

CONFLICT OF LAWS: PENNSYLVANIA REPUDIATES PLACE OF INJURY RULE, ADOPTS GOVERNMENTAL INTEREST ANALYSIS

ACADEMIC CRITICISM of the traditional conflict of laws rule that tort actions are to be adjudicated according to the law of the place of injury¹ has become commonplace.² Increasingly, courts are breaking with this rule.³ The question of moment seems no longer to be

¹ The traditional rule is set out in RESTATEMENT, CONFLICT OF LAWS § 378 (1934): "The law of the place of wrong determines whether a person has sustained a legal injury." The conceptual basis of the rule is that any wrong is but a violation of a right; that a right enjoyed by a person obtains by virtue of his being situated within the state which protects that right; and that any forum which entertains an action for redress of a wrong can only be enforcing the right created or protected by the state where the right was violated. See 2 BEALE, CONFLICT OF LAWS §§ 377.1-78.1 (1935).

Arguments made to justify the rule are: (1) it is relatively easy to apply; (2) predictability of outcome is enhanced; (3) forum shopping is discouraged; (4) it is symmetrical—all parties injured in a single mishap have their rights adjudicated by the same law; (5) there is lack of agreement regarding an alternative method of decision, and the old rule enjoys the force of precedent. See *Griffith v. United Air Lines, Inc.*, 203 A.2d 796, 807-11 (Pa. 1964) (Bell, C.J., dissenting); 1 BEALE, *op. cit. supra* § 4.12; Sparks, *Babcock v. Jackson—A Practicing Attorney's Reflections upon the Opinion and its Implications*, 31 INS. COUNSEL J. 428 (1964).

Critics of the rule point out: (1) courts enforce rights created by their own state, not foreign-created rights; (2) the rule mechanically ignores consideration of the interest (or lack of interest) of each state in the outcome of the dispute; (3) the rule ignores consideration of the reasonable expectations of the parties; (4) no rule (or rules) can take into account the infinite number of possible factual variations which bear on the interests to be considered. See authorities cited note 2 *infra*.

² E.g., COOK, THE LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS 3-47, 311-46 (1942); CURRIE, *Survival of Actions*, in SELECTED ESSAYS ON THE CONFLICT OF LAWS 128, 137-40 (1963); Cavers, *A Critique of the Choice-of-Law Problem*, 47 HARV. L. REV. 173 (1933); Ehrenzweig, *The "Most Significant Relationship" in the Conflicts Law of Torts*, 28 LAW & CONTEMP. PROB. 700 (1963); Reese, *Conflict of Laws and the Restatement Second*, 28 LAW & CONTEMP. PROB. 679, 680 (1963); Traynor, *Is This Conflict Really Necessary?*, 37 TEXAS L. REV. 657, 667 (1959); Weintraub, *A Method for Solving Conflict Problems—Torts*, 48 CORNELL L.Q. 215, 216 (1963).

³ Some courts have avoided applying the rule without completely repudiating it. E.g., *Emery v. Emery*, 45 Cal. 2d 421, 289 P.2d 218 (1955) (intra-family immunity issue in tort action is local question of capacity to sue); *Grant v. McAuliffe*, 41 Cal. 2d 859, 264 P.2d 944 (1953) (issue characterized as locally governed matter of "estate administration"); *Kilberg v. Northeast Airlines, Inc.*, 9 N.Y.2d 34, 172 N.E.2d 526, 211 N.Y.S.2d 133 (1961) (amount of damages a locally governed "procedural" matter); *Haumschild v. Continental Cas. Co.*, 7 Wis. 2d 130, 95 N.W.2d 814 (1959) (inter-spousal immunity issue in tort action characterized as locally governed "family law").

