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William B. Danforth

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DEVELOPMENTS IN THE MINNESOTA LAW OF CONFLICT OF LAWS

WILLIAM B. DANFORTH†

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I. THE PROBLEMS

A. Choice of Law

In *Milkovich v. Saari*† the Minnesota Supreme Court adopted the choice influencing considerations of Professor Leflar for solving interstate conflicts in tort law.‡ The results, reflected in the Minnesota cases decided since then,§ are: (1) that the law of the forum or "justice-administering state" has been selected as the "better rule of law"¶ in all cases but two,** and (2) that the plaintiff-favoring

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† Professor of Law, William Mitchell College of Law
1. 295 Minn. 155, 203 N.W.2d 408 (1973).
3. See infra notes 59-148 and accompanying text.
law has been chosen in all cases but one\textsuperscript{6} in accordance with the court's notions of fairly and justly distributing tort losses among the insurance premium-paying public.\textsuperscript{7} These results have been both commended\textsuperscript{8} and criticized.\textsuperscript{9}

The plaintiff-favoring policy represents the modern development in substantive tort law.\textsuperscript{10} The "better rule of law" test, if applied objectively to "true" conflicts, leads to a just result.\textsuperscript{11}

On the other hand, applying the "better rule of law" in accordance with a court's concepts of what is fair and just in establishing domestic substantive law leads to the choice of forum law in nearly all interstate conflicts cases; the necessity for any separate body of conflict of laws principles disappears and "conflicts justice" in connection with interstate transactions and events, involving multiple parties from different states with conflicting laws, does not necessarily flow from domestic justice.\textsuperscript{12} The controversy, therefore, is between a method and a principled resolution of interstate conflicts.\textsuperscript{13}

\begin{footnotes}
\item[6] See generally infra notes 59-148 and accompanying text. The one exception is Davis v. Furlong, 328 N.W.2d 150 (Minn. 1983). See infra notes 88-94 and accompanying text.
\item[10] "[L]oss-distribution through the tort-feasor's liability insurance represents the most pervasive aspect of tort development in this country over the past several decades." R. Weintraub, supra note 8, § 6.32. "[O]ne of the functions of conflict-of-laws decisions is to serve as growing pains for the law of a state . . . ." Freund, Chief Justice Stone and the Conflict of Laws, 59 Harv. L. Rev. 1210, 1216 (1946).
\item[11] "The use of such a 'better law' criterion is commendable and is to be encouraged provided that two conditions on its use are met. First . . . that the conflict . . . not be a spurious conflict . . . [and second], [that] the better law should be selected by objective standards . . . ." R. Weintraub, supra note 8, § 6.27.
\item[12] "I see the 'better law' criterion applied in domestic cases as affording a false analogy, an escape that is not responsive to a choice-of-law problem confronting the court." Cavers, Principled References, supra note 10, at 215. "To use this standard [the law which best accords with present-day ideas of justice and convenience] seems to me to retreat from choice of law as a branch of Private International Law." Cavers, Choice-of-Law Process, supra note 10, at 653.
\item[13] Reese, supra note 10; Sedler, On Choice of Law and the Great Quest: A Critique of Special Multistate Solutions to Choice-of-Law Problems, 7 Hofstra L. Rev. 807 (1979); Trautman, A Comment on Twerski and Mayer: A Pragmatic Step Towards Consensus as a Basis for
\end{footnotes}
B. Judicial Jurisdiction, Legislative Jurisdiction, and Choice of Law

The Minnesota cases\textsuperscript{14} decided since \textit{Milkovich v. Saari} also reflect the close but troublesome relationship among judicial jurisdiction, legislative jurisdiction, and choice of law.\textsuperscript{15} If a defendant has sufficient contacts with the forum state to permit the exercise of jurisdiction over the person or property interests of the defendant without violation of federal constitutional due process (judicial jurisdiction),\textsuperscript{16} the forum may choose its own law if it wishes to do so under its choice of law method. This choice must not infringe the federal constitutional requirements of due process\textsuperscript{17} and full faith and credit\textsuperscript{18} (legislative jurisdiction)\textsuperscript{19} for lack of an adequate connection between the forum and the involved transaction or parties.

The connectional requirements of judicial and legislative jurisdiction may sometimes overlap,\textsuperscript{20} but compliance with the standards of one does not necessarily satisfy the other. The interests of a forum state which constitutionally permit application of forum law may not by themselves provide sufficient contact to allow judicial jurisdiction over the person or property interests of the defendant.\textsuperscript{21} Judicial jurisdiction does not automatically subsume the


\textsuperscript{14} See infra notes 59-148 and accompanying text.


\textsuperscript{16} See infra notes 28-40 and accompanying text.

\textsuperscript{17} U.S. Const. amend. XIV, § 1.

\textsuperscript{18} Id. art. IV, § 1; see also 28 U.S.C. § 1738 (1976).

\textsuperscript{19} See infra notes 41-57 and accompanying text; see also Reese, \textit{Legislative Jurisdiction}, 78 Colum. L. Rev. 1587 (1978).

