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Conflict of Laws

by *John A. Gorfinkel**

The Choice of Law Process—Injuries to Person or Property

This is the year of *Reich v. Purcell*,¹ a case that is simple on its facts but far reaching in its effects on the development of the choice of law process in California. Mrs. Reich, the wife of Lee Reich, and their two children were driving from Ohio to California, where they contemplated settling. In Missouri their car collided with a motor vehicle owned and operated by the defendant, a California resident. The wife and one child were killed. Plaintiffs were the surviving husband and child who, prior to the commencement of the action, became domiciled in California. Missouri has a statutory limitation of \$25,000 on recovery in wrongful death actions; California

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Gate College, School of Law, for assistance in preparation of this article.

1. 67 Cal. 2d 551, 63 Cal. Rptr. 31, 432 P.2d 727 (1967). See Comments on *Reich v. Purcell*, 15 UCLA Law Rev. 551-654 (1968).

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and Ohio have no such limitation. On appeal, liability and damages were stipulated and the only issue was whether the judgment in the action for the wife's death should be \$55,000 actual loss, or \$25,000, under the Missouri limitation.

Four courses of action were open to the court:

(1) It could apply the Missouri limitation, following traditional theory² that the law of the place of the tort, i.e., the place of impact, controlled;

(2) It could apply Ohio substantive law on the theory that Ohio was the interested state, since plaintiffs were still domiciled there at the time of the injury;³

(3) It could apply the law that Ohio would apply, including its choice of law rule, modifying the second suggested course of action by the invocation of the *renvoi* doctrine;⁴

(4) It could apply the substantive law of California on the dual grounds that California was the forum and the interested state by virtue of plaintiffs' contemplated domicile at the time of injury and actual domicile at the time suit was commenced.

The supreme court, in a unanimous opinion, rejected the mechanical test of the *lex loci delicti* in favor of an approach which would consider the interests of the three states involved, concluded that the interest of Ohio should control, and applied the substantive law of Ohio.

What does this mean, as a guide to the development of choice of law "rules" in tort cases?

First, and most clearly and emphatically, the vested-rights approach is now expressly repudiated. What was formerly disguised in *Grant v. McAuliffe*,⁵ is now openly avowed.

2. 67 Cal.2d at 553, 63 Cal. Rptr. at 33, 432 P.2d at 729. See Slater v. Mexican National Ry. Co., 194 U.S. 120, 48 L.Ed. 900, 24 S.Ct. 581 (1904); Loranger v. Nadeau, 215 Cal. 362, 10 P.2d 63, 84 A.L.R. 1264 (1932). Restatement of Conflict of Laws § 378 et seq.

3. 67 Cal.2d at 555, 63 Cal. Rptr. at 34, 432 P.2d at 730.

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4. This possibility is not suggested in the opinion and would clearly be contrary to the great weight of authority in the United States which rejects *renvoi*. Cf. the concurring opinion in Haumschild v. Continental Casualty, 7 Wis.2d 130, 95 N.W.2d 814 (1959).

5. 41 Cal.2d 859, 264 P.2d 944, 42 A.L.R.2d 1162 (1953).

Loranger v. Nadeau,⁶ *Ryan v. North Alaska Salmon Co.*,⁷ “and other cases to the contrary [e.g. *Victor v. Sperry*]⁸ are overruled.”⁹ California thus joins with New York,¹⁰ Pennsylvania,¹¹ Wisconsin,¹² and others¹³ in rejecting the view that the law of the impact state creates the cause of action and determines the existence and extent of the rights and obligations of the parties.

Second, and equally clearly and emphatically, the rejection of the law of the place of the tort does not, either directly or indirectly, produce any new law-finding or jurisdiction-finding device. A new technique must be employed in the choice of law process.

Third, and most significant, is the articulation and development of this technique, and it is here that the decision in *Reich v. Purcell* will have its greatest impact. The opinion proceeds essentially along the path suggested in the writings of Brainerd Currie.¹⁴ The governing principle is: “The forum must search to find the proper law to apply based upon the interests of the litigants and the involved states.”¹⁵ This principle is simple to state; the problems arise in its application.

The notable contribution of the opinion is its analysis of the forces that bear upon the question of determining the interests that are to be served. The interest of Missouri in the precise question at issue in *Reich* was quickly disposed of.