Other courts have entirely abandoned the rule. *Watts v. Pioneer Corn Co.*, 342 F.2d 617 (7th Cir. 1965); *Schmidt v. Driscoll Hotel, Inc.*, 249 Minn. 376, 82 N.W.2d 365 (1957); *Babcock v. Jackson*, 12 N.Y.2d 437, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963); *Griffith v. United Air Lines, Inc.*, 203 A.2d 796 (Pa. 1964).

whether *lex loci delicti* is to be retained or rejected, but rather what shall take its place. Scholars who denounce the old rule have not reached a general consensus as to the new order,⁴ and courts which have abandoned the traditional rule have generally reflected this uncertainty.⁵ In *Griffith v. United Air Lines, Inc.*,⁶ however, Pennsylvania clearly and forthrightly adopted a single rational approach to conflict of laws problems.

Griffith was brought in the Pennsylvania courts by the executor of a Pennsylvania citizen who had died in an airplane crash in Colorado. The executor alleged damages on behalf of the estate including loss of prospective earnings of the deceased,⁷ which are recoverable under Pennsylvania law⁸ but precluded by the law of Colorado.⁹ Had the Pennsylvania Supreme Court continued its ad-

⁴ Professors Cavers and Currie apparently agree that conflict of laws problems should be approached by examining the apparently interested states' concern with seeing their respective policies effectuated in a given dispute, but they differ as to the method of determining which state's interest shall prevail. Compare Cavers, *Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws*, 63 COLUM. L. REV. 1212, 1219, 1225-26 (1963), with Currie, *id.* at 1233, 1237-38, 1242-43. Professor Ehrenzweig joins Professor Currie in opposing the American Law Institute's project of formulating new "rules." See Currie, *supra* at 1241-42; Ehrenzweig, *supra* note 2, at 701-02. However, Ehrenzweig labels the governmental interests to which Currie looks as "fictitious," preferring his own theory that courts follow certain "true rules" which they have evolved. EHRENZWEIG, CONFLICT OF LAWS §§ 103-20 (1962); Ehrenzweig, *Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws*, 63 COLUM. L. REV. 1212, 1243, 1246 (1963). Professor Reese includes the purpose of "relevant local law" as a factor to be considered, but lists nine additional considerations which may singly or jointly override this factor. Reese, *supra* note 2, at 682-90.

⁵ Courts declining to apply the place-of-injury rule have frequently done so by categorizing the issue as something other than tort. See cases cited note 3 *supra*. Other courts which have repudiated the rule have not indicated a clear successor. In *Schmidt v. Driscoll Hotel, Inc.*, 249 Minn. 376, 82 N.W.2d 365 (1957), the court recognized that application of the place-of-injury rule would frustrate the interests of both concerned states, and concluded simply that on the facts before it principles of equity and justice would be better served by not adhering to the rule. The opinion in *Babcock v. Jackson*, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963), expressly repudiated the traditional rule, but was worded in such a manner that each of the numerous critics of the rule was able to claim that the case lent support to his view. See *Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws*, 63 COLUM. L. REV. 1212 (1963).

⁶ 416 Pa. 1, 203 A.2d 796 (1964).

⁷ 203 A.2d at 797-98.

⁸ Pennsylvania's survival statute does not limit recovery. PA. STAT. ANN. tit. 20, § 320.603 (1950). This is in accord with the Pennsylvania Constitution, which proscribes legislative limitation of recovery in personal injury cases, except with regard to workmen's compensation statutes. PA. CONST. art. III, § 21. Pennsylvania case law allows recovery of a decedent's expected future earnings, less maintenance costs for himself, his wife and his children. *E.g.*, *Skoda v. West Penn Power Co.*, 411 Pa. 323, 335, 191 A.2d 822, 828-29 (1963).

⁹ COLORADO REV. STAT. ANN., § 152-1-9 (Supp. 1960).

herence to the place-of-injury rule,¹⁰ the applicable law would automatically have been that of Colorado. Instead, the court expressly abandoned *lex loci delicti* and in its place adopted "a more flexible rule which permits analysis of the policies and interests underlying the particular issue before the court."¹¹ Applying this approach to the facts of the case, the court examined the possible interests of each of the two states in having its law given effect in the case.¹² Analysis of the policies underlying each state's law led the court to conclude that Pennsylvania alone possessed an interest in the measure of damages to be awarded in this particular suit, and that Pennsylvania's law should therefore be applied.¹³

The governmental interest analysis approach adopted by the court in *Griffith* is, as the court noted,¹⁴ one advocated by a number of contemporary scholars.¹⁵ The function of this approach—perhaps its sole function—is to enable a court to decide in a rational manner whether the laws of two or more states, with regard to a specific

¹⁰ Pennsylvania courts had followed the rule for more than 100 years. See 203 A.2d at 801.