\textsuperscript{20} See Hay, supra note 15, at 165, 170-83.

constitutional right to apply forum law.\textsuperscript{22}

Recent decisions of the United States Supreme Court\textsuperscript{23} restricting the extra-territorial extension of the states' judicial jurisdiction have led commentators to suggest that the standards for judicial and legislative jurisdiction should be merged.\textsuperscript{24} The Court, however, has not yet definitely fixed either the bases or limits of legislative jurisdiction. As a result a debate has ensued over the proper standard for fixing such bounds: whether legislative jurisdiction should be based on or limited by due process or full faith and credit, or whether a single standard based on both due process and full faith and credit should be developed.\textsuperscript{25} The Court's recent restrictions on judicial jurisdiction not only limit the opportunities of the states to exercise any choice of law,\textsuperscript{26} but they present serious questions as to the present boundaries of judicial jurisdiction.\textsuperscript{27}

II. JUDICIAL JURISDICTION

\textit{Rush v. Savchuk}\textsuperscript{28} is an example of a case in which the Supreme Court, by restricting the forum's judicial jurisdiction, frustrated the application of forum law by a Minnesota court. Two Indiana residents were involved in an automobile accident in Indiana. One of them moved to Minnesota and there instituted a quasi in rem action against the other by garnishing the contingent liability of the Indiana defendant's liability insurer doing business in Min-


\textsuperscript{25} Compare Kirgis, supra note 15, with Martin, Constitutional Limitations, supra note 15, and Martin, A Reply to Professor Kirgis, supra note 15.

\textsuperscript{26} See Hay, supra note 15, at 165-66.


\textsuperscript{28} 444 U.S. 320 (1980).
nnesota. Under Minnesota's choice of law rules, the Minnesota court would have applied the Minnesota laws of ordinary 29 and comparative negligence 30 and Minnesota's statute of limitations 31 as the better rules of law favoring the Minnesota plaintiff in preference to the Indiana guest statute 32 requiring proof of gross negligence, Indiana's law of contributory negligence, 33 and the Indiana statute of limitations. 34

The Supreme Court, however, following its decision in *Shaffer v. Heitner,* 35 held that no due process basis existed for quasi in rem jurisdiction in the absence of any connection between the property garnished, the forum, and the litigation. 36 In *Shaffer v. Heitner,* also a quasi in rem action, the Court further said that henceforth the same due process standards for judicial jurisdiction shall be applied to in personam, in rem, and quasi in rem actions. 37 This has raised questions about the continued validity of previously settled due process bases for in personam jurisdiction over foreign corporations who are licensed or doing business in the forum state, and perhaps even over domestic corporations, when suits are brought on causes of action unrelated to forum corporate business. 38 Transient jurisdiction over a non-resident individual based on physical power by service of process in the forum state is also questionable 39 unless the cause of action sued upon is related to the defendant's activities in the forum. If not, any contacts of a non-resident defendant with that state, such as business interests, a vacation home, a farm, or a bank account, may not be adequate to provide a valid due process basis for in personam or quasi in rem jurisdiction.

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29. See infra notes 58-59 and accompanying text.
30. See infra notes 79-82 and accompanying text.
31. See infra notes 83-87 and accompanying text.
33. Id.
34. Id. at 322 n.2.
36. Id. at 208-16.
37. 433 U.S. at 211 n.38.
39. See Bernstine, supra note 27, at 60-68; Werner, supra note 38, at 588-89.
III. LEGISLATIVE JURISDICTION

*Rush v. Savchuk* prevented the application of Minnesota law by denying quasi in rem jurisdiction. The Court, therefore, did not need to reach the question of whether Minnesota law could have been chosen without violation of due process or full faith and credit in view of the absence of any connections between the forum, the automobile accident, or the parties except that Minnesota was the residence of the plaintiff and the liability insurer (garnishee) did business there.

A bill was introduced in the 1980 session of the Minnesota legislature whereby an insured person may bring a direct action against a tortfeasor's liability insurer, licensed or doing business in Minnesota, upon causes of action wherever they may arise. The mere regulatory interest of Minnesota over insurance companies licensed or doing business in the state, even if coupled with the local residence of the plaintiff, may not be sufficient to provide either judicial jurisdiction over the insurer under *Shaffer v. Heitner* or legislative jurisdiction under the full faith and credit and due process clauses when, as in *Savchuk*, the insured tortfeasor is a non-resident without contacts to the State of Minnesota, and suit is brought against the insurer in Minnesota on a cause of action unrelated to the forum, based on an insurance policy issued in another state without a direct action statute.

A. Full Faith and Credit

The connectional requirements that permit a state's laws to be applied without violation of the full faith and credit clause are best exemplified by a series of workers' compensation cases decided by the Supreme Court. A forum state may constitutionally choose its workers' compensation act in preference to that of another state

41. 444 U.S. 320 (1980).
42. Id. at 325 & n.8.
44. See *infra* notes 51-57 and accompanying text.
if (1) the work-related injury occurred in the forum;\(46\) (2) the contract of employment was entered into in that state;\(47\) or (3) the worker resides and is employed in the forum and the employer is located there.\(48\) The Court has not yet held that either the local residence of an employee or the employer’s being licensed and doing business in a state, or both, is sufficient, without more, to satisfy the requirements of the full faith and credit clause.

