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Conflict of Laws: The "Center of Gravity" Theory Applied to Torts: Babcock v. Jackson

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CASE NOTE

CONFLICT OF LAWS: THE "CENTER OF GRAVITY" THEORY APPLIED TO TORTS—BABCOCK V. JACKSON

The plaintiff, the defendant, and the defendant's wife, all residents of the city of Rochester, New York, had started from Rochester in defendant's automobile on a trip which was to take them through Ontario, Canada. In Ontario, with the defendant driving and plaintiff a passenger, the automobile went out of control and crashed into a stone wall. The plaintiff suffered serious personal injuries as a result of this car accident.

Upon return to New York state, the plaintiff instituted suit to recover damages for her personal injuries. While the action was pending, the defendant died from injuries received in the accident and his executrix was substituted. The plaintiff claimed that the defendant was negligent in the operation of his automobile. The defendant moved to dismiss the complaint on the ground that the Ontario guest statute barred recovery.[1] Since New York law did not bar recovery, a choice of law question was presented. *Babcock v. Jackson.*[2]

The New York Supreme Court granted the defendant's motion and dismissed the complaint on the basis of Ontario law, thus applying the traditional rule that the place where the tort occurred governs choice of law questions concerning torts.[3] The appellate division affirmed,[4] but the court of appeals reversed the lower court's decision. In so acting, the court of appeals applied the law of the state of New York, thus deviating from the traditional choice of law rule governing torts. In lieu of the traditional rule, the court adopted the "center of gravity" or "grouping of contacts" theory,[5] which requires the court of the forum state to examine the contacts which each of the involved states have

[1] ONTARIO HIGHWAY TRAFFIC ACT, §105(2); REV. STATS. OF ONTARIO, ch. 172, §105(2):

> Notwithstanding subsection 1, the owner or driver of a motor vehicle, other than a vehicle operated in the business of carrying passengers for compensation, is not liable for any loss or damage resulting from bodily injury to, or the death of, any person being carried on, or upon, or getting on to, or alighting from such motor vehicle.

[2] Babcock v. Jackson, 12 N.Y. 2d 473, 240 N.Y.S. 2d 765, 191 N.E. 2d 279 (1963).

[3] Poplar v. Bourjois, Inc., 298 N.Y. 62, 66, 80 N.E. 2d 334, 336 (1948); Trudel v. Gagne, 328 Mass. 464, 104 N.E. 2d 489, 490 (1952); Clement v. Atlantic Casualty Ins. Co., 13 N.J. 439, 100 A. 2d 273, 274 (1958); Behner v. Industrial Comm., 154 Ohio St. 433, 96 N.E. 2d 403, 406 (1951); GOODRICH, CONFLICT OF LAWS 260 (3d ed. 1949); STUMBERG, PRINCIPLES OF CONFLICT OF LAWS 182 (2d ed. 1951).

[4] Babcock v. Jackson, 17 App. Div. 2d 694, 230 N.Y.S. 2d 114 (1962). Mr. Justice Halpern dissented and sought to apply the "center of gravity" theory.

[5] The "center of gravity" or "grouping of contacts" theory is defined as:

> That theory under which the courts lay emphasis upon the law of the place which has the most significant contacts with the matter in dispute.

with the parties, and also the effect which the litigation of this particular legal issue will have in the respective states. The court of the forum must then apply the law of that state which has the most "significant" contacts or relationships.

New York is the first state to use the "center of gravity" theory to determine the applicable law in tort cases. It anticipated, by two weeks, the American Law Institute's adoption of the same theory.[6]

Conflict of laws is a field saturated with distinctions which frequently seem to be based on no definite or logical principles. Not only in the choice of law area, but also in almost all the branches of law, writers and courts have been insatiably groping for a "Messianic" theory which will resolve the maze of distinctions into a coherent unity.

As a modern result of this groping, the "center of gravity" theory has now gained increasing recognition and stature in the area of contracts[7] and torts,[8] but it does not have a synonymous effect in the two cases.