¹¹ *Id.* at 805.

¹² *Id.* at 806-07.

¹³ "An examination of the policies which apparently underlie that Colorado statute tends to indicate that state's lack of interest in the amount of recovery in a Pennsylvania court." *Id.* at 807. "Pennsylvania's interest in the amount of recovery, on the other hand, is great." *Ibid.*

¹⁴ *Id.* at 802-03.

¹⁵ The term "governmental interest analysis" as used herein is not meant to identify the view of any particular scholar, but to describe the judicial approach whereby the respective state laws which are asserted to be in conflict are analyzed in order to discover whether the policies underlying those laws would require conflicting results in a particular case. Thus defined, governmental interest analysis appears to be espoused by the following scholars: Cavers, *Change in Choice-of-Law Thinking and its Bearing on the Klaxon Problem*, in A.L.I. STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS 154, 163-66 (Tent. Draft No. 1, 1963); CURRIE, SELECTED ESSAYS ON THE CONFLICT OF LAWS (1963); Currie, *Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws*, 63 COLUM. L. REV. 1212, 1233, 1242-43 (1963); M. Traynor, *Conflict of Laws: Professor Currie's Restrained and Enlightened Forum*, 49 CALIF. L. REV. 845, 847-51 (1961); Traynor, *supra* note 2; Weintraub, *supra* note 2, at 216-17.

The court also cited Professors Cheatham, Leflar and Reese as "all placing importance upon an analysis of the policies underlying the conflicting laws and of the relationship of the particular contacts to those policies." 203 A.2d at 802. Of these scholars, Professor Leflar seems most to consider such analysis important, although he appears to give equal weight to "the significant contacts" and "social policies." Leflar, *Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws*, 63 COLUM. L. REV. 1212, 1247, 1249 (1963). Professor Reese considers such analysis one of ten factors which courts should consider. Reese, *supra* note 2, at 682-90. What importance Professor Cheatham would accord governmental interest analysis is not clear. Cheatham, *Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws*, 63 COLUM. L. REV. 1212, 1229 (1963).

issue, *really are in conflict*.¹⁶ If analysis of the policies embodied in the apparently conflicting laws discloses that only one state has asserted an interest in the outcome of the particular issue, there is no conflict of laws relevant to the case; hence, the law of the only interested state should be given effect.¹⁷ If this approach seems sensible to the point of being self-evident, it should be noted that it is totally ignored by the traditional choice-of-law rules¹⁸ which have long held sway¹⁹ and which have only recently begun to be subverted.²⁰ It should also be noted that some contemporary scholars view the states' respective interests as only one factor to be considered.²¹

While there is agreement among several scholars that apparent or asserted conflicts should be examined with regard to the interests of the seemingly concerned states,²² there is disagreement as to the course to be followed in the event that the court's analysis discloses a "true conflict."²³ One suggested approach to the true conflict problem is that courts should "weigh" the conflicting state interests.²⁴ It is suggested that if it is not apparent to the court that the

¹⁶ If analysis discloses the presence of a "true" conflict (see note 23 *infra*) of state interests and the court presumes to resolve the conflict by "weighing" the respective interests (see text accompanying notes 24-29 *infra*), its analysis reasoning would seem the basis for determining the "weight" to be assigned to each state's interest. On the other hand, if true conflicts are to be decided by application of the law of the forum (see text accompanying notes 30-35 *infra*), the sole function of governmental interest analysis will have been that of determining whether true conflict exists.

¹⁷ See authorities cited note 15 *supra*.