6. 215 Cal. 362, 10 P.2d 63, 84 A.L.R. 1264 (1932).

7. 153 Cal. 438, 95 P. 862 (1908).

8. 163 Cal. App.2d 518, 329 P.2d 728 (1958).

9. 67 Cal.2d at 555, 63 Cal. Rptr. at 34, 432 P.2d at 730.

10. *Babcock v. Jackson*, 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743, 95 A.L.R.2d 1 (1963).

11. *Griffith v. United Air Lines, Inc.*, 416 Pa. 1, 203 A.2d 796 (1964).

12. *Haumschild v. Continental Casualty*, 7 Wis.2d 130, 95 N.W.2d 814 (1959).

13. See generally R. Leflar, *American*

Conflicts Law, Ch. 14 at p. 325 et seq. (1968).

14. See B. Currie, *Selected Essays on the Conflict of Laws* (1963), and particularly Notes on Methods and Objectives in the Conflict of Laws, Duke L.J. 171, (1959), reprinted in *Selected Essays*, 177 et seq. For analysis of the opinion in the light of the Currie approach, see Comments on *Reich v. Purcell* by Herma Hill Kay, 15 UCLA Law Rev. 584 et seq., and David P. Currie, 15 UCLA Law Rev. 595 et seq.

15. 67 Cal.2d at 553, 63 Cal. Rptr. at 33, 432 P.2d at 729.

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The measure of damages may be looked at from plaintiffs' viewpoint as compensation to the survivors or from defendant's viewpoint as avoiding an excessive financial burden. However, since no party was a Missouri resident or a resident of a state with a similar limitation, no interest of any party or of any such state would be served by imposing the damage limitation.

The choice was narrowed to Ohio and California. Since their laws and policies were the same, there was no need to choose between them. However, the court did make the choice, presumably to avoid giving undue encouragement in the future to forum shoppers.¹⁶ The decision emphasized the concept of retention of the last domicile until a new domicile is actually created,¹⁷ found that plaintiffs' plans to change their domicile from Ohio to California "were not definite and fixed",¹⁸ and concluded that California was a disinterested forum, as of the date the cause of action arose, and therefore had no interest in applying its own law. To hold otherwise, the court feared, might encourage injured parties to engage in domicile shopping as a prelude to forum shopping. Ohio was left as the only interested state, *renvoi* was rejected, and Ohio's internal law was held to govern the issue of damages.

The decision clarifies what has heretofore been frequently suggested, but has been as yet unsettled in California choice of law cases. In *Alaska Packers v. Industrial Accident Commission*,¹⁹ California in 1934 rejected a mechanical reliance on the law of the place where the injured workman was regularly employed and injured, in favor of the law of California as the place where he had originally been employed and to which he had returned on termination of the employment.²⁰ California's interest, stemming from the fact that if the employee became a public charge the burden would be felt in California,

16. 67 Cal.2d at 555, 63 Cal. Rptr. at 34, 432 P.2d at 730.

17. But cf. *Matteucci v. Messersmith*, 385 F.2d 1023 (9th Cir. [1967]) and proposed text, Restatement of Conflict of Laws, 2d, § 16 Comment (d).

18. 67 Cal.2d at 555, 63 Cal. Rptr. at 34, 432 P.2d at 730.

19. 1 Cal.2d 250, 34 P.2d 716 (1934); affirmed, 294 U.S. 532, 79 L.Ed. 1044, 55 S.Ct. 518 (1935).

20. 1 Cal.2d at 261-262, 34 P.2d at 721-722.

was held sufficient to justify taking jurisdiction and making an award. The United States Supreme Court affirmed. A like approach was taken in 1939 in *Pacific Employers Insurance Co. v. Industrial Accident Commission*,¹ a situation the exact converse of the *Alaska Packers* case. The employee was a resident of Massachusetts and was injured while temporarily in California in the course of his employment. California took jurisdiction and applied its law, finding an interest in the need to protect those who had furnished medical and hospital care to the injured person. However, in tort cases, the California decisions had not followed a clear path.

In *Loranger v. Nadeau*,² the law of Arizona, the place of injury, was applied to determine the duty owed to the guest in a motor vehicle. In *Victor v. Sperry*,³ a case involving a collision in Mexico between two vehicles registered in California and with all parties California residents, the measure of damages was held to be controlled by Mexican law.