In the recent case of Nevada v. Hall,\(49\) a non-workers’ compensation case, the Court allowed California to impose full liability on the State of Nevada for an automobile accident in California in which the California plaintiff was injured by the negligence of a State of Nevada employee, despite Nevada’s having not consented to suit in California. Because the State of Nevada had waived its sovereign immunity and consented to be sued only in the courts of Nevada, the state argued that the full faith and credit clause required California to respect Nevada’s sovereign immunity from nonconsensual suit in California. In the alternative the state argued that, at the very least, the full faith and credit clause required California to honor the limited maximum recovery allowed against Nevada in actions in Nevada courts. The Supreme Court found no full faith and credit basis for Nevada’s arguments.\(50\)

B. Due Process

The question of when a state may choose its law without depriving an interested party of liberty or property in violation of the due process clause has arisen primarily in the insurance cases decided by the Supreme Court.\(51\) The occurrence in a state of the events giving rise to an insured loss or covered liability is a sufficient connection to allow the application of the state’s statute of limitations\(52\) or its direct action statute\(53\) against the insurer despite contrary provisions in the insurance policy or conflicting laws in the state where the policy was issued.

\(47\) Alaska Packers Ass’n v. Industrial Accident Comm’n, 294 U.S. 532, 539-41 (1935).
\(50\) Id. at 424.
In *Home Insurance Co. v. Dick*,\(^{54}\) however, the Court would not permit the forum, Texas, to apply its longer statute of limitations in favor of the insured plaintiff, a permanent Texas resident, whose boat exploded in Mexican waters. The insurance policy was issued in Mexico by the defendant, a Mexican insurance company, to cover the boat in Mexican waters while the plaintiff/insured was temporarily residing and operating the boat in Mexico. Here, judicial jurisdiction was obtained in a quasi in rem action which would probably not now be valid under *Shafer v. Heitner* or *Savchuk*.\(^{55}\)

The exact limits of due process for legislative jurisdiction have not as yet been established, and the respective roles of due process and full faith and credit in determining when legislative jurisdiction exists are unclear.\(^{56}\) A recent decision of the Supreme Court has cast very little illumination upon this cloudy area.\(^{57}\)

### IV. THE MINNESOTA CASES

*Milkovich v. Saari*\(^{58}\) was the last in a series of guest statute cases\(^{59}\) in which the Minnesota Supreme Court chose Minnesota’s law of ordinary negligence over conflicting guest statutes which require proof of gross negligence. In the earlier cases, the court reached that result by a somewhat different route, following a grouping of contacts (“center of gravity”) or policy-centered approach\(^{60}\) in

\(^{54}\) 281 U.S. 397 (1930).

\(^{55}\) See *supra* notes 28-40 and accompanying text.

\(^{56}\) See *supra* note 15.


\(^{58}\) 295 Minn. 155, 203 N.W.2d 408 (1973).

\(^{59}\) See Allen v. Gannaway, 294 Minn. 1, 199 N.W.2d 424 (1972); Bolgreen v. Stich, 293 Minn. 8, 196 N.W.2d 442 (1972); Schneider v. Nichols, 280 Minn. 139, 158 N.W.2d 254 (1968); Kopp v. Rechtzigel, 273 Minn. 441, 141 N.W.2d 526 (1966).

\(^{60}\) Allen v. Gannaway, 294 Minn. 1, 5, 199 N.W.2d 424, 427 (1972); Bolgreen v. Stich, 293 Minn. 8, 10, 196 N.W.2d 442, 443-44 (1972); Schneider v. Nichols, 280 Minn. 139, 143-45, 158 N.W.2d 254, 259 (1968); Kopp v. Rechtzigel, 273 Minn. 441, 443, 141 N.W.2d 526, 528 (1966).
which the policy of compensating tort victims and spreading their losses prevailed over the policy of preventing collusion between guest and host and protecting the gratuitous host from the ungrateful guest.

The court used this same approach in the earlier landmark case of *Schmidt v. Driscoll Hotel*, when the place-of-injury rule for solving tort conflicts was first abandoned. The *Schmidt* court applied Minnesota’s Civil Damage Act to a Wisconsin automobile accident in which a Minnesota plaintiff was injured by the negligence of an intoxicated Minnesota motorist to whom the defendant, a Minnesota liquor vendor, illegally sold liquor in Minnesota. The Minnesota policy of compensation for innocent victims of illegal liquor sales was given preference over Wisconsin’s law of non-liability. No problems of judicial or legislative jurisdiction were presented by this case.

*Schmidt v. Driscoll Hotel* was followed by *Balts v. Balts* in which the court abrogated the rule of parent-child tort immunity and permitted a Minnesota father to recover damages from his minor son for injuries sustained in an automobile accident in Wisconsin. The Minnesota policy of compensation for tort victims prevailed over the policy of protection of family harmony and preventing collusion among family members. The court clearly did not exceed its judicial or legislative jurisdiction in this case.