Generally speaking, where this theory is applied, the courts seek a "policy orientated" choice of law solution by giving governing effect to the law of that state which is most significantly interested and effected by the outcome of the particular legal controversy. This is seen in greater detail by the application of the theory in the area of contracts and torts.

There exists today, in the contracts choice of law area, a confusion resulting from the various applicable theories.[9] The "center of gravity" theory serves as a unifying principle by abandoning the numerous

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Auten v. Auten, 308 N.Y. 155, 160, 124 N.E. 2d 99, 101 (1954); Barber Co. v. Hughes, 223 Ind. 570, 586, 63 N.E. 2d 417, 423 (1945); Rubin v. Irving Trust Co., 305 N.Y. 288, 305, 113 N.E. 2d 424, 431 (1953); Haag v. Barnes, 9 N.Y. 2d 554, 216 N.Y.S. 2d 65, 175 N.E. 2d 441 (1961); Note, *Choice of Law Problems in Direct Actions Against Indemnification Insurers,* 3 UTAH L. REV. 490, 498-99 (1952).

[6] 31 U.S.L. WEEK 2599 (U.S. May 28, 1963); RESTATEMENT (SECOND), CONFLICT OF LAWS §379 (Tent. Draft No. 8, 1963).

[7] Auten v. Auten, 308 N.Y. 155, 124 N.E. 2d 99 (1954); Haag v. Barnes, 9 N.Y. 2d 554, 216 N.Y.S. 2d 65, 175 N.E. 2d 441 (1961).

[8] Babcock v. Jackson, 12 N.Y. 2d 473, 240 N.Y.S. 2d 743, 191 N.E. 2d 279 (1963); RESTATEMENT (SECOND), CONFLICT OF LAWS §379 (Tent. Draft No. 8, 1963).

[9] The traditional theories which have been applied to resolve choice of law problems concerning contracts have been these three: (a) That the intention of the parties will govern as to which state's law to apply. See, Siegelman v. Cunard White Star, Ltd., 221 F. 2d 189, 195 (2d Cir. 1955); Duskin v. Pennsylvania-Cent. Airlines Corp., 167 F. 2d 727, 730 (6th Cir. 1948); 2 RABEL, THE CONFLICT OF LAWS: A COMPARATIVE STUDY 400 (1947). (b) That the law of the place of making will govern. See, Naylor v. Conroy, 46 N.J. Super. 387, 134 A. 2d 785, 787 (1957); Ritterbusch v. Sexmith, 256 Wis. 507, 514, 41 N.W. 2d 611, 614 (1950); LEFLAR, CONFLICT OF LAWS §60, at 232 (student ed. 1959). (c) That the law of the place of performance will govern. See, Hurtt v. Steven, 333 Ill. App. 181, 77 N.E. 2d 204, 206 (1948); Brown v. Gates, 120 Wis. 349, 353, 97 N.W. 221, 222 (1903); Cookson v. Knauff, 192 Pa. 69, 43 A. 2d 402, 407 (1945); Leflar, *supra* at 232.

theories applied in the past and adopting one co-ordinating theory, which implements all the prior principles, as determinative in the future.

In torts, however, the theory is not a stabilizing principle because of the established uniformity in this field under the *lex loci delicti* rule. The "center of gravity" theory is rather a deviation from uniformity and an effort to arrive at results which are theoretically sustainable and "policy orientated." It advocates a setting aside of the application of mechanical formulae[10] of the *lex loci delicti* rule, seeks to inquire into the prominent efforts of the litigation on each involved state, and then awards control to that state most "significantly" effected or concerned.

From the above, the broad applicability and flexibility of the "center of gravity" theory can be seen along with its opposed effects in the contracts and torts choice of laws area.

In the remainder of this article, a parellelism will be attempted between the adoption of the "center of gravity" theory in contracts and torts. The parallelism will be carried out by discussing New York decisions and the American Law Institute's promulgations in this area. Also discussed, will be the Wisconsin Supreme Court's present philosophy in the area.