On the other hand, in *Hudson v. Von Hamm*⁴ and *Thome v. Macken*⁵ California courts invoked local public policy to close their doors to suits based on torts committed elsewhere. Departures from the rule of *lex loci delicti* occurred in *Grant v. McAuliffe*⁶ where the issue of survival was “characterized” as “procedural”, and governed by forum law, and in *Emery v. Emery*⁷ where the issue of intra-family immunity was held to be governed by domiciliary law.

1. 10 Cal.2d 567, 75 P.2d 1058 (1938); affirmed, 306 U.S. 493, 83 L. Ed. 940, 59 S.Ct. 629 (1939).

2. 215 Cal. 362, 10 P.2d 63, 84 A.L.R. 1264 (1932).

3. 163 Cal. App.2d 518, 329 P.2d 728 (1958). See the criticism of this decision in J. Schnake & J. Murad, Conflict of Laws—Torts—California, 16 Hastings L.J. 42 (1964).

4. 85 Cal. App. 323, 259 P. 374 (1927). This was a suit by injured party against the parents of a minor tortfeasor; the complaint alleged injury in

Hawaii and the imputed liability of the parents under Hawaiian law.

5. 58 Cal. App.2d 76, 136 P.2d 116 (1943). This was a suit for alienation of affections, in which plaintiffs were residents of Oregon and the activity of defendant took place in that state. Civil Code section 43.5 was held to bar relief. Cf. *Yunker v. Reseda Manor*, 255 Cal. App.2d 431, 63 Cal. Rptr. 197 (1967), discussed *infra*.

6. 41 Cal.2d 859, 264 P.2d 944, 42 A.L.R.2d 1162 (1953).

7. 45 Cal.2d 421, 289 P.2d 218 (1955).

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The court is now clearly committed. *Loranger* is expressly overruled; *Victor v. Sperry* may be regarded as overruled; the circumlocutions of *Grant* and *Emery* are now superfluties.

How sound is the result as a matter of interest analysis? There is no question that the rejection of Missouri law and its limitation on damages is proper, and there is also no question that the rejection of *renvoi* in the application of Ohio law is also proper. Therefore, viewed solely by its result, the decision is clearly correct. It is arguable, however, that the court may have too hastily disclaimed a California interest. Concededly, California *solely* as a forum had no interest, and if plaintiffs had never been domiciled in California, there was no reason to apply California law. Conceivably, California has a positive interest in not encouraging prospective plaintiffs to select a California domicile, *ex post facto*, to enhance their claims. But in this case, the plaintiffs were en route to California when the accident happened, and there was a present, good faith, although tentative, decision to remove to California. Under these circumstances, acceptance of a California interest would not open the door to forum shopping. Since the entire financial burden of the event fell upon persons who were California residents at the time of suit, the court might well have applied California law. This approach, while irrelevant to the ultimate result in *Reich*, may be vital in other cases where the facts are only slightly different.

And this leads to the next question, what does *Reich* portend for the future? It is clear that while the decision sets a general course, it does not purport to answer many of the particular questions that will arise in the future in analogous, but not identical situations. What, for example, would be the result, if the defendant were a resident of a state having a limitation on liability? Or, if the plaintiffs were residents of a state with a limitation on liability and the accident happened in a state without a limitation on liability? Would the result in either of these hypothetical cases be changed, if it were established that the plaintiffs' decision to remove to California had been definite and fixed, the former home disposed of, the furniture packed, and the new position accepted, but no new

domicile “established” in the traditional sense? This uncertainty exists; it is undesirable from the point of view of attorneys advising clients, but it could hardly be otherwise within the framework of the judicial process. The supreme court in *Reich* is functioning in the true common-law tradition,⁸ the same tradition manifested in its opinions in other recent choice of law cases;⁹ it is deciding the case before it. Eventually rules will emerge, but they will be the product of the decisional process in many cases and not the result of an abstract formulation in the course of a single opinion. For the present, counsel must rely on suggestions from commentators and interpretations from the courts in subsequent cases. There is a plethora of the former¹⁰ and, within the period of this volume, three of the latter. To these we now turn.

