I

CHOICE OF LAWS

A. Torts

Reich v. Purcell.[1] The supreme court rejected the law of the place of the wrong (lex loci) as the applicable law for limitations on damages in tort actions brought in California. In place of the lex loci rule the court adopted an individualized, policy-oriented approach for choosing the appropriate law. This case is a major development in conflict of laws in California, and has already been the subject of numerous articles.[2]

Purcell, a resident of California, and the Reichs, residents of Ohio, were involved in an automobile accident in Missouri. Two of the Reichs were killed in the collision, and their survivors, who subsequently had become residents of California, sued for wrongful death. The parties stipulated that the damages for Mrs. Reich's wrongful death should be 25,000 or 55,000 dollars, depending on the applicability of Missouri's 25,000 dollar limitation on wrongful death damages.[3] Neither California nor Ohio had any such limitation.[4] The court reversed the lower court's application of the Missouri limitation and granted the 55,000 dollar award based on the parties' stipulations.

Since *Reich* is not the first California case to depart from the rigid application of the lex loci approach,[5] its major significance lies in its method of analysis.[6] Three states were said to be involved: Ohio, the plaintiffs' residence at the time of the accident as well as the state where the decedents' estates were to be administered; Missouri, the place of the accident; and California, the defendant's residence and the plaintiffs' residence at the time the action was brought. Missouri, the place of the wrong and the only state with a damages limitation, was the key state. The court said that as to conduct Missouri had the predominant interest of the involved states. However, the court went on to say that damage limitations for wrongful death "have little or nothing to do with conduct,"[7] but rather serve to protect local

1. 67 Cal. 2d 551, 432 P.2d 727, 63 Cal. Rptr. 31 (1967).

2. Symposium, *Comments on Reich v. Purcell*, 15 U.C.L.A.L. REV. 551 (1968).

3. §1, [1955] Mo. Laws 778. The statute was subsequently amended to increase the damages limitation to $50,000. MO. ANN. STAT. 537.090 (1967).

4. CAL. CIV. PRO. CODE § 377 (West 1954); OHIO CONST. art. 1, § 19a.

5. *See, e.g.*, Emery v. Emery, 45 Cal. 2d 421, 289 P.2d 218 (1955); Grant v. McAuliffe, 41 Cal. 2d 859, 264 P.2d 944 (1953).

6. *See* Gorman, *Comments on Reich v. Purcell*, 15 U.C.L.A.L. REV. 605, 607 (1968). In fact, the lex loci may never have been the general rule at any time. Ehrenzweig, *Comments on Reich v. Purcell*, 15 U.C.L.A.L. REV. 570 (1968).

7. 67 Cal. 2d at 556, 432 P.2d at 730-31, 63 Cal. Rptr. at 34-35.

defendants from excessive financial burdens, and thus are relevant only where the defendant is a local resident. Certainly, out-of-State defendants will not have limited their insurance coverage in reliance upon the damages limitation of another jurisdiction. Accordingly, the court held Missouri's limitation inapplicable. It went on to point out that the defendant has no reason to complain when damages are assessed in accordance with the law of his domicile and the plaintiffs do not receive any more than they would have at home.[8]

The court could have said that since Missouri is not an interested state, and since the California and Ohio wrongful death statutes have the same policy—full compensation of specified beneficiaries—there is no reason to do more than apply that common policy.[9] Instead, it reasoned that since the plaintiffs' residence at the time of the accident was critical, California itself was a disinterested state. This conclusion was based on the fear that forum shopping would be encouraged if the relevant date for determining the plaintiffs' residence was subsequent to the accident.[10] Therefore, Ohio, whose statutes imposed no limitation upon damages, was deemed the only interested state on this issue.

Although the commentators agree with the court's refusal to apply the Missouri damages limitation, there is significant disagreement as to the validity of its methodology. Professor Kay maintains that the case is a wise and correct application of the late Brainerd Currie's governmental interest analysis.[11] The court properly reached the conclusion that this was a false conflict[12] and applied the law of the only interested state—Ohio. On the other side, Professor Ehrenzweig criticizes the court for complicating what should have been an easy application of the forum's rule;[13] a criticism based upon a thorough rejection of the governmental interest approach.

Professor Ehrenzweig's first criticism goes to the question of which states are "involved." Are these involvements allocated by some kind of "superlaw," or are some states involved merely because a party or the court identifies them as such? In any event, he argues, determining the involved states would be particularly difficult in situations where a large number of states all have some connection with a factual aspect of the case.[14]

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8. *Id.*

9. *See* Scoles, *Comments on Reich v. Purcell*, 15 U.C.L.A.L. REV. 563, 566 (1968); COMMENT, *False Conflicts*, 55 CALIF. L. REV. 74, 92-96 (1967).

10. 67 Cal. 2d at 555-56, 432 P.2d at 730, 63 Cal. Rptr. at 34.

11. Kay, *Comments on Reich v. Purcell*, 15 U.C.L.A.L. REV. 584, 585, 593 (1968).

12. *See* Comment, *False Conflicts*, 55 CALIF. L. REV. 74 (1967).