Both New York and the American Law Institute have previously adopted this theory in the choice of law area governing contracts. Authorities seem to agree that this area is the most perplexing and disconcerting of all choice of law areas.[11]

In the case of *Auten v. Auten,* the New York court rejected all the traditional rules governing contract choice of law questions and adopted the "center of gravity" theory.[12] The *Auten* case involved a separation agreement entered into between an English husband and wife, executed in New York and performable in New York and England. On appeal, the New York court applied the law of England because of that jurisdiction's "paramount interest" in the controversy. The court through Mr. Justice Fuld said:

> Under this [center of gravity] theory, the courts, instead of regarding as conclusive the parties intention, or the place of making or performance, lay emphasis rather upon *the law of the place which has the most significant contacts* with the matter in dispute.[13] (Emphasis added.)

Thus the New York court and the American Law Institute have both given recognition and stature to this theory which is a step towards uniformity in the contracts choice of law area, and in effect does not

[10] Vanston Committee v. Green, 329 U.S. 156, 162 (1946); Morris, *The Proper Law of the Tort,* 64 HARV. L. REV. 881, 883 (1951); Currie, *Survival of Actions: Adjudication Versus Automation in the Conflict of Laws,* 10 STAN. L. REV. 205, 209-10 (1958).

[11] Leflar, *supra* note 9, at 123.

[12] Auten v. Auten, *supra* note 7.

[13] *Ibid.*

abandon, but rather co-ordinates prior rules in determining a more reasoned and practical result.

In the area of torts, *Babcock v. Jackson,* the case under consideration, was a reflection of a growing realization in the choice of law area that to utilize "skeleton" formulas to answer every controversy was often producing a result without any "flesh" or equitable rationale. The *Auten* case and the American Law Institute gave the "center of gravity" theory a new prominence; and now the *Babcock* case has lifted this rationale from the anonymity of the theorists and has given it a new being in the tort area. The application of the "center of gravity" theory in torts was not totally unexpected or revolutionary. In the last few years, there has been a fomenting of dissension towards the traditional *lex loci delicti* rule.[14]

The traditional rule is still upheld in the majority of jurisdictions because of the certainty, ease of applicability, and predictability which it supplies. The traditional rule is sometimes paraphrased: "In the absence of some overriding domestic policy translated into law, the law of the place where the tort occurred governs the right to recover."[15] The "center of gravity" theory will have a tendency to loosen this rigid uniformity in the torts area unlike its co-ordinating effect in the contracts area.

The American Law Institute has also adopted the "center of gravity" theory for torts, again complementing the New York courts and strengthening the position of the minority.

The New York law enunciated in the *Babcock* decision follows essentially the same pattern as the *Restatement.* Under section 379 of the new *Restatement*: ". . . the local law of that state which has the most significant relationship with the occurrence and with the parties determines their rights and liabilities in torts."[16] Section 379, also lists the important contacts which the forum should consider in resolving the question as to which state has the most significant contacts or relationships with the parties:

> (a) The place where the injury occurred; (b) the place where the conduct occurred; (c) the domicile, nationality, place of incorporation, and (d) the place where the relationship, if any, between the parties is centered.[17]

In order to determine the relative importance of the contacts, the *Restatement* provides: ". . . that, the forum will consider the is-

[14] DICEY, CONFLICT OF LAWS 937 (7th ed. 1958); Ehrenzweig, *Guest Statutes in the Conflict of Laws,* 69 YALE L. J. 595 (1958-59); Leflar, *supra* note 9, at 217. See also, Richards v. United States, 369 U.S. 1, 12-13 (1962); Schmidt v. Driscoll Hotel, 249 Minn. 376, 82 N.W. 2d 365, 368-69 (1959).

[15] Grant v. McAuliffe, 41 Cal. App. 2d 859, 264 P. 2d 944, 946 (1953). See also, Babcock v. Jackson, *supra* note 8, at 477, 240 N.Y.S. 2d at 746, 191 N.E. 2d at 281; Leflar, *supra* note 9, at 207.

[16] U.S.L. WEEK, *supra* note 6.