In *Mlovich v. Saari* the court first expressly adopted Professor Leflar’s five choice influencing considerations:

1. Predictability of Result, an important factor in resolving conflicts in the areas of consensual arrangements, property rights, and the status of persons;
2. Maintenance of International and Interstate Order, whereby the state with a negligible factual connection in relation to the policy underlying its law defers to the state with a substantial relationship relevant to its policy, so that particularly in the fields of property, corporations, and status of persons, in which stability, uniformity, and certainty are important, the interstate and international movement

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61. 249 Minn. 376, 82 N.W.2d 365 (1957).
62. 273 Minn. 419, 142 N.W.2d 66 (1966).
63. Id. at 425-26, 142 N.W.2d at 73.
64. Id. § 104.
65. R. LEFLAR, supra note 2, § 103.
66. Id. § 104.
of goods and people is not impeded nor retaliation by sister states or foreign nations provoked;

3. Simplification of the Judicial Task, by which a court’s choice of law may depend on the ease of ascertaining and applying the law of a sister state as compared to forum law, such as procedure, with which the local court is familiar;

4. Advancement of the Forum’s Governmental Interest, leading to the choice of forum law when the policy underlying forum law plus the forum’s factual relationship relevant to that policy (governmental interest) is at least equal to the governmental interest of the state or states with conflicting laws;

5. Better Rule of Law, the objectively selected preferable law which is in accord with modern development as opposed to a conflicting obsolete archaic rule which is a “drag on the coat-tails of civilization.”

Milkovich v. Saari was a suit by an Ontario guest against an Ontario host for damages for personal injuries sustained in an automobile accident in Minnesota. Ontario had a guest statute. Minnesota did not. The court said that the first three of Professor Leflar’s considerations were of minor importance: predictability of result was of little importance because people do not plan to commit torts; maintenance of international order was not important because Minnesota’s interest was more than negligible and the choice of Minnesota law would not significantly affect international commerce or provoke retaliation by a foreign state; and simplification of the judicial task was of no consequence because either of the competing rules could be easily ascertained and applied.

The court then chose the “better rule of law” of Minnesota as the “justice-administering state,” the guest statute of Ontario being considered incompatible with the Minnesota court’s concepts of fairness and justice. Milkovich presented no problems of judicial or legislative jurisdiction. The accident occurred in Minnesota, supplying an adequate connection for those purposes. In all of the

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68. Id. § 105.
69. Id. § 106.
70. Id. § 107.
72. 295 Minn. at 164-70, 203 N.W.2d at 414-17.
73. Id. at 170, 203 N.W.2d at 416-17.
74. Id.
75. Id. at 171, 203 N.W.2d at 416-17.
76. Id. at 170, 203 N.W.2d at 416-17.
conflicts cases decided since *Milkovich* the "better rule of law" has been the decisive rule of choice. The court has had only three occasions to use Professor Leflar's choice influencing considerations in areas other than tort law.

In the next case, *Schwartz v. Consolidated Freightways Corp.*, the court chose the Minnesota comparative fault statute as the "better rule of law," favoring a Minnesota plaintiff injured in Indiana over Indiana's law of contributory negligence. The result is that the Minnesota law of comparative fault follows Minnesotans wherever they go, provided Minnesota courts can get judicial jurisdiction over the adverse parties.

In *Schwartz* the court came close to exceeding its legislative jurisdiction, and perhaps in light of *Shafer v. Heitner* even its judicial jurisdiction, which depended on the fact that the corporate defendants were doing business in Minnesota, although unrelated to the cause of action upon which suit was brought. The Minnesota plaintiff was injured in a three-truck accident in Indiana when his Minnesota-based truck collided with two Ohio-based trucks on an interstate trip having no connection to Minnesota. Both judicial and legislative jurisdiction depended on the plaintiff's Minnesota residence and the two Ohio corporations' unrelated Minnesota business. In choosing Minnesota's "better law," the court apparently gave no consideration to the law of Ohio, which was the same as that of Indiana.

*Meyers v. Government Employees Insurance Co.* is the first of two cases in which the court did not apply forum law when faced with a conflict of laws. A Minnesota plaintiff was injured in Louisiana in an automobile accident with Louisiana residents. The plaintiff sued the Louisiana liability insurer of the Louisiana resident under Louisiana's direct action statute. The court applied Louisiana law, saying that the policy underlying Minnesota's prohibition of direct actions against insurance companies for their protection against prejudiced juries was weak; that the Louisiana law, favor-

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77. See infra notes 79-143 and accompanying text.
78. See infra notes 136-48 and accompanying text.
81. See R. Weintraub, supra note 8, § 6.26.
83. 302 Minn. 359, 225 N.W.2d 238 (1974).
ing plaintiffs and relieving them of the necessity of filing multiple suits for recovery of tort damages, was intended for the benefit of the public, including Minnesotans; and that the Minnesota plaintiff had acquired a “vested substantive right” under Louisiana law which Minnesota had an interest in protecting. The conflict between the two laws on this issue is almost miniscule, when viewed in this light.