Schneider v. Schimmels,¹¹ so far as relevant to the present discussion, was an action for the husband’s loss of consortium arising out of defendant’s alleged wrong to the wife. All events occurred in Colorado and all parties were Colorado residents at the time of the injury. California was the forum only because it was the state to which defendant “happened to move”¹² after the event and a series of delays, coupled with inadequacies in Colorado’s jurisdictional statutes, had prevented the Colorado court acquiring *in personam* jurisdiction over the defendant.¹³ Colorado recognizes loss of consortium as an element of damages; California does not. The court of appeals, first district, applying the same approach as *Reich*, concluded that the issue involved was one of compensation for a wrong suffered, and that Colorado, as the state

8. See Radin, *The Trail of the Calf*, 32 Cornell L. Q. 137 (1946).

9. See, notably, *Bernkrant v. Fowler*, 55 Cal.2d 588, 12 Cal. Rptr. 266, 360 P.2d 906 (1961).

10. See, for example, Comments on *Reich v. Purcell*, 15 UCLA L. Rev. 551–654 (1968).

11. 256 Cal. App.2d 366, 64 Cal. Rptr. 273 (1967).

12. 256 Cal. App.2d at 373, 64 Cal. Rptr. at 277.

13. The tale of futile efforts in Colorado is narrated in 256 Cal. App.2d at 368–369, 64 Cal. Rptr. at 274–275; it covered a period of little less than two years and raised a serious question of the California statute of limitations and the saving provision of section 355 of the California Code of Civil Procedure. For another illustration of Colorado’s jurisdictional problems, see *Bay Aviation Services Co. v. District Court*, 149 Colo. 542, 370 P.2d 752 (1962).

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of both parties' domicile at the time of injury, had the greater interest. California's rule denying recovery for loss of consortium was said not to involve any matter of California interest or public policy but to exist merely "because the Legislature has not seen fit to provide for the allowance of such damages."¹⁴ The decision well illustrates how fine the line is in these cases, and how much depends upon the manner in which the interest involved is defined. If California's rule disallowing recovery for loss of consortium were said to be based on a policy consideration that such loss could not or should not be measured in monetary terms and therefore was not compensable, or that as a matter of California "policy" no action could be maintained for such an injury, the opposite result would seem to be required.¹⁵

Travelers Insurance Co. v. Workmen's Compensation Appeals Board,¹⁶ the second of the cases, involved the applicability of the California workmen's compensation statute to an extremely complex, four-state factual situation. The employee, a California resident, had registered for employment with a Colorado agency. His employment was initiated by a telephone conversation with the agency while the employee was still in California. Pursuant to the conversation he went to Wyoming at his own expense and there entered into a written contract of employment. He was injured while on assignment in Utah and under a Utah statute received benefits that he later sought to augment by application for compensation in California. Resolution of the problem was treated as essentially a matter of statutory construction, namely whether the employee was working pursuant to a labor contract made in California, since if he was, under sections 5305 and 3600.5 of the California Labor Code, the California compensation act was applicable.¹⁷

14. 256 Cal. App.2d at 373, 64 Cal. Rptr. at 277.

15. Cf. *Thome v. Macken*, 58 Cal. App.2d 76, 136 P.2d 116 (1943); see footnote 5 *supra*, for the facts and holding.

16. 68 Cal.2d 7, 64 Cal. Rptr. 440, 434 P.2d 992 (1967).

17. "Section 5305 of the Labor Code provides that the appeals board exercise jurisdiction over all controversies arising out of injuries suffered outside the

Thus, this case differs substantially in posture from *Reich* and *Schneider*. The court did not have to determine the principal choice of law rule or the interest of California. The legislature had already performed those functions by determining that California's interest extended to labor contracts made in California and that California law was to be applied to them. However, the court did have to determine the "incidental" or "preliminary" question of where the labor contract was made. In resolving this matter, choice of law problems and policy considerations did arise in connection with three separate issues: (i) was the employment agency an agent of the employer, the employee, or neither; (ii) was the telephone conversation an oral contract of employment made in California; (iii) if an oral contract was made in California, was the written agreement in Wyoming a rescission of or only an implementation of the prior oral contract?

The California interest was said to be sufficiently strong and pervasive to justify the court applying California law to the determination of the three sub-issues involved in the preliminary question.¹⁸ The results were that the employment agency was found to be the agent of the employer, an oral contract was held to have been made in California, and the written agreement was regarded as merely amplifying and memorializing the oral contract.

