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I. The Uniform Commercial Code

The most important development in conflict of laws for many years is the enactment of the conflict of laws provisions of the Uniform Commercial Code.[1] In adopting these provisions the General Assembly did much more than to fix the law for the specific matters covered, important though these are. The General Assembly rejected one widely urged method of choice of law, and it prescribed a wholly different one. It rejected the old vested rights theory which calls for the use of the law of the place of the last element of a transaction to govern the case, as, the place of acceptance of an offer to govern the validity of a contract and the place of injury to govern a tort. The Code pushes aside these technical connections. In their place it employs business connections to identify the state whose law is to be used, that is, the place of a thing, the business headquarters of a person, the state on which the parties agree, and when other connections fail of application then "an appropriate relation."

The general section of the Code on the "Territorial Application of the Act" gives to the parties to a transaction the power to choose the applicable law:

> Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.[2]

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1. Tenn. Code Ann. § 47-1-105 (repl. vol. 1964).
2. Tenn. Code Ann. § 47-1-105 (repl. vol. 1964).

In the absence of such an agreement by the parties, the section provides that the Code shall apply "to transactions bearing an appropriate relation to this state." The conclusion for lawyers is manifest that instruments within the Code should include an explieit agreement on which state's law shall apply, but thorough research into the laws of the related states must precede the choice of law.

Some important special matters listed in the general section are treated in detail in later sections. These special matters are the rights of creditors against sold goods, bank deposits and collections, bulk transfers, investment securities, and secured transaetions.

The matter of "secured transaction" is a complex one and several phases of it dealt with in sections 9-102 and 9-103 of the Code call for mention. As to a security interest concerning "any personal property and fixtures within the jurisdiction of this state," the law of the state where the collateral is located is the governing law, except as otherwise provided in section 9-103. The latter section treats of three situations. First as to "accounts and contract rights," the validity and perfection of a security interest are governed by the law of the place "where the assignor of accounts or contract rights keeps his records concerning them . . . (including the conflict of laws rules) of the jurisdiction." Second, with respect to "general intangibles or . . . goods of a type which are normally used in more than one jurisdiction" [as "mobile equipment"], the security interest is governed by "the law (including the conflict of laws rules) of the jurisdiction where such chief place of business [of the debtor] is located." Third, "incoming goods already subject to a security interest" are dealt with at two stages. The first stage is the inception of the security interest. If it is asserted that the personal property is already subject to a security interest when brought into Tennessee, "the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached"; however if the parties understood that the property would be kept in this state and it was brought into this state within 30 days for purposes other than transportation through the state, "then the validity of the security interest in this state is to be determined by the law of this state." The second stage is the period after the personal property is brought into this state. A security interest perfeeted in another state at its inception "continues perfected in this state for four months and also thereafter if within the four months period it is perfected in this state"; with the power to perfect the interest after the four months period, though "in such case the perfection dates from the time of perfection in this state."

The phrase employed in quoted passages of the Code, "the law (including the conflict of laws rules)," illustrates the use of the renvoi in some provisions of the Code. The law to be employed is not merely the local law of the state referred to but its whole law, including its conflict of laws rule. The purpose of the use of the renvoi is to assure that the result reached by the Tennessee courts will be the same as that which would be reached by the courts of the state to which the Code refers. For example, if the law of the state to which Tennessee initially refers would by its conflict of laws rule refer on to another state and use that third state's law, the Tennessee court, too will make the additional reference and thus reach the same result that would be reached by the court of the state identified by the Code.

The discussion of detailed provisions of the Code should not obscure broader effects already mentioned resulting from the enactment of the Code. The General Assembly has rejected the old vested rights theory.[3] At the same time the General Assembly has given the force of law to a broadly based set of principles on choice of law. The courts of Tennessee may use these enacted principles as guides in conflict of laws in other areas beyond the limits of the Code itself.[4] The results so reached would be in accord with the developments in conflict of laws in many states and with the basic change made by *Restatement (Second), Conflict of Laws,* of the American Law Institute.[5]