Minnesota could clearly apply Louisiana law without any violation of due process or full faith and credit. Judicial jurisdiction, however, was based on the insurance company’s unrelated business in Minnesota.

To further protect the “vested substantive right” of the Minnesota plaintiff, the Myers court chose the Minnesota six-year statute of limitations over Louisiana’s one-year statute, saying that Louisiana was not interested in the application of its limitations to Minnesota courts. One member of the court would have chosen the six-year statute as the better rule of law.

An argument can be made that the limitations period should be that of the state whose substantive law governs the action. Under the theory of dépéçage, however, the laws of several states may be applied to multiple substantive issues as to which there is a conflict. In choosing the Minnesota limitations period, which Minnesota considers adequate to protect defendants and the Minnesota judicial system from stale claims and suits, Minnesota, the forum, clearly had a sufficient connection for legislative jurisdiction.

In 1983 the Minnesota court, in a five-four decision, distinguished the Myers case when it held that the choice influencing considerations of Professor Leflar will not be used to resolve conflicts of procedural law. Instead the law of the forum will govern. In Davis v. Furlong the plaintiff was a Minnesota resident who was a passenger in a car owned and driven by Wisconsin residents. The plaintiff was injured in Wisconsin when the car she was in collided with a car driven and owned by a Minnesota resident.

84. Id. at 363-64, 366, 368, 225 N.W.2d at 241-42, 244. The “vested rights” theory has been discredited by the modern writers. See R. Leflar, supra note 2, § 86.
85. 302 Minn. at 366, 225 N.W.2d at 243.
86. Id. at 370, 225 N.W.2d at 245 (Kelly, J., concurring specially).
88. 328 N.W.2d 150 (Minn. 1983).
89. Id. at 151.
In plaintiff's suit in Minnesota against the drivers and owners of the two cars, she sought to join the Wisconsin defendants' liability insurer as a defendant. Under Wisconsin law, 90 such joinder was proper despite a no-direct action clause in the policy, which in this case was issued in Wisconsin. Direct actions against liability insurers are prohibited in Minnesota.91 Treating the conflict as procedural—one of joinder of parties—the Davis court held that the law of the forum governed.92 The court distinguished Myers on the ground that the Louisiana direct action statute applied in Myers was substantive.93

Because of the thin and frequently imperceptible line between substantive and procedural rules, the dissenters in Davis advocated use of Professor Leflar's choice influencing considerations to resolve all conflicts.94 In this case the dissenters presumably would have chosen the plaintiff-favoring, "better" Wisconsin rule of law.

Hague v. Allstate Insurance Co.95 and Hime v. State Farm Fire & Casualty Co.96 were insurance cases in which the court adhered to its policy of spreading the losses from automobile accidents among the insurance premium-paying public, and applied the plaintiff-favoring "better" law of Minnesota to accomplish that purpose.97 The Hague court came close to exceeding its legislative jurisdiction98 and had judicial jurisdiction only because the defendant insurance company was doing business—unrelated to the litigation—in Minnesota.

In Hague a Wisconsin resident was killed in Wisconsin while riding on his Wisconsin son's uninsured motorcycle which collided with the automobile of an uninsured Wisconsin motorist. The trip had no connection to Minnesota. The decedent, however, had worked in and commuted to Minnesota for thirteen years before his death. After the accident, his widow moved to Minnesota where she probated his estate. As executrix she sued the uninsured

90. Id. at 151-52; see Wis. Stat. Ann. § 803.04(2) (West 1977).
92. 328 N.W.2d at 153.
93. Id. at 152 n.2.
94. Id. at 153 (Todd, J., dissenting).
97. 289 N.W.2d at 47, 49; 284 N.W.2d at 833.
98. 289 N.W.2d at 50-54 (Otis, J., dissenting); see Martin, Personal Jurisdiction, supra note 15 at 883-88.
motorist insurer of the decedent for a declaratory judgment to determine whether his uninsured motorist insurance of $15,000 on each of his three automobiles covered the accident. The insurance policies were issued in Wisconsin. The court, admitting the scant governmental interest of the forum, chose as the “better rule of law”99 Minnesota’s “stacking” of the coverage of separate no-fault policies over Wisconsin’s non-stacking law. Again the Minnesota court selected the plaintiff-favoring law. The court recognized but minimized Professor Leflar’s first choice influencing consideration, predictability of result, usually important in solving contracts conflicts.100 The court justified its legislative jurisdiction to apply Minnesota law by saying that an insurer of automobiles could reasonably foresee that coverage might be governed by the law of the state into which a vehicle traveled.101

The United States Supreme Court affirmed in a five-three decision.102 By aggregating all of the Minnesota connections, the Court was able to find that Minnesota had a sufficient interest in applying Minnesota law so that neither full faith and credit nor due process was violated.103 This aggregation of Minnesota contacts—which made it fair and reasonable to apply Minnesota law—consisted of the following:

1. The insured worked in and commuted to Minnesota;
2. The insurer did business in Minnesota;
3. Plaintiff, insured’s widow, resided in Minnesota at the time of suit;
4. The insured’s estate was probated in Minnesota.