There is one curious aspect in this case. The primary concern is to determine when a labor contract may be regarded as having been made in California. The court did not address itself to the policy considerations involved in applying California law to determine where the contract is made, or to California's interest in holding that labor contracts involving

state if the injured employee is a California resident at the time of the injury and the contract of employment is entered into in California. Section 3600.5 provides that if an employee is hired in California but injured outside California he shall receive compensation according to the laws of California. The only issue here turns on whether,

within the meaning of sections 5305 and 3600.5 of the Labor Code, applicant, at the time of his injuries in Utah, was working pursuant to an employment contract made in California." 68 Cal. 2d at 11, 64 Cal. Rptr. at 442, 434 P.2d at 994.

18. 68 Cal.2d at 13-14, 64 Cal. Rptr. at 444, 434 P.2d at 996.

California residents are made in California, but rather to the policy considerations of applying California law to determine the legal consequences of separate incidents in the process of making a contract. If, under California law, the writing were regarded as a supercession of the prior oral agreement, while under Wyoming law it was merely a formalizing of that agreement, would California, in view of its interest in the application of its own workmen's compensation law, have concluded that, as a matter of California policy, the contract was made in California if any substantial event in the negotiations between the parties occurred in California or while the California resident-employee was still in California? Again we have an illustration of how much may depend upon the manner in which the question is put. Do we ask what is California's interest in having this agreement a California contract? Or do we ask what is California's interest in applying its law to determine the agency status of an employment agency?

The third case, *Howe v. Diversified Builders, Inc.*,¹⁹ also involved an industrial accident. In this case, the injured party was a Nevada resident, working on a Nevada project, under a contract made in Nevada—every contact was in Nevada except that the general contractor was a California corporation. Under Nevada law, the plaintiff, although an independent contractor, was subject to the Nevada Industrial Insurance Act as the exclusive remedy for his injuries. Under California law, if applicable, he could maintain a common-law tort action against the defendant. California quite properly held that it had no interest in the matter and refused relief.

Some recapitulation and synthesis are appropriate, but before attempting it, two other decisions need to be considered.

The Choice of Law Process—Contract Rights and Remedies

*Yunker v. Reseda Manor*²⁰ involved the applicability, in a suit in California, of section 580b of the Code of Civil Pro-

¹⁹. 262 Cal. App.2d 741, 69 Cal. Rptr. 56 (1968).

²⁰. 255 Cal. App.2d 431, 63 Cal. Rptr. 197 (1967).

cedure to a Nevada land transaction. This section reads: “No deficiency judgment shall lie in any event after any sale of real property for failure of the purchaser to complete his contract of sale, or under a deed of trust, or mortgage, given to the vendor to secure payment of the balance of the purchase price of real property.” The plaintiffs were Nevada residents; the defendants were purchasers of Nevada land who had given a promissory note, secured by deed of trust on the land, for part of the purchase price. The transaction was consummated in Nevada and the note was executed and payable there. The trial court granted plaintiffs’ motion for a summary judgment; the court of appeals reversed. That court concluded that section 580b *could* be applied to the transaction, since it purported to relate to actions after default and was not limited to the proceedings of foreclosure or judicial or private sale of the land. The court also concluded that section 580b *should* apply, for two reasons. The first reason was that defendants were California residents, and in “land sales, where the land is given as security for the debt to the vendor, this state has an interest in protecting purchasers from judgments for deficiency.”¹ In other words, California’s concern about the solvency of its residents may justify protecting them against suit in California courts on obligations incurred outside California in transactions where California does not believe such an obligation should arise. This is, it is suggested, a rather provincial and unduly narrow view of California’s interest.

The second reason is even harder to justify. The affidavit in opposition to the motion for summary judgment averred that the parties were concerned about the possibility of a deficiency judgment and that the sellers had represented that the law of Nevada was the same as that of California in respect to deficiency judgments. This would seem, on its face, to indicate that the parties contracted with clear recognition that the law of Nevada would govern, but with some doubt as to what that law was. If anything, under principles of party

1. 255 Cal. App.2d at 437, 63 Cal. Rptr. at 202.

autonomy or the reasonable expectation of the parties, the application of Nevada law would seem to be in order.² The court's treatment of seller's representation is curious. The opinion states:

We do not regard the admissibility of this oral statement as related to estoppel in general (which was not pleaded) or to fraud, or to attempts to vary the terms of a written instrument. On the subject of choice of laws, however, where respondents contend that the law of the state where they seek to recover should not apply because superior contacts of the state of situs exist, we deem it relevant to consider the statement alleged (and accepted by us, at this stage) to have been made by the prospective creditor.³

Why this is, or should be, relevant, was not discussed.