[17] *Ibid.*

sues, the character of the tort, and the relevant purposes of the tort rule involved."[18] These criterion seem to have the flavor of a policy orientated rule which will be able to achieve theoretically sustainable results. By giving stress to the issues, character of the tort, and the purpose of the particular tort rule involved, the court can more easily obviate patently awkward results which they could not avoid in following the *lex loci delicti* rule.

The reasoning of the *Babcock* decision exemplifies the policy orientated philosophy of the courts:

> . . . it is clear that the concern of New York is unquestionably the greater and more direct and the interest of Ontario is at best minimal. . . . Ontario has no conceivable interest in denying a remedy to a New York guest against his New York host for injuries suffered in Ontario by reason of conduct which was tortious under Ontario law . . . whether New York defendants' are imposed upon or their insurers' defrauded by a New York plaintiff is scarcely a valid legal concern of Ontario simply because the accident occurred there.[19]

In the *Babcock* case, Ontario's relation with the parties was totally fortuitous. The question was not Ontario's interest in maintaining safe highways by enacting laws governing negligent drivers, but rather Ontario's interest in not allowing suits by guest-passengers against host-drivers. Ontario's interest was insignificant, and it has been pointed out that its law prohibiting suit may have been enacted primarily to discourage fraudulent claims by guest-passengers acting in collusion with the host-drivers.[20] The court of New York examined the issues, the character of the tort, and the relevant purposes of the tort rule involved as the *Restatement* would have done, and concluded that the *lex loci delicti* rule would result in an awkward result, with little logical basis, and so applied New York law grounded on the "center of gravity" theory. Thus New York reached a theoretically sustainable result by the application of a policy orientated choice of law rule, and thus obviated the anomalous position of granting governing effect to that state which is the least rationally interested in the particular legal controversy.

Some jurisdictions have refused to apply the traditional *lex loci delicti* rule without expressly adopting the "center of gravity" theory.

In the case of *Kilberg v. Northeast Airlines*,[21] the New York court refused to apply the law of the place of the tort to determine the maxi-

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[18] *Ibid.*

[19] Babcock v. Jackson, *supra* note 8, at 481, 240 N.Y.S. 2d at 750, 191 N.E. 2d at 284.

[20] Robinette, *Survey of Canadian Legislation*, 1 U. TORONTO L. J. 358, 366 (1935-36).

[21] Kilberg v. Northeast Airlines, 9 N.Y. 2d 34, 211 N.Y.S. 2d 133, 172 N.E. 2d 526 (1961).

mum amount of recovery in a wrongful death action arising out of an airplane crash. The decedent had been a New York resident and had purchased his plane ticket in New York, from where the plane departed, eventually crashing in Massachusetts. Under Massachusetts law, a $15,000 limitation was placed on the amount recoverable in a wrongful death action.[22] New York did not have such a limitation because it wished to avoid what it termed an arbitrary limit. The New York court rejected the argument that the cause of action could not be divided and proceeded to accept the Massachusetts rule for imposing liability but refused to apply that state's limitation requirement. The New York court decided the case on the basis of two rationales, the first one being the strong public policy of the state against placing a limitation on the amount of damages recoverable in a wrongful death action.[23] It cited the constitution of 1894 and various legislative histories in upholding the validity of this strong public policy.[24] However, the New York court in *Kilberg* also evidenced that it was seeking a policy orientated choice of law rule. Commenting on this particular point of the *Kilberg* rationale, Mr. Justice Fuld in his decision in the *Babcock* case stated:

> . . . the merely fortuitous circumstance that the wrong and injury occurred in Massachusetts did not give to that State a controlling concern or interest in the amount of damages recoverable, *as against the competing interest and concern of New York in providing its residents and users of the transportation facilities originating there with full compensation for wrongful death.*[25] (Emphasis added.)