These contacts together with the ambulatory protection given by automobile insurance policies provide the requisite territorial connections.104 The Court did not hold that any one or any combination of these connections less than all would satisfy the requirements of due process or full faith and credit.105 Therefore, it still remains doubtful whether a plaintiff’s residence or a defendant’s doing business in a state, or both, without more, will satisfy constitutional requirements for application of forum law. Justice

99. 289 N.W.2d at 49.
100. Id. at 48; see R. Leflar, supra note 2, § 103.
101. 289 N.W.2d at 48.
103. Id. at 302.
104. Id.
105. As stated by the court, “We express no view whether the first two contacts, either together or separately, would have sufficed to sustain the choice of Minnesota law made by the Minnesota Supreme Court.” Id. at 320 n.29.
Stevens, concurring, said that the choice of law was unsound but constitutional. He distinguished the policies underlying full faith and credit from those underlying due process. The former is a protection of the states’ sovereignty, the latter protects individual rights. The dissenting justices—through Justice Powell—said that even the aggregation of the contacts was too trivial and irrelevant to provide any significant state interest. The Minnesota Supreme Court itself was unable to find a sufficient governmental interest for application of forum law and based its choice primarily on its view that forum law was “better.”

_Hime_ does not present problems of either judicial or legislative jurisdiction. The connections of Minnesota to the litigation and the parties were more than adequate to satisfy both. A Florida woman was injured in an automobile accident in Minnesota with a Minnesota motorist while she was riding with her Florida husband. She sued her husband and the Minnesota motorist in Minnesota and recovered. Her husband then brought action in Minnesota against his liability insurer for a declaratory judgment that the insurance covered interspousal tort claims, although the insurance policy and the Florida law under which the policy was issued excluded such claims from coverage. Once again, the Minnesota court ascribed minor importance to Professor Leflar’s factor of predictability of result for the solution of insurance-tort conflicts. The court was primarily concerned that a law not be chosen that was inconsistent with its notions of fairness and justice.

_Blamey v. Brown_ stretched judicial jurisdiction to the breaking point. The court applied the Minnesota rule of common-law

106. _Id._ at 331-32.
107. _Id._ at 322-31.
108. _Id._ at 337.
109. 289 N.W.2d at 49.
110. 284 N.W.2d at 833.
111. 284 N.W.2d at 833.
liability as the better rule of law to an illegal sale of liquor in Wisconsin by a Wisconsin bar owner to a Minnesota resident who became intoxicated, causing injury in Minnesota to a Minnesota plaintiff. Although the injury occurred in Minnesota, the extension of Minnesota law to a liquor sale in Wisconsin by a Wisconsin bar owner, who incurred no liability under Wisconsin law, also came close to breaking the boundaries of legislative jurisdiction.

The defendant operated a bar in Hudson, Wisconsin, a small town near the Minnesota border, about a mile and a half from the interstate freeway leading to the metropolitan area of St. Paul and Minneapolis. Wisconsin bars by law could stay open later than those of Minnesota. Based upon the proximity of defendant's bar to the freeway and the metropolitan area, and the late hours allowing Wisconsin bars to attract Minnesota customers, the court decided it had judicial jurisdiction under the Minnesota long-arm statutes. There was, however, no evidence that the defendant advertised, solicited, made any purchases for his business, or otherwise did business in Minnesota.

Having decided that it had jurisdiction over the defendant, the court held that the Minnesota Civil Damage Act had not intended extra-territorial effect upon this transaction, but that the Minnesota rule of common-law liability extended to the Wisconsin sale and resultant injury in Minnesota to the Minnesota plaintiff. According to the court this was the better rule of law.

*Follese v. Eastern Airlines* was a workers' compensation case. The plaintiff, a permanent resident of Minnesota, was hired as a flight attendant by a Florida-based airline under a contract of employment entered into in Florida. She was based in Florida for

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[T]he critical focus in any jurisdictions analysis must be on “the relationship among the defendant, the forum and the litigation.” *Rush*, 444 U.S. at 327 (quoting *Shaffer v. Heiner*, 433 U.S. 186, 204 (1977)). This tripartite relationship is defined by the defendant's contacts with the forum state, not by the defendant's contacts with residents of the forum. See, e.g., *Hanson v. Denckla*, 357 U.S. 235, 250-55 (1958); *Aaron Ferer & Sons Co. v. Atlas Scrap Iron*, 558 F.2d 450, 455 n.6 (8th Cir. 1977).


115. MINN. STAT. § 543.19 (1982).

116. 270 N.W.2d at 886.

117. MINN. STAT. § 340.95 (1982).

118. 270 N.W.2d at 890-91.

119. 271 N.W.2d 824 (Minn. 1978).
eight years during which time she sustained work-related injuries on three flights. The only flight that was connected with Minnesota was the second flight which had originated from Minneapolis-St. Paul. After she became disabled as a result of her injuries, she returned to Minnesota where she had retained her permanent residence, and initiated a proceeding under the Minnesota Workers’ Compensation Act, since an action in Florida was barred by the Florida statute of limitations.

