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## Conflict of Laws: Foreign Statute of Limitations Applied in Wrongful Death Action

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who has old or destroyed the chattel.<sup>9</sup> Trespass on the case may lie when a cotenant's negligence has caused the destruction of the chattel.<sup>10</sup>

In conclusion there remains the question as to the remedies available to a cotenant of indivisible personalty where there is no agreement on possession and profits, and where there is no sale, destruction, or conversion to meet the requirements of the cases previously discussed. His most effective remedy is to take peaceable possession of the property if possible. But his cotenant may prevent this, since one who has actual possession may retain it to the exclusion of his cotenants.<sup>11</sup> If the property were divisible, he could recover his share or the value thereof.<sup>12</sup> But Wisconsin provides no comparable statutory remedy in the case of indivisible personal property. Thus it appears that the only remedy is the statutory action for partition, where the property can be divided, or sold upon court order where the property is not susceptible of division and the proceeds divided according to the interests of the parties.<sup>13</sup>

FRANK W. HAMMETT

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**Conflicts of Laws—Foreign Statute of Limitations Applied in Wrongful Death Action**—The death of Lewis was allegedly due to the negligence of Defense Plant Corporation, which by Congressional authority had been succeeded by the Reconstruction Finance Corporation, the defendant in this case. The fatal injury occurred in Nebraska, where a wrongful death act with a two-year statute of limitations was in effect. The suit for wrongful death was brought in the District of Columbia, where a one-year limitation existed in wrongful death actions. Plaintiff, administratrix of the estate of the deceased, brought suit twenty-two months after the fatal accident. She brought the action under the Nebraska statute, and the defendant invoked as a bar the District of Columbia one-year limitation. *Held*: The District of Columbia wrongful death statute establishing the one-year limitation was not applicable. The time prescribed for filing suit operated as a limitation upon the liability created by Nebraska statute, and was a condition attached to the right to sue. The limitation of the state where the injuries occurred governed and the public policy of the District of Columbia was not in conflict. *Lewis v. Reconstruction Finance Corporation*, 177 F (2d) 654 (C.C.A. D.C. 1949).

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<sup>9</sup> *Ibid*, p. 139.

<sup>10</sup> *Ibid* p. 144.

<sup>11</sup> *Ibid* p. 95.

<sup>12</sup> Wis. Stat. (1947) Sec. 331.06.

<sup>13</sup> Wis. State. (1947) Ch. 277.

The question and problem presented is whether the limitation of the *lex loci* or that of the *lex fori* should apply to an action based upon a statute of another state where the statute of the forum is shorter than the one of the *lex loci*.

Statutes of limitations are generally regarded as regulations founded on local policy and the general rule is that the law of the forum governs with respect to limitations of actions.<sup>1</sup> But where an action for wrongful death is brought in a state other than the state in which the injury causing death occurred, it is well-settled that where a conflict arises matters relating merely to the remedy and procedure are governed by the *lex fori*, but matters of substantive law are governed by the *lex loci*.<sup>2</sup>

There is a conflict in the decisions as to which statute of limitations applies in wrongful death actions. Some courts hold that the statute of the forum is a procedural time limit and a declaration of state policy precluding action, even where the statute of the *lex loci* allows a longer period.<sup>3</sup> The courts following this line of reasoning hold that statutes of limitations are designed to put litigation at rest after lapse of certain periods of time, and cannot be extended by legislation in other states.<sup>4</sup> They assert that the limitation statutes can have no force beyond the jurisdiction, and hold that the law of the forum governs all actions with respect to limitations.<sup>5</sup>

The opposing and majority view is that where a cause of action did not exist at common law, but has been created by the statute of a state, it only exists in the manner and form and for the length of time prescribed by the statute.<sup>6</sup> It follows that where, by statute, a state creates the cause of action for wrongful death and prescribes the limitation, such limitation will be applied in a sister state, even though there is a shorter limitation on similar statutory causes of action in the state of the forum.<sup>7</sup> The *lex loci* should not only determine the lifetime of the

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<sup>1</sup> Discussed in 15 C.J.S. 953 (1939).

<sup>2</sup> 25 C.J.S. 1097 (1941).

<sup>3</sup> *Tieffenbrun v. Flannery*, 198 N.C. 397, 151 S.E. 857 (1930).

<sup>4</sup> *Cauley v. S.E. Massengill Co.*, 35 F.Supp. 371 (E.D. Tenn. 1940).

<sup>5</sup> Discussed in 15 C.J.S. 954 (1939); Cases collected and discussed in 146 A.L.R. 1356 (1943); See Restatement, Conflict of Laws, Sec. 397, 603, 605; See also: *Order of United Commercial Travelers of America v. Wolfe*, 331 U.S. 586, 67 S.Ct. 1355 (1946).

<sup>6</sup> *Wilson v. Missouri Pacific Railroad*, 58 F.Supp. 844 (E.D. Ark. 1945); *Summar v. Besser Mfg. Co.*, 310 Mich. 347, 17 N.W. (2d) 209 (Death occurred in the District of Columbia and the action was brought in Michigan. The Michigan court applied the *lex loci*); *Coffman v. Wood*, 5 F.Supp. 906 (N.D. Ill. 1934) (Death in Indiana and action brought in Illinois. Illinois court applied the Indiana statute); See also: *Calvin v. West Coast Power Co.*, 44 F. Supp. 783 (Ore. 1942).

<sup>7</sup> *Wilson v. Massengill*, 124 F.(2d) 666 (C.C.A. 6th 1942). Certiorari denied in 316 U.S. 686, 62 S.Ct. 1274 (1942).

cause of action, but also should determine the time within which suit may be brought in another jurisdiction.<sup>8</sup>

Is the limitation in a wrongful death action a matter of substantive right or merely a procedural matter?

The effect of the statute of limitations in a wrongful death act is to prevent recovery upon the cause of action after a lapse of a period of time after the wrongful death. This limitation does not affect the presentation of the facts, but seems to limit the substantive right of the plaintiff. The right is not gone until lost under the statute that created it. It would seem that the limitation terminates the substantive right and so the *lex loci* should govern. The limitation seems to be part of the substantive right and the courts should recognize it as such and not as a mere matter of procedure.

EUGENE F. KOBAY

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*Majority Rule and Minority Rights*, by Henry Steele Commager.

Peter Smith, New York, 1950 Pp. 92. \$2.50.

Mr. Commager reconsiders the old problem of democracy, the preservation of majority rule and minority rights versus limited government. An analysis of the Hamiltonian solution (judicial review) discloses that after 150 years the United States Supreme Court has failed to further and secure the human rights it purports to protect and:

"the congress and not the courts, emerges as the instrument for the realization of the guarantees of the Bill of Rights."

Commager tenders the nation old "Jeffersonian solution" to this problem and holds that the people themselves are best qualified to decide the ultimate merits of the constitutional rights involved. This answer is both workable and necessary for it offers a stimulant to the citizens of a democratic state which in turn it their preservation of their form of government and their rights. The people never seriously threatened any basic right because of reason, education, and natural sanctions e.g. rebellions. The contention is made that the citizenry is falsely lulled into apathy believing the courts are preserving their fundamental rights. This result tends to weaken a democracy.

This book represents the liberal position to the solution of majority rule versus limited government and is recommended for its scholarly and stimulating discussion of the problem.

EARL A. CHARLTON

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<sup>8</sup> Cases collected and discussed in 68 A.L.R. 217 (1930) ; 146 A.L.R. 1356 (1943).