The second rationale in the *Kilberg* case was grounded on the substantive-procedural dichotomy, a "thorny" issue in the conflicts area.[26]

In a companion case arising out of the same fact situation, *Pearson v. Northeast Airlines,*[27] the circuit court affirmed in principle the *Kilberg* rationale. Mr. Justice Kaufmann writing for the majority remarked:

> We hold that the ruling of the New York Court of Appeals in the *Kilberg* case was a proper exercise of the state's power to

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[22] GEN. STATS. MASS., ch. 229, §2. This statute has since been amended to raise the upper limit of recovery to $20,000. MASS. GEN. LAWS ANN., ch. 229, §2 (Supp. 1961).

[23] Kilberg v. Northeast Airlines, *supra* note 21.

[24] For a discussion and history of New York's public policy against a limitation on recovery in wrongful death, see: N.Y. CONST. art. I, §16 (1894); 3 LINCOLN, CONSTITUTIONAL HISTORY OF NEW YORK 57-65 (1947); Medinger v. Brooklyn Heights R. Co., 6 App. Div. 42, 39 N.Y. Supp. 613 (1896).

[25] Babcock v. Jackson, *supra* note 8, at 480, 240 N.Y.S. 2d at 748, 191 N.E. 2d at 282.

[26] The first step in determining which law to apply is to break the issues down into those which are procedural and those which are substantive. It is a generally held principle that the law of the forum will apply its own procedural law and will be the determinator of the distinction between substance and procedure. See, Kilberg v. Northeast Airlines, *supra* note 21, 211 N.Y.S. 2d at 137, 172 N.E. 2d at 529; RESTATEMENT, CONFLICT OF LAWS §584 (1934); Leflar, *supra* note 9, at 109.

[27] Pearson v. Northeast Airlines, 309 F. 2d 553 (2d Cir. 1962).

> develop conflict of laws doctrine; and the court's refusal to apply in the Massachusetts statute a constitutional exercise of such power.[28]

The court also urged that the traditional rule, being derived from the "Ice Age of conflict of laws jurisprudence" should not be "frozen" into a constitutional mandate at a time when that jurisprudence is in an "advanced stage of thaw."

Dictum in the *Pearson* case tends to show the court's acclination to the "center of gravity" rationale:

> We hold, however, that a state with substantial ties to a transaction in dispute has a legitimate constitutional interest in the application of its own rules of law. . . . We are convinced that New York may examine each issue in the litigation . . . and by weighing the contacts of the various states with the transactions, New York may . . . shape its rules controlling the litigation.[29]

Significant, also, are the areas of workmen's compensation,[30] intrafamilial immunity from tort,[31] and issues affecting the survival of a tort right of action[32] in which the courts have deemed it best to abandon the *lex loci delicti* rule and apply a more flexible principle to the particular litigation.

The Wisconsin Supreme Court is well aware of the growing recognition of the "center of gravity" theory, although they have not yet adopted it in Wisconsin in lieu of the traditional rules. In the court's decisions in *In re Estate of Knippel*[33] and *Haumschild v. Continental Casualty Co.*,[34] there is evidenced a reasoning similar to that of the New York courts and the American Law Institute in the choice of law area concerning contracts and torts respectively.

In the case of *In re Estate of Knippel,* the court was asked to de-

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[28] *Id.* at 556. The constitutional questions raised in this area center around the *Full Faith and Credit Clause* of the United States Constitution, art. IV, §1 and the "vested rights" theory of conflict of laws. The "vested rights" theory holds that a right to recover for a foreign tort owes its creation to the law of the place where the tort occurred and depends for its existence and extent solely on such law. To deprive a person of this vested property right, the theorists claim, is a denial of due process by the deprivation of property. See, Cavers, *A Critique of the Choice of Law Problem,* 47 HARV. L. REV. 173, 178 (1933-34); Cheatham, *American Theories of Conflict of Laws: Their Role and Utility,* 58 HARV. L. REV. 361, 379-85 (1944-45); Cavers, *The Two Local Law Theories,* 63 HARV. L. REV. 822, 823 (1949-50).

[29] Pearson v. Northeast Airlines, *supra* note 27, at 560-61.