The Minnesota Act was then silent as to its extra-territorial effect upon this situation. The court, however, granted the plaintiff workers’ compensation benefits, basing legislative jurisdiction on the permanent residence of the defendant in Minnesota, her receipt of welfare assistance in Minnesota when she returned to the state, and the fact that the airline operated flights in and out of the Twin Cities’ airport and had a ticket office there. Whether these connections supplied an adequate basis for application of Minnesota law is debatable until the Supreme Court more explicitly defines the boundaries of legislative jurisdiction.

In Ewers v. Thunderbird Aviation, Inc., the court construed the Minnesota Airplane Owner’s Responsibility Act to cover an airplane accident in Colorado. A Minnesota plaintiff sued the Minnesota owner of a Minnesota-based private airplane for injuries suffered in an accident in Colorado on a round-trip flight from Minnesota to Colorado in a plane leased by the defendant to the Minnesota pilot. The court applied the Minnesota statute imposing liability on the owner for the negligence of the pilot. The court clearly had both judicial and legislative jurisdiction, but the controversy was over the construction of the statute and its intended extra-territorial effect. The dissenting justices—who took the position that the Act applied only to Minnesota accidents—would have chosen Minnesota law as the better rule of law had the legislature in their view not restricted the Act’s extra-territorial application.

121. 271 N.W.2d at 830.
122. Id. at 830-32.
123. 289 N.W.2d 94 (Minn. 1979).
126. 289 N.W.2d at 101 (Otis, J., dissenting).
Petty v. Allstate Insurance Co. was an insurance case in which a California resident, who was injured in an automobile accident in Minnesota, recovered basic economic loss benefits under the Minnesota no-fault insurance statute. Minnesota's no-fault law has a built-in conflict of laws provision which automatically converts the liability insurance of a non-resident to no-fault insurance under the Minnesota statute to cover an automobile accident of the non-resident in Minnesota. In Petty the requirements of both judicial and legislative jurisdiction were satisfied by the occurrence of the accident in Minnesota and the fact that the insurance company was doing business in Minnesota.

In Bigelow v. Halloran, the second case in which forum law was not applied, the court again followed the plaintiff favoring "better rule of law." A Minnesota resident intentionally shot and injured the plaintiff, an Iowa resident, and then killed himself. The shooting occurred in Iowa. A suit for damages was brought in Minnesota against the Minnesota executor of the deceased's estate probated in Minnesota. At the time of the shooting the plaintiff was a resident of Iowa working in Minnesota. At the time of suit she was a resident of Minnesota. Under Iowa law the cause of action for an intentional tort survived the death of the tortfeasor while under Minnesota law it did not.

The Minnesota Supreme Court chose Iowa law. Minnesota has "no legitimate governmental interest in transferring the decedent's estate intact to his heirs to the exclusion of a seriously injured intentional tort victim." The court stated that "it is in the interest of this state to see that tort victims are fully compensated." The Minnesota law "undermines this state interest." Minnesota law is a relic of the old common law and not in accord with modern

127. 290 N.W.2d 763 (Minn. 1980).
128. MINN. STAT. §§ 65B.41-.71 (1982).
129. Id. §§ 65B.47, .50 (1982).
130. 313 N.W.2d 10 (Minn. 1981).
132. MINN. STAT. §§ 573.01, 525.1-201(4) (1982). MINN. STAT. § 573.01 allowed survival actions for personal injury or death against the personal representative of the deceased tortfeasor except in cases of intentional tort. In 1982, the Minnesota Supreme Court struck down the intentional tort exception as violative of equal protection under the Minnesota Constitution. Thompson v. Estate of Petroff, 319 N.W.2d 400 (Minn. 1982). Thompson is an example of the "growing pains" experienced by state domestic law. See Freund, supra note 10.
133. 313 N.W.2d at 12.
134. Id.
135. Id.
developments. Here the court gave greater protection to a non-resident than it could give to a resident unless it held the Minnesota statute unconstitutional. The court could clearly apply Iowa law without violation of full faith and credit or due process. The result, of course, is the same as it would have been under the discarded place-of-injury conflict of laws rules.

Since the adoption of Professor Leflar's choice influencing considerations, the Minnesota Supreme Court has had occasion in three cases to consider conflicts in areas other than torts. The case of In re Estate of Congdon involved consolidated appeals of court orders issued in three causes of action arising out of the murder of Elisabeth Congdon. During the probate of the estate a petition was filed objecting to the distribution of funds to Marjorie Caldwell, daughter of the deceased, on the grounds of her possible involvement in the murder. The trial of Marjorie Caldwell had resulted in a verdict of not guilty. A number of the heirs of Elisabeth Congdon brought a motion requesting a civil trial to determine Marjorie Caldwell's entitlement under section 524.2-803 of the Minnesota Statutes. In response Marjorie Caldwell brought a declaratory judgment action in which she sought a declaration from the court that her status as a beneficiary was to be determined under the law of the state of her residence, Colorado. The dismissal of this action was appealed to the Minnesota Supreme Court along with several other court orders rendered in the probating of the Congdon estate.