¹⁸ Courts following the place-of-injury rule may well give effect to the law of a state having no interest in seeing its law applied, while failing to effectuate the law of an interested state. *E.g.*, *Jeffrey v. Whitworth College*, 128 F. Supp. 219 (E.D. Wash. 1955); *Bohenek v. Niedwiecki*, 142 Conn. 278, 113 A.2d 509 (1955); *Buckeye v. Buckeye*, 203 Wis. 248, 234 N.W. 342 (1931).

¹⁹ In Pennsylvania the place-of-injury rule had been consistently applied for more than 100 years prior to *Griffith*. See note 10 *supra*. Many jurisdictions still follow the rule. *E.g.*, *Maloy v. Taylor*, 86 Ariz. 356, 346 P.2d 1086 (1959); *Workman v. Hargadon*, 345 S.W.2d 644 (Ky. 1960); *Hall Motor Freight v. Montgomery*, 357 Mo. 1188, 212 S.W.2d 748 (1948); *Clement v. Atlantic Cas. Ins. Co.*, 13 N.J. 439, 100 A.2d 273 (1953); *Richardson v. Pacific Power & Light Co.*, 11 Wash. 2d 288, 118 P.2d 985 (1941); *Ball v. Ball*, 73 Wyo. 29, 269 P.2d 302 (1954).

²⁰ See cases cited note 3 *supra*.

²¹ See note 15 *supra*.

²² See note 15 *supra*.

²³ The term "true conflict" is used herein to describe the situation which exists when a court's analysis discloses that more than one state is legitimately interested in seeing its policies effectuated in the particular case before it.

²⁴ See *Cavers, The Changing Choice-of-Law Process and the Federal Courts*, 28 *LAW & CONTEMP. PROB.* 732, 733 (1963); *Leflar, Constitutional Limits on Free Choice of Law*, 28 *LAW & CONTEMP. PROB.* 706 (1963); *M. Traynor, supra* note 15.

Professor Weintraub would also have courts decide conflicts on the basis of their

circumstances of a particular case give one state a "greater interest in the effectuation of its policy," a decision may nevertheless be reached in accord with the "claims of justice."²⁵ It is argued that the making of such value judgments is no less a proper judicial function in conflicts cases than in the numerous other contexts in which courts daily weigh competing policy factors.²⁶ The Supreme Court is cited as having performed interest weighing in a conflict of laws case²⁷ (although it is admitted to have "retreated somewhat"),²⁸ as well as in other contexts.²⁹

On the other hand, a materially different view advocates that a court confronted with a true conflict should not pass judgment upon which state's policy *it* thinks should be given effect, but rather should apply the law of the sovereign to which it owes its existence.³⁰ Although the court should carefully consider whether the policy of its own state cannot reasonably be construed so as to avoid conflict with that of the other interested state,³¹ once conflict is found proponents of this view assert that its resolution is a legislative, not a judicial, function.³² The Supreme Court has arguably abandoned

own value judgments, but he emphasizes that his method need not involve weighing of interests. "[I]n viewing the entire matter at issue with circumspection and common sense, a rational solution . . . will very often suggest itself." Weintraub, *supra* note 2, at 237-38.

²⁵ Cavers, *supra* note 24, at 733.

²⁶ M. Traynor, *supra* note 15, at 854-55.

²⁷ *Alaska Packers Ass'n v. Industrial Acc. Comm'n*, 294 U.S. 532, 547-50 (1935). The Court held that the full faith and credit clause does not require a state to subordinate its own interest to the conflicting interest of another state, and that the Court must "determine for itself the extent to which the statute of one state may qualify or deny rights asserted under the statute of another." 294 U.S. at 547. The Court articulated that its determination would be made by "appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight." *Ibid.*

²⁸ M. Traynor, *supra* note 15, at 853. See note 34 *infra*.

²⁹ *E.g.*, see cases cited by M. Traynor, *supra* note 15, at 852-53.