A similar problem had been presented in an earlier decision, *Kish v. Bay Counties Guaranty Co.*⁴ *Kish* also involved, in part, a Nevada land transaction. The facts are complex and a recitation thereof is unnecessary to the matter under discussion. Suffice to say that, in considering the availability of section 580b as a defense, the court there stated:

Section 580b, on the other hand, destroys rights that would otherwise exist, by directing that any satisfaction of the debt must come from the land. *The protection the statute provides is a part of the contract between borrower and secured lender.* (Emphasis added.) The fact that the land lies in another state makes no difference, when the contract was made in California and was to be performed here.⁵

These decisions have created an unfortunate confusion. Under *Younkers*, section 580b applies to actions in California courts against California residents, regardless of where the

2. Cf. *Bernkrant v. Fowler*, 55 Cal.2d 588, 12 Cal. Rptr. 266, 360 P.2d 906 (1961).

3. 255 Cal. App.2d at 437, 63 Cal. Rptr. at 202.

4. 254 Cal. App.2d 725, 62 Cal. Rptr. 494 (1967).

5. 254 Cal. App.2d at 733, 62 Cal. Rptr. at 500.

contract is made; it is not clear whether that court would apply it to actions in California courts against nonresidents. Under *Kish*, section 580b applies to contracts “made in California and . . . to be performed here”; it is not clear whether that court would apply it to contracts made in California and to be performed elsewhere.

The decisions are hopelessly inconsistent in theory and approach, and each leaves much unsettled. It is regrettable that the supreme court has not clarified this matter; it is to be hoped that it will do so at the next opportunity.

Recapitulation of the Choice of Law Process

California is now clearly committed to the interest analysis approach. This means that the advocate may no longer merely direct the court’s attention to the geographical locale of the event and thereby solve his choice of law problems. Rather, the advocate now must first focus attention on the precise issue in controversy, then develop the interests of the states affected or served by the rule invoked, and finally convince the court that the interest which benefits his client should prevail. If the legislature has determined the California policy and asserted the local interest in its application (as in the *Travelers Insurance* case) part of the advocate’s work is done. But his ingenuity in putting forth the precise issue in its most favorable light (as witness again the *Travelers* case) may well be determinative.

In taking an over-view of the cases, slight indications of a pattern emerge. There was a notable tendency to apply California policy to favor or protect the interest of a party who was a California resident at *all* relevant times. Thus in *Travelers*, the California Workmen’s Compensation Act was applied to compensate for an industrial accident in Utah; in *Younker*, California policy was invoked to protect a California resident against a deficiency judgment on a purchase money mortgage on out-of-state land. *Reich’s* California domicile at the time of suit may have been irrelevant in view of the congruence between Ohio and California law, but it seems clear from the opinion that if plaintiff had been a California

resident at the time of the event, California policy would have prevailed. Only in *Schneider* was California policy not invoked to aid a California resident; but here California policy was neither clear nor significant, and defendant's California residence did not exist at the time of the event.

But the fundamental issue is still one of determining the state's interest or policy and this is best illustrated by the *Younker* and *Kish* decisions. Without critical analysis, *Younker* may seem to be returning to the view that the remedy is a matter of procedure and procedure is a matter for the forum. In one sense this is true; namely that if the forum state does not provide a court, or a remedy, no action is maintainable. And we will continue to have instances where California, by closing its doors to certain types of cases, will prevent recovery. But the real problem in cases such as *Younker* and *Kish* is to determine the legislative intent, and hence California policy or interest. Did the legislature, by a statute such as section 580b, intend to bar such suits, or to regulate contracts made in California, or to regulate contracts involving California land, or all three or some combination thereof? That is the question that must be answered before California's interest can be determined and the choice of law made.

There is another aspect to cases such as *Younker* and *Schneider*. Nevada, with a proper jurisdictional statute, could have subjected the defendants in *Younker* to suit in its courts. Colorado clearly had the power, in *Schneider*, to subject the defendant to the jurisdiction of its courts in a suit for a tort committed in Colorado, particularly when the defendant was a Colorado domiciliary at the time of the tort.