13. Ehrenzweig, *Comments on Reich v. Purcell*, 15 U.C.L.A.L. REV. 570, 582-83 (1968).

14. *Id.* at 573-74.

His second criticism involves the question of which state's rule to apply, assuming the court can initially isolate the involved states. Professor Ehrenzweig argues that, in the absence of a "superlaw" to somehow provide the criteria for the selection of the appropriate rule, an approach which attempts to focus on "state interests" is circular:

> The relevance . . . of an alleged or potential state interest can be deduced only from that very rule of the forum whose application or displacement is deduced from such relevance.[15]

To avoid these conceptual difficulties, as well as the practical problems such as lack of predictability, Professor Ehrenzweig proposes the following solution to the *Reich* problem: Because the California wrongful death statute in its terms is applicable to both forum and foreign accidents as well as to both forum and foreign domiciliaries, because there is no legislative intent to preclude its application to the present case, and because there are no special circumstances to displace it—such as insurance secured in reliance upon the limitation—the California statute should apply.[16]

The court's supporters feel that its analysis represents significant progress in the development of a rational choice of law methodology,[17] in that the court has compelled the parties to focus their inquiry on the central question: What policies or equities warrant application of any particular law?—rather than relying on rigid jurisdiction selecting rules such as lex loci. They argue that *Reich*, in line with the policy-oriented approach, involved thorough consideration of the policies and purposes behind the Missouri damages limitation and its relevance to the case presented. Missouri had no interest worthy of application and the court's refusal to apply its limitation was correct. However, some of these same commentators have pointed out that the seemingly unnecessary step of deciding that California itself was disinterested may return to haunt the court.[18] The fact that California, in the absence of full recovery for the damages suffered, might have to provide for the welfare of the plaintiffs would seem to indicate that, notwithstanding the forum shopping fears, in a true conflicts situation California would be viewed as interested.[19]

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15. *Id.* at 575.

16. *Id.* at 582-83.

17. Cavers, *Comments on Reich v. Purcell*, 15 U.C.L.A.L. REV. 647; Scoles, *Comments on Reich v. Purcell*, 15 U.C.L.A.L. REV. 563, 565; Weintraub, *Comments on Reich v. Purcell*, 15 U.C.L.A.L. REV. 556, 561 (1968).

18. Scoles, *Comments on Reich v. Purcell*, U.C.L.A.L. REV. 563, 567; Weintraub, *Comments on Reich v. Purcell*, 15 U.C.L.A.L. REV. 556, 561-62 (1968). *But see* Kay, *Comments on Reich v. Purcell*, 15 U.C.L.A.L. REV. 584, 593-94 (1968).

19. Scoles, *Comments on Reich v. Purcell*, 15 U.C.L.A.L. REV. 563, 568 (1968).

Whether *Reich v. Purcell* is a "well-lit road for the future"[20] or a detour in the path of progress in the conflict of laws, there is no question that its policy-oriented approach will be increasingly applied to California cases. This can be seen in a workmen's compensation case which the supreme court decided shortly after *Reich v. Purcell.*

Travelers Insurance Company v. Workmen's Compensation Appeals Board[21] involved a California resident applicant who was injured while working in Utah. On his return to California he applied for California workmen's compensation benefits to which he would be entitled only if, at the time of the injury, he was working pursuant to an employment contract formed in California.[22] The court of appeal assumed that California law applied, but held that the contract was executed in Colorado.[23] The supreme court reversed, holding that the contract was formed in California, fulfilling the statutory requirements for California workmen's compensation benefits.[24]

Prior to reaching this conclusion, the supreme court discussed the conflict of laws problem, and compared the forum's interest to those of the other involved states. The other states were Utah, the place of the injury; Wyoming, the place where the applicant reported for work and filled out various documents specifying his work responsibilities; and Colorado, the place of the employment agency that notified applicant of the job offer and also the place where the employer was located. The court argued that not only did California have a strong interest in the applicant's employment status, but there was no reason to apply the law of any of the other states to any of the questions at issue. The court found further support in the legislative declaration that the workmen's compensation provisions were to "be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment."[25]

As in *Reich v. Purcell*, it is the court's methodology which would

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20. Kay, *Comments on Reich v. Purcell*, 15 U.C.L.A.L. REV. 584 (1968).

21. 68 A.C. 1, 434 P.2d 992, 64 Cal. Rptr. 440 (1967).

22. "If an employee who has been hired . . . in this State receives personal injury . . . in the course of such employment outside of this State, he . . . shall be entitled to compensation according to the law of this State." CAL. LABOR CODE § 3600.5 (West 1955).

"The Commission has jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this State in those cases where the injured employee is a resident of this State at the time of the injury and the contract of hire was made in this State. Any such employee . . . shall be entitled to the compensation . . . provided by this section." *Id.* § 5305.

23. Travelers Ins. Co. v. Workman's Comp. App. Bd., 251 A.C.A. 146, 59 Cal. Rptr. 262 (1967).

24. 68 A.C. at 1-8, 434 P.2d at 992-97, 64 Cal. Rptr. at 440-45.

25. CAL. LABOR CODE § 3202 (West 1955).