³⁰ CURRIE, *Notes on Methods and Objectives in the Conflict of Laws*, in *SELECTED ESSAYS ON THE CONFLICT OF LAWS* 177 (1963); Currie, *The Disinterested Third State*, 28 *LAW & CONTEMP. PROB.* 754, 758 (1963).

³¹ *Id.* at 757-58. Such construction with an eye toward avoiding conflict has been criticized as inconsistent with proscription against weighing. When the court performs such construction of its state's policies, is it not engaged in a "weighing" process? Cavers, *supra* note 24, at 734 n.9. Professor Currie concedes the functional similarity, but sees an important distinction in method. "When a court avowedly uses the tools of construction and interpretation it invites legislative correction of error—or at least criticism from the law reviews. When it weighs state interests and finds a foreign interest weightier it inhibits legislative intervention and confounds criticism." Currie, *The Disinterested Third State*, 28 *LAW & CONTEMP. PROB.* 754, 759 (1963).

³² "It is no part of the duty of a court to subordinate domestic interests to those

the notion that weighing of states' interests in conflicts cases is a proper judicial function by holding that the forum state's application of its own "legitimate" interest³³ is consistent with the full faith and credit clause and will not be disturbed.³⁴ If weighing legitimate state interests is not a proper function for the Supreme Court, a fortiori such weighing should be foreclosed to the state courts.³⁵

Because of the court's conclusion that only Pennsylvania had an interest in the effectuation of its policy in *Griffith*,³⁶ it did not reach the question of how true conflicts are to be decided. *Griffith* is limited to an express repudiation of *lex loci delecti* and the adoption of an approach which analyzes asserted conflicts to determine whether state interests actually are in conflict in the particular case. Interestingly, it would seem that the court failed to recognize that *Griffith* did in fact present a true conflict.

The court's examination of Colorado's possible interest entailed consideration of that state's apparent reasons for enacting a survival

of a foreign state. The conflict must remain unresolved, unless it can be resolved by political action. Resolution of a conflict between the interests of co-ordinate states is a function of a high political order, which courts are not equipped to perform. *Id.* at 758.

In the *Griffith* context, adherence to this view would dictate that the determination by Pennsylvania, embodied in the state constitution (see note 8 *supra*), that damages recoverable in personal injury cases should not be limited by reason of the death of the injured party should be given effect by the Pennsylvania court in all cases in which the policy applies, until such time as the policy is properly changed—in this case, by constitutional amendment.

³³The term "legitimate public interest" was used by the Supreme Court in summing up its opinion that California's application of its own statute was consistent with due process in *Alaska Packers Ass'n v. Industrial Acc. Comm'n*, 294 U.S. 532, 542 (1935). The term "legitimate interest" has been similarly employed by the Court in *Carroll v. Lanza*, 349 U.S. 408, 413 (1955) and in *Watson v. Employers Liability Assur. Corp.*, 348 U.S. 66 (1954). See Currie, *Full Faith and Credit, Chiefly to Judgments: A Role for Congress*, 1964 SUP. CT. REV. 89, 91-99.

³⁴In *Pacific Employers Ins. Co. v. Industrial Acc. Comm'n*, 306 U.S. 493 (1939), the Court, advertent to its "weighing" procedure in *Alaska Packers Ass'n v. Industrial Acc. Comm'n*, *supra* note 33, said, "there would seem to be little room for the exercise of that function when the statute of the forum is the expression of domestic policy, in terms declared to be exclusive in its application to persons and events within the state." 306 U.S. at 502-03. See note 27 *supra*. The Supreme Court applied this philosophy in favor of application by a state of its common law rule: "The State of the forum also has interests to serve and to protect." *Carroll v. Lanza*, *supra* note 33, at 412. Cf. *Crider v. Zurich Ins. Co.*, 380 U.S. 39 (1965). See CURRIE, *The Constitution and Choice of Law*, in SELECTED ESSAYS ON THE CONFLICT OF LAWS 188, 201-05 (1963).

³⁵*Id.* at 278.