II. Torts—Indemnity

A complex problem of indemnity in tort was presented in *Roberson v. Bitner.*[6] An employee, Roberson, of a North Carolina employer, Lance, Inc., was a guest passenger in the employer's automobile driven by a fellow employee when there was a collision with another automobile in Tennessee. For the injuries suffered in the collision Roberson brought an action in tort in a federal court in Tennessee against the driver of the other automobile and his employers. The defendants in the tort action impleaded for indemnification both Lance, Inc., and the driver of its car, charging that the injury to Roberson was caused by the negligence of Lance's driver. Both employees of Lance, Inc. were covered by the workmen's compensation act of North Carolina, and the workmen's compensation act of North

3. On the old Tennessee cases of choice of law as to contracts, see 2 Beale, Conflict of Laws § 322.49 (1935).

4. See Stone, *The Common Law in the United States,* in The Future of the Common Law 120, 131-32 (1937).

5. See Cheatham, *Some Developments in Conflict of Laws,* 17 Vand. L. Rev. 193 (1963).

6. 221 F. Supp. 379 (E.D. Tenn. 1963).

Carolina barred a claim for indemnity by the third party against the employer. The statute of Tennessee, however, did not bar indemnity.[7] To resolve the conflict between the statutes of the two states, Judge Neese employed a conflict of laws test for tort indemnification similar to that adopted in the Uniform Commercial Code for commercial matters.

"[C]onsidering the totality of contacts of this event and the parties with the laws of the two states," he looked for the "most significant relationship of the several parties" with the two states. Applying what he evidently believed to be the conflict of laws rule of Tennessee he found "the most significant relationship" was with Tennessee and its laws should apply, so the impleader for indemnification was allowed.

III. JURISDICTION OF COURTS

A. *Activities within the State as the Basis of Jurisdiction*

The General Assembly and the courts continue their liberal attitude toward jurisdiction in non-resident motorists cases. The General Assembly amended Tennessee Code Annotated, section 20-224 on "Use of Highways as Appointment of Agent for Service of Process" by extending it to "any non-resident who, acting in behalf of the owner of any such [motor] vehicle, uses or causes to be used any such motor vehicle in this state."[8] The United States Court of Appeals for the Sixth Circuit interpreted the same Code section liberally so as to apply to a non-resident who purchased an automobile in Tennessee and had an accident in the state on her way to her home elsewhere.[9]

B. *Divorce—Military Personnel*

A statute liberalized the rules of competence in divorce proceedings of military service personnel by creating a presumption of residence of a person who has lived in the state for a year. It amended Tennessee Code Annotated section 36-804, "Venue of Action," by providing that

> [A]ny person in the armed services of the United States of America, or the spouse of any such person, who has been living in this state for a period of not less than one (1) year shall be presumed to be a resident of this state, and the presumption of residence shall be overcome only by clear and convincing evidence of a domicile elsewhere.[10]

7. On the conflict of laws rules as to contribution and indemnity, see Wade, *Joint Tortfeasors and the Conflict of Laws*, 6 VAND. L. REV. 464, 472-78 (1953).

8. TENN. CODE ANN. § 20-224 (1955), as amended, TENN. CODE ANN. § 20-224 (Supp. 1963).

9. William v. Kitchin, 316 F.2d 310 (6th Cir. 1963).

10. TENN. CODE ANN. § 36-804 (1955), as amended, TENN. CODE ANN. § 36-804 (Supp. 1963).

C. *Custody—Continuance of Jurisdiction*

In *Talley v. Talley*,[11] a court in Tennessee had granted to a woman a divorce and the custody of a child of the marriage. The mother moved to Ohio to live taking the child with her and there remarried. The father of the child then filed a petition in the same case in the Tennessee court, seeking among other things a change of the custody of the child to him. The court of appeals of the western section held, in an opinion by Judge Bejach, that the jurisdiction of the court which had originally granted the divorce and custody of the child continued over the matter of custody even though the mother had become domiciled in another state.

IV. Full Faith and Credit to Sister State Judgments

Two decisions by the Supreme Court of the United States dealt with the protection of sister state judgments.