[30] Alaska Packers Ass'n. v. Industrial Acc. Comm. of California, 294 U.S. 532, 542 (1935); Matter of Nashko v. Standard Water Proofing Co., 4 N.Y. 2d 199, 173 N.Y.S. 2d 565, 149 N.E. 2d 859 (1958); Aleckson v. Kennedy Motor Sales Co., 238 Minn. 110, 55 N.W. 2d 696 (1952).

[31] Emery v. Emery, 45 Cal. 2d 421, 289 P. 2d 218, 222 (1955); Haumschild v. Continental Casualty Co., 7 Wis. 2d 130, 138, 95 N.W. 2d 814, 818 (1959).

[32] Grant v. McAuliffe, *supra* note 15; Herzog v. Stern, 264 N.Y. 379, 191 N.E. 23 (1934); Currie, *Survival of Actions: Adjudication Versus Automation in the Conflict of Laws,* 10 STAN. L. REV. 205 (1957-58).

[33] *In re* Estate of Knippel, 7 Wis. 2d 335, 96 N.W. 2d 514 (1959).

[34] Haumschild v. Continental Casualty Co., *supra* note 31.

termine the validity of an antenuptial agreement which had been executed in Arizona. Appellant contended that the agreement was void under Arizona law, the place of execution, marriage, and her domicile prior to marriage. The supreme court affirmed the decision of the lower court which applied Wisconsin law and upheld the validity of the agreement. After examining the traditional principles governing the contracts choice of law area, the court found them inadequate to resolve the particular problem posed in the case and went on to apply Wisconsin law on the basis of another rationale. Mr. Justice Fairchild, speaking for the court, remarked:

> We do not hesitate to declare that in this case before us, Wisconsin is the state having the most significant contacts with the matter in dispute. . . . We are satisfied *that no rule compels us to apply Arizona law* in determining the validity of the *Knippel* agreement; and that either the rule based on determining the intention of the parties *or the "grouping of contacts" theory would require the application of Wisconsin law.*[35] (Emphasis added.)

This language is indicative of a cautious philosophy, yet a philosophy analogous to that of the New York courts antedating *Auten* which is of evidential significance in stating that the Wisconsin Supreme Court will not be hedged in by the aura of prestige surrounding traditional principles in contract choice of law problems but will rather inquire perspectively into the demands of the age and apply modern rules if they are demanded.

A further indication of the Wisconsin Supreme Court's modern attitude is reflected in the decision of *Haumschild v. Continental Casualty Co.,* in which the court deviated from the traditional choice of law rule governing torts, the *lex loci delicti* rule, and applied the law of the domicile to govern the question of interspousal immunity from tort claims.

The *Haumschild* case involved a plaintiff and defendant who were married in and domiciliaries of Wisconsin. The plaintiff sued her husband to recover for injuries she received in a California accident which she claimed was caused by the negligent operation of their automobile by her husband. Under Wisconsin law, a wife may sue her husband,[36] but under California law she may not.[37] The court applied Wisconsin law and Mr. Justice Currie gave the reason for this action:

> Whenever the courts of this state are confronted with a conflict of laws problem as to which law governs the capacity of one

[35] *In re* Estate of Knippel, *supra* note 33, at 344-345, 96 N.W. 2d at 519.

[36] Haumschild v. Continental Casualty Co., *supra* note 31, at 131, 95 N.W. 2d at 815; Wait v. Pierce, 191 Wis. 202, 209 N.W. 475, 210 N.W. 822 (1926); Fontaine v. Fontaine, 205 Wis. 570, 577, 238 N.W. 410, 412 (1931); WIS. STAT. §6.015 (1961).

[37] Peters v. Peters, 156 Cal. 32, 103 Pac. 219, 220 (1909); Cubbison v. Cubbison, 73 Cal. App. 2d 437, 166 P. 2d 387 (1946).

spouse to sue the other in tort; the law to be applied is that of the state of the domicile.[38]

The court overruled six previous decisions dealing with the same problem,[39] all of which held fast to the application of the *lex loci delicti* rule.