³⁶See note 13 *supra*.

statute precluding recovery of a decedent's prospective earnings.³⁷ The court first reasoned that the limitation was probably intended to prevent Colorado courts from engaging in "speculative computation of future earnings," and that Colorado would be unconcerned by Pennsylvania's readiness to make such computations.³⁸ What the court apparently overlooked, however, is that the Colorado survival statute does not preclude such computations by Colorado courts. If a person is disabled rather than killed, for example, a Colorado court assessing damages would be confronted with the necessity of computing expected future earnings.³⁹ Thus it appears unlikely that the policy underlying the Colorado limitation is avoidance of judicial speculation in computing damages.

The court next considered the possibility that the Colorado limitation might have been intended to "protect Colorado defendants from large verdicts."⁴⁰ This line of inquiry was cut short, however, with the statement that although United does business in Colorado, it is not domiciled there, and that it also does business in other states which do not limit recovery.⁴¹ Turning to Pennsylvania's interests, the court found that state "strongly" interested in

³⁷ 203 A.2d at 807. The court had first noted that no Colorado interest could, in this case at least, be posited on the argument that the defendant had relied on Colorado's policy of limiting damages, since the site of the accident had been "purely fortuitous." *Id.* at 806. The court also reasoned that whatever interest Colorado might have in the compensation of those who render aid to injured persons was not assertable when, as here, death had been immediate. *Id.* at 807.

³⁸ *Ibid.*

³⁹ See *Moyer v. Merrick*, 392 P.2d 653, 656 (Colo. 1964); *King v. Avila*, 127 Colo. 538, 259 P.2d 268 (1953).

On the other hand, it is possible that Colorado allows computation of probable future earnings in suits involving injury only, but not where injury has resulted in death, because of a belief that a decedent's dependents are usually life insurance beneficiaries, while an injured man and his family are probably uncovered by disability insurance.

⁴⁰ 203 A.2d at 807.

⁴¹ *Ibid.* There appear to be two explanations for the court's disposition of the point in this manner. Most apparent is that the court was simply excluding United from the "Colorado defendant" category because it is not domiciled there and does business elsewhere.

A second element seems to be that of pointing out that refusal to apply Colorado law is not "unfair" to United, since it "could reasonably anticipate that it might be subject to the laws of such states and could financially protect itself against such eventuality." *Ibid.* This factor of fairness to the parties is considered by some scholars to be important in deciding true conflicts. *E.g.*, *Cavers*, *supra* note 15, at 164; *Weintraub*, *supra* note 2, at 239-42. Since the *Griffith* court discovered no true conflict, and in light of its reliance upon analysis of state interests in reaching that conclusion, its observation as to the fairness of its application of Pennsylvania law would seem to be "make-weight."

having its law given effect, due to its concern with the administration of the decedent's estate and the well being of his surviving dependents.⁴²

The court did not discuss the likelihood that the Colorado statute reflects a legislative policy of providing certain limitations upon the liability of all entrepreneurs doing business in the state, whether domiciled there or not. Such a policy might obtain, for example, in order to encourage beneficial commercial activity in the state.⁴³ If this is the purpose of the statute, Colorado was interested in effectuation of its policy in *Griffith*; awarding damages in excess of those allowed by Colorado's statute subverted that state's policy of affording limited liability for defendants engaged in commercial activity within the state. Thus it is at least arguable that Colorado did have an interest in the application of its law in the instant case; and since Pennsylvania was also interested in having its law applied—an interest which was irreconcilable with that of Colorado—a true conflict was present.

Although *Griffith* leaves unresolved the true conflict problem, the court's clear reliance upon governmental interest analysis is itself a significant development. Such an approach would seem to reject the notion that courts require choice-of-law rules to guide them in deciding, when conflict is asserted, what law to apply. Such a system of rules is, according to its reporter,⁴⁴ the aim of the *Restatement (Second), Conflict of Laws*.⁴⁵ In place of the few rules of broad application (such as the place-of-injury rule) embraced by the original *Restatement*,⁴⁶ it is said that many rules of narrow application are required.⁴⁷ The paucity of precedent, however, requires that "broad, flexible rules" must suffice for the present.⁴⁸

The *Restatement (Second)* rule applicable in a case such as *Griffith* would require application of the law of the state having "the most significant relationship with the occurrence and the parties."⁴⁹

⁴² 203 A.2d at 807.