In both cases a proper "long-arm statute" would have enabled plaintiff to obtain a judgment in the other state, sue in California on the judgment and thus avoid any clash with California law and policy. This is particularly important *in reverse*, since California's jurisdictional statutes, so far as individual defendants are concerned, are primitive and frequently force California plaintiffs to seek relief in another state on a California transaction, with the possible application of the

other state's policy to defeat the claim.⁶ As the interest analysis approach spreads to other jurisdictions, it becomes increasingly important that California courts possess the means to acquire jurisdiction over the necessary parties, so that this state's policy may be applied to California-based transactions.

Support Decrees

May a California court modify a lump-sum alimony and child-support agreement that has been completely incorporated into a Georgia divorce decree that is unalterable in Georgia, when the judgment debtor has become a California resident? In *Elkind v. Byck*,⁷ the California Supreme Court, relying on Georgia's adoption of the Uniform Reciprocal Enforcement of Support Act and California Civil Code section 139 answered this question in the affirmative.

The defendant-obligor contended that the California court was compelled to give full faith and credit to the Georgia decree on the authority of the United States Supreme Court decision in *Yarborough v. Yarborough*.⁸ That case dealt with South Carolina's power to modify an alimony and child-support agreement, that was not modifiable under Georgia law. The Supreme Court held that South Carolina had to give full faith and credit to the Georgia decree. In *Elkind*, the California court held that *Yarborough* was not controlling for two reasons. First, in *Yarborough* the defendant-obligor had maintained his domicile in Georgia, and had satisfied his duty under its law, while in *Elkind* the obligor had removed to California and was domiciled here. This, it was said, was sufficient to make California law applicable. Second, prior to the original decree in *Elkind*, the Georgia legislature had adopted a statute imposing a duty on the part of parents to support dependent children and providing that such duty

6. See for example, *Lilienthal v. Kaufman*, 239 Ore. 1, 395 P.2d 543 (1964) where California residents, forced to sue in Oregon on a California contract, were defeated by application of Oregon policies.

7. 68 Cal.2d 453, 67 Cal. Rptr. 404, 439 P.2d 316 (1968).

8. 290 U.S. 202, 78 L.Ed. 269, 54 S.Ct. 181, 90 A.L.R. 924 (1933).

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was to be determined by “the laws of the State where the obligor was present during the period for which the support is sought”.⁹ There was no similar legislation in effect at the time of the *Yarborough* decree.

This legislation, the court said, although continuing to make the decree nonmodifiable in Georgia, would allow another state in which the obligor then resided to determine whether it should modify the decree. “The decree therefore does not purport to govern defendant’s obligations when he does not reside in Georgia.”¹⁰ This analysis, in effect, enabled California to give full faith and credit to the Georgia decree, *as so limited and construed*, and still carry out the policy of Civil Code section 139, which provides that child support agreements are “separate and severable” from other provisions of a divorce decree. Thus the trial court had power to modify the decree on a proper showing of changed circumstances.

Dissatisfaction with the *Yarborough* decision has been frequently expressed by the courts and commentators. Obviously, the California Supreme Court is not in a position to overrule the United States Supreme Court. However, the California opinion, while purporting only to distinguish *Yarborough*, carries overtones of basically disagreeing with the majority decision and favoring the dissent by Mr. Justice Stone. Perhaps the California Supreme Court, by adding its great prestige, may help to bring about the realization of Professor Ehrenzweig’s cogent challenge:

Support claims of minors have usually been subjected to general rules of support recognition which have been developed by and for adversary proceedings between spouses. This is not always justified. The minor’s welfare is a matter of public concern, and neither the forum state nor the minor himself were usually represented in the proceedings underlying the decree which is sought to be enforced . . . Courts are becoming increasingly aware of their role as *parens patriae*. It may be hoped

9. Ga. Laws 1956, URESA § 6, see Ga. Code Ann. § 99-907(a), cited at 68 Cal.2d at 456, 67 Cal. Rptr. at 406.

10. 68 Cal.2d at 459, 67 Cal. Rptr. at 408.

that they will in such cases . . . gradually discard the formalism which continues to beset the conflicts law of domestic relations. And it may be hoped that the only decision of the Supreme Court in this field [*Yarborough*] will not stand in the way of such a development.¹¹

11. A. Ehrenzweig, *Conflicts of Law*
(1962) § 85 at 279.