The rationale of the *Haumschild* decision is akin to that in the *Babcock* case and the American Law Institute in that all three adhered to the principle that there is nothing unjust or abhorrent in dealing with a cause of action as a series of distinct parts and applying different choice of law rules to each distinct part. Thus the Wisconsin court could apply the *lex loci delicti* rule so as to determine liability, but could reject that rule and apply the law of the domicile in determining the capacity of one spouse to sue the other in tort. In the *Babcock* case the court pointed out that if the question were one of determining negligence or non-negligence, then it would apply the law of the place where the tort occurred as determinative, but it saw nothing contradictory about investigating individual issues of the composite controversy, and applying the law of the place of injury to one, and the law of the place which has the most significant contacts to the other.[40] The American Law Institute also pointed out that 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 particular tort rules involved.[41]

The Wisconsin court also manifested in the *Haumschild* case its concern for the interests of its citizens and displayed its willingness to adopt rules of law for their benefit: "Strong reasons of public policy exist for supplanting such a rule [*lex loci delicti*] by a better one which does not unnecessarily discriminate against the citizens of our own state."[42] This language seems to represent an attitude resembling that expressed in the *Babcock* case and the American Law Institute's new section 379.[43] It simulates a search for a policy orientated choice of law rule which will take into account the prominent interest of the citizens of each state, and the state itself, and then determine the applicable law.

In *Haumschild,* the court decided that from the standpoint of "public policy and logic" the law of the domicile should apply but sounded a note of caution to the effect that the *lex loci delicti* rule was not abandoned except in the area of determining capacity to sue because of marital status.[44]

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[38] Haumschild v. Continental Casualty Co., *supra* note 31, at 138, 95 N.W. 2d at 818.
[39] *Id.* at 138-39, 95 N.W. 2d at 818.
[40] Babcock v. Jackson, *supra* note 8.
[41] RESTATEMENT (SECOND), CONFLICT OF LAWS §379 (Tent. Draft No. 8, 1963).
[42] Note 38 *supra.*
[43] Note 41 *supra.*
[44] Note 38 *supra,* The *Haumschild* rule merely dealt with the incapacity to sue because of marital status, and decided that this question is more properly one

In the *Babcock* case and through the American Law Institute's new section 379, the place of the wrong as the controlling state in tort choice of law questions has been abandoned, and the "center of gravity" theory or the law of the place having the most significant contacts or relationships with the particular legal controversy has been adopted. Following necessarily in the wake of this change is an increased emphasis on determining choice of law rules for the distinct issues in one cause of action, and a greater concern for the valid interests of the citizens and the states involved in the controversy.

Although Wisconsin has not adopted the "center of gravity" theory, its analogous reasoning can be noticed by the decisions in the choice of law area which display a growing tendency to examine more closely the interests of the parties, the citizens, and each individual state's concern with the controversy.

The *lex loci delicti* has served the courts well by providing certainty, ease of applicability, and predictability. It is not expected that the "center of gravity" theory will dispel the complexity surrounding the choice of law area and issue in a new era of reasoned and lucid justice. The "center of gravity" theory is of rather recent origin and is still developing; its scope and radius of impact, as yet, cannot be fully perceived. As long as the courts are working with human means and agencies, they will not achieve "simplicity" or complete uniformity, but the "center of gravity" theory is a further step in adapting the rules of justice to the modern age.

Although the theory will detract from the past uniformity in the torts area, and from the predictability of result in both torts and contracts, it is a desirable doctrine because:

> . . . it gives to the place having the most interest in the problem, paramount control over the legal issues arising out of a particular factual context, thus allowing the forum to apply the policy of the jurisdiction most intimately concerned with the result of the particular litigation. . . . It also enables the court to reflect the relevant interests of the several jurisdictions involved . . . and also to give effect to the probable intention of the parties and consideration to whether one rule or the other produces the best practical result.[45]

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of family law governable by the law of the domicile and not of tort law governable by the law of the place of injury.

[45] Auten v. Auten, *supra* note 7, 124 N.E. 2d at 102; See also, Note, *supra* note 5, at 490, 498.