⁴³ Cf. 1964 DUKE L.J. 351, 357-58.

⁴⁴ See Reese, *supra* note 2, at 680.

⁴⁵ RESTATEMENT (SECOND), CONFLICT OF LAWS (Tent. Draft No. 9, 1964).

⁴⁶ RESTATEMENT, CONFLICT OF LAWS (1934).

⁴⁷ Reese, *supra* note 2, at 680.

⁴⁸ See *id.* at 681. This is more than simply re-stating existing law. Indeed, Professor Reese states that the choice of law area is not ripe for restatement in that sense. *Ibid.*

⁴⁹ Both § 390 (Survival of Actions) and § 379 (a) (Personal Injuries) are controlled by "The Most Significant Relationship" rule of § 379. Section 379 provides:

This state would be ascertained by consideration of "important contacts" viewed with regard to "the issues, the character of the tort, and the relevant purposes of the tort rules of the interested states."⁵⁰ Although it may be demonstrated that the rules of the *Restatement (Second)* would permit the result reached in *Griffith*, it is also evident that they would not require that result.⁵¹ Most important, however, is recognition of the fact that the basic *Griffith* approach to conflict of laws cannot be reconciled with that of the *Restatement (Second)*.

This incompatibility may not be immediately apparent. The Pennsylvania court, after discussing the *Restatement (Second)* and noting the criticism which it has provoked,⁵² concluded with the statement that "almost all authorities agree that there must be a policy analysis approach to replace the place of the injury rule."⁵³ This might seem to indicate approval of at least so much of the *Restatement (Second)* approach as recognizes interest analysis.⁵⁴ Paradoxically, a decision based on such analysis would seem to repudiate the entire concept of choice-of-law rules such as the *Restatement (Second)* embodies. A court engaged in ascertaining the policies behind seemingly conflicting state laws is unlikely to be

"The General Principle.

(1) The local law of the state which has the most significant relationship with the occurrence and with the parties determines their rights and liabilities in tort.

(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 contracts, the forum will consider the issues, the character of the tort, and the relevant purposes of the tort rules of the interested states." RESTATEMENT (SECOND), CONFLICT OF LAWS § 379 (Tent. Draft No. 9, 1964).

⁵⁰ *Ibid.*

⁵¹ Comment *d* to § 379 stipulates that the state where the conduct and injury occurred (usually given the "greatest weight"—see comment *b*) is not the state primarily concerned with the issue of survival of tort claims. *Id.* at 8-9.

However, even when *both* the plaintiff and defendant are domiciled in a state other than the state of injury and conduct, that state's law need not control, but "would seem" to have the greatest interest "ordinarily." *Id.* at 9.

⁵² 203 A.2d at 802-03. See critics cited note 4 *supra*.

⁵³ 203 A.2d at 803.

⁵⁴ "In determining the relative importance of the contacts, the forum will consider the issues, the character of the tort, and the relevant purposes of the tort rules of the interested states." RESTATEMENT (SECOND), CONFLICT OF LAWS § 379 (3) (Tent. Draft No. 9, 1964). (Emphasis added.) Comment *f* to § 379 states that such purposes are "an important factor to be considered. . . ." *Id.* at 11.

concerned about an heirarchy of important contacts, or about which contact is "as to most issues" to be "given the greatest weight."⁵⁵ Analysis of "the relevant purposes of the tort rules of the interested states" was the sole basis of decision in *Griffith*, not merely "an important factor to be considered. . . ."⁵⁶

⁵⁵ RESTATEMENT (SECOND), CONFLICT OF LAWS § 379, comment *b* (Tent. Draft No. 9, 1964).

⁵⁶ RESTATEMENT (SECOND), CONFLICT OF LAWS § 379, comment *f* (Tent. Draft No. 9, 1964).