The appellant argued that although the court had jurisdiction to apply the Minnesota Probate Code, section 524.2-803 should not be applied because the Congdon estate was not in issue. Instead the appellant framed the issue as her status as a beneficiary which she asserted should be resolved under the laws of her residence. After reviewing Leflar's choice influencing considerations the court chose to apply Minnesota law. Of the choice influencing factors it appears that the "better rule of law" was the decisive factor since the court expressly stated that the Uniform Probate Code was now the law of the majority of the jurisdictions. Since the compensation of a tort victim was not the basis of this suit the concept of loss distribution and resulting preference for plaintiff-favoring law was not relevant to the choice of law analysis. One

136. 309 N.W.2d 261 (Minn. 1981).
137. MINN. STAT. § 524.2-803 (1982).
138. 309 N.W.2d at 271.
might question why the court addressed the choice of law issue since it appears that the case involved a false conflict.\textsuperscript{139}

In \textit{Alside v. Larson},\textsuperscript{140} a "no-conflict" contract case, the court, in order to carry out the presumed intent of the parties, validated a covenant not to compete given to an Ohio employer by a Minnesota employee, employed in Minnesota. The court indicated that this would have been the result had there been a conflict between Ohio and Minnesota law. This is in accord with Professor Leflar's first choice influencing consideration, predictability of result, which is important in resolving conflicts involving consensual arrangements.\textsuperscript{141} In \textit{Laikola v. Engineered Concrete}\textsuperscript{142} the court refused to recognize a common-law marriage when Montana, where such marriages are valid, could not have done so because of the short time the parties lived together in Montana and the impermanency of their residence in that state. Presumably, the court would have recognized the marriage had it been valid in Montana. Recognition in these circumstances would have been justified under Professor Leflar's choice influencing considerations of predictability of result and maintenance of interstate order in the interests of stability, uniformity, and certainty in the status of marriage.\textsuperscript{143}

What choices the court will make when confronted with conflicts in the areas of property,\textsuperscript{144} procedure,\textsuperscript{145} corporations,\textsuperscript{146} receivers\textsuperscript{147} and persons\textsuperscript{148} remains for the future. Will the court make a choice based on its notions of fairness and justice in the same way that it decided domestic cases? If so, is that method feasible for the resolution of interstate conflicts in these areas?

V. RECOGNITION OF JUDGMENTS

A recent Minnesota Supreme Court decision has touched upon the problem of the recognition of child custody orders of sister

\begin{itemize}
\item \textsuperscript{139} Compare \textsc{Minn. Stat.} \textsection{} 524.2-803 (1982) with \textsc{Colo. Rev. Stat.} \textsection{} 15-11-803 (1973).
\item \textsuperscript{140} 300 Minn. 285, 220 N.W.2d 274 (1974).
\item \textsuperscript{141} R. Leflar, \textit{supra} note 2, \textsection{} 103.
\item \textsuperscript{142} 277 N.W.2d 653 (Minn. 1979).
\item \textsuperscript{143} See R. Leflar, \textit{supra} note 2, \textsection{}s 103, 104, 219-230.
\item \textsuperscript{144} See \textit{id.} \textsection{}s 165-185, 232-237.
\item \textsuperscript{145} See \textit{id.} \textsection{}s 121-130.
\item \textsuperscript{146} See \textit{id.} \textsection{}s 251-260.
\item \textsuperscript{147} See \textit{id.} \textsection{}s 212-217.
\item \textsuperscript{148} See \textit{id.} \textsection{}s 239-248.
\end{itemize}
A five-year-old child was adjudicated a dependent in California because of the imprisonment of the father for murdering the mother. The California court placed the child with an aunt and uncle in Minnesota, reserving continuing jurisdiction over the boy. Three years later the California court ordered the boy removed to California to the home of a great aunt with the purpose of facilitating his ultimate return to the father who had been released from prison.

The Minnesota aunt and uncle sought an injunction and declaratory judgment in Minnesota to prevent the removal of the boy to California. The Minnesota Supreme Court recognized the continuing jurisdiction of the California court under the Uniform Child Custody Jurisdiction Act (UCCJA), adopted by both Minnesota and California, but held that an evidentiary hearing should be held in Minnesota under the provisions of the Act for the consideration of the California court in resolving the issue of custody.

This case reflects the perplexing problems that arise in connection with the recognition of child custody orders of sister states, problems which the UCCJA seeks to solve. The jurisdictional provisions of the Act have recently been incorporated into federal legislation implementing and supplementing the full faith and credit clause of the federal constitution.

Landa v. Norris was another case involving recognition of child custody orders. North Dakota residents were divorced in North Dakota, and the mother was awarded permanent custody of the children. She moved to Ohio with the children. The father moved to Minnesota. He sued in Ohio for permanent custody but was denied. While the children were visiting the father in Minnesota he petitioned in a Minnesota court for permanent custody on the ground that they were being abused by the mother