Indiana, both the plaintiff and the defendant driver were residents of Indiana. Later in the same year, plaintiff moved with his parents to Minnesota and became a resident of the forum state. 272 N.W.2d at 889.

do not indicate that no other forum is available.⁵⁰ Undesirable substantive choice-of-law consequences in another available forum do not create minimum contacts in the plaintiff's home forum.

Added impetus to the possibility of further constitutional developments may be seen between the lines of the 1978 decision by the United States Supreme Court in *Kulko v. Superior Court*.⁵¹ The Court reversed a Supreme Court of California decision allowing jurisdiction over a nonresident New York father in a case involving the divorced mother's claim for additional support for their children, whom the father had permitted to go to California. The Court found that the father, in acquiescing in the children's desire to spend more time in California than was provided in the separation agreement, had not purposefully availed himself of the benefit and protection of the laws of California so as to be constitutionally amenable to suit in California for increased child support.⁵² The Court also assessed the inconveniences to the nonresident father, who could not be deemed to foresee defending in California, and balanced them against the availability of a New York forum in an action involving an agreement that was executed in New York and that the Court assumed would be governed by New York law.⁵³ Interpretations of *Kulko* will vary;⁵⁴ it is of interest here not so much for the correctness of the decision on the facts but because the Court has chosen to make yet another move into the area of policing state-court jurisdiction.⁵⁵ Continuing attention to the unfolding doctrine of

50. The court seems persuaded, however, that such is the case: "A state's interest in providing a forum for its residents is particularly strong where an alternative forum would not have permitted recovery. In the instant case, Indiana's guest statute would have cut off Savchuk's claim . . . Ind. Stat. § 9-3-3-1. *Shaffer v. Heitner*, 433 U.S. 211, . . ." 272 N.W.2d at 891 n.5. The dissent argues that the court is misreading *Shaffer*. 272 N.W.2d at 894 (Otis. J., dissenting).

51. 436 U.S. 84 (1978).

52. *Id.* at 94.

53. *Id.* at 97-101.

54. Commentary on *Kulko* has begun to appear and interpretations of the case, though generally favorable, do show some inconsistencies. Compare Note, *A New Minimum Contacts Analysis*, 12 CREIGHTON L. REV. 905 (1979) with Note, *The Long-Arm Reach of the Courts Under the Effect Test After Kulko v. Superior Court*, 65 VA. L. REV. 175 (1979). See also Note, 1979 DET. COL. L. L. REV. 159; Comment, 31 S.C.L. REV. 555 (1980); Comment, 1978 WASH. U.L.Q. 797. For a useful study that predates the United States Supreme Court decision in *Kulko*, see Fischer, *State Interest, Minimum Contacts, and in Personam Jurisdiction Under Code of Civil Procedure Section 410.10*, 12 U.S.F.L. REV. 387 (1978).

55. The current possibility of a sweeping opinion in the area of state court jurisdiction

International Shoe in *McGee*⁵⁶ and *Hanson*,⁵⁷ and now in rapid succession in *Shaffer*⁵⁸ and *Kulko*,⁵⁹ indicates a constitutional exposition of the due process clause over a range of actions and contact patterns. Such an exposition may entail development of the positive as well as the negative implications of the due process clause. This, in turn, may link more effectively the legislative as well as the judicial authority of the states. It must be remembered, however, that the Court insists that the constitutional justifications for choice of law are not to be translated into justification for the assumption of jurisdiction.

Professor Leflar has already argued that the states should more closely police state-court jurisdiction in order to avoid unnecessary litigation on non-substantive issues.⁶⁰ In the past, he has pointed out, somewhat ruefully, that the due process threshold of tolerance regarding state-court jurisdiction is very high, permitting assertions of jurisdiction that are "barely fair" and prohibiting only those which are "grossly unjust."⁶¹ The classic example is transient jurisdiction based on casual presence, in actions unrelated to the forum. (It is perhaps wicked to point out that one of the most celebrated examples of "ambush" jurisdiction is the Arkansas case of *Grace v. MacArthur*,⁶² in which a defendant was served in an airplane flying over Professor Leflar's home state!)

A narrowing of the opportunity for transient jurisdiction and a growing constitutional emphasis on the selection of a convenient forum as a decisionmaking consideration⁶³ must, of course, bring the issues of jurisdiction and choice of law into clearer focus.⁶⁴ Neither authority nor principle, however, supports a thorough equation of considerations that govern the two questions. Professor Leflar, for example, suggests that if a state has the

is suggested by the fact that the Court heard arguments on the same day in *Savchuk* and *World-Wide Volkswagen Corp. v. Woodson*, 585 P.2d 351 (Okla. 1978) (long-arm products-liability case).

56. *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957).

57. *Hanson v. Denckla*, 357 U.S. 235 (1958).

58. *Shaffer v. Heitner*, 433 U.S. 186 (1977).

59. *Kulko v. Superior Court*, 436 U.S. 84, 95-96 (1978).

60. Leflar, *Barely Fair, Not Grossly Unjust*, 25 S.C.L. REV. 177 (1973).

61. See Leflar, *Conflict of Laws*, 1969-70 ANN. SURVEY AM. L. 1, 8. See also Cheatham, *Conflicts of Laws: Some Developments and Some Questions*, 25 ARK. L. REV. 9, 25 (1971).

62. 170 F. Supp. 442 (E.D. Ark. 1959).

63. *Kulko v. Superior Court*, 436 U.S. at 93-95.

64. Compare Ehrenzweig, *The Transient Rule of Personal Jurisdiction: The "Power Myth" and Forum Conveniens*, 65 YALE L.J. 289 (1956) with Traynor, *Is This Conflict Necessary?*, 37 TEX. L. REV. 657 (1959).

authority to apply its substantive tort law to a controversy, it reasonably follows that it has the authority to assert judicial jurisdiction.⁶⁵ He does not generalize this suggestion because choice of law operates differently in other areas.

Domestic relations, moreover, is complicated by the question of the continued vitality of domicile or its functional equivalent. The recent South Carolina case of *Nienow v. Nienow*⁶⁶ is in point. The case appeared to be governed by *Vanderbilt v. Vanderbilt*,⁶⁷ and in *Nienow*, the court did permit a recently divorced woman to obtain alimony, but in so doing did not specify as a judicial sine qua non that she had established domicile in South Carolina prior to the rendition of a Florida *ex parte* divorce in favor of the husband. The opinion implies a broadening of the basis for divisible divorce and post-divorce jurisdiction to determine claims for support. A totality-of-contacts approach reminiscent of the opinion of Chief Justice Traynor in *Atkinson v. Superior Court*⁶⁸ would also explain the decision. Of importance here is that when something other than domicile acquired prior to a foreign *ex parte* divorce becomes the articulated basis for jurisdiction, the choice-of-law options available to the forum increase.

As these and other issues unfold, Robert Lefflar's work in conflicts will continue to illuminate current authority and to suggest approaches for problems yet to come. His assessment of current theories and results is based on a sound appreciation of the past, of the practical needs of the present, and of the directions conflicts law will take in the future.

65. R. LEFLAR, *supra* note 1, §§ 55-62.

66. 268 S.C. 161, 232 S.E.2d 504 (1977), *surveyed in* 30 S.C.L. REV. 75 (1979).

67. 354 U.S. 416 (1957).

68. 49 Cal. 2d 338, 316 P.2d 960 (1958).