A. *Conclusiveness of Rulings on Jurisdiction*

An important recent development in conflict of laws is the increasingly broad protection given to a ruling on jurisdiction by a court of one state when the question of jurisdiction of the first court is raised in a second state. The protection given by the full faith and credit clause of the United States Constitution extends beyond rulings on jurisdiction over the person to "jurisdiction over the subject matter," as illustrated in *Duke v. Durfee*.[12] An action was brought in a state court of Nebraska to quiet title to bottom land lying along the Missouri River, which at that point forms the boundary between Nebraska and Missouri. The Nebraska court had jurisdiction of the case only if the land was in Nebraska; and whether the land was in Nebraska turned on whether a shift in the river's course had been caused by avulsion or accretion. In a contested proceeding the Nebraska court found the land was in Nebraska, that it had jurisdiction, and that title to the land was in the petitioners. The losing party then filed in a Missouri court a parallel suit to quiet title to the same land in him. Because of diversity of citizenship the suit was removed to the federal court. The United State Court of Appeals, reversing the district court, held that the usual principles of res judicata and full faith and credit did not apply and the court in Missouri was free to re-try the question of the Nebraska court's jurisdiction, dependent as its jurisdiction was on the determination of the state in which the land lay. The Supreme Court of the United States unanimously reversed the court of appeals. Finding that under Nebraska law the Nebraska

11. 371 S.W.2d 152 (Tenn. App. E.S. 1963), *cert. denied*, 375 U.S. 915 (1963).
12. 375 U.S. 106 (1963).

judgment was entitled there to res judicata effect, the Court held that the full faith and credit clause required Missouri to give the same effect to the Nebraska judgment. Mr. Justice Stewart, pointing out that the principle of conclusiveness of rulings had been established as to both jurisdiction over the person and jurisdiction over the subject matter, stated there were no overriding considerations that justified an exception for title to land "as between the parties to the litigation. . . ." The decision between the private parties, however, could not, he added "bind either Missouri or Nebraska with respect to any controversy they might have . . . as to the location of the boundary between them." Mr. Justice Black, concurring, reserved the question whether the Nebraska decision would be binding even on the parties to the private litigation, "should it later be authoritatively decided, either in an original proceeding between the States in this Court or by a compact between the two States under Article I, sec. 10, that the disputed tract is in Missouri."

B. *Determination of Sister State Law*

Aldrich v. Aldrich,[13] too, was a case in which a court in a second state had refused to enforce a sister state's judgment on the ground of lack of jurisdiction. In a divorce proceeding with personal jurisdiction over the spouses a Florida circuit court entered a decree in favor of the wife for monthly alimony with a provision that if the divorced husband predeceased the wife, the monthly sum should become a charge upon his estate. After the husband's death the divorced wife sought to enforce the Florida decree against his estate in West Virginia. The Supreme Court of West Virginia denied relief on the ground the Florida circuit court lacked jurisdiction to make such a post mortem provision.[14]

On certiorari, the Supreme Court of the United States assumed, as had the Supreme Court of West Virginia, that the validity of the Florida decree must be determined under Florida law, of which the Supreme Court of Florida was the arbiter. To ascertain the validity of the Florida decree, the Supreme Court of the United States employed a method which, unfortunately, was not open to the West Virginia court. It certified to the Supreme Court of Florida questions on the validity of the Florida decree. Florida "with rare foresight" has a statute and a rule of court under which the state supreme court may answer questions of Florida law certified to it by a federal appellate court in a case pending before the latter. In an earlier case the Supreme Court of Florida had entertained a similar question, and,

13. 375 U.S. 249 (1963).

14. Aldrich v. Aldrich, 127 S.E.2d 385 (1962).

considering the matter sua sponte, held the Florida statute constitutional.[15] It would be well for every state to follow the model of the Florida statute, extending it even further so that the supreme court of a state could entertain questions on its law certified to it by state as well as federal appellate courts. In this way the often troubling problem of an appellate court determining what the law of a sister state is on a decisive matter would be eliminated, and the determination would be made by the court that has final authority in the matter.

15. Sun Ins. Office, Ltd. v. Clay, 133 So. 2d 735 (Fla. 1961). After the Florida Supreme Court answered the question of Florida law certified to it, the Supreme Court of the United States upheld the application of the Florida law to the case before it. Clay v. Sun Ins. Office, Ltd., 84 Sup. Ct. 1197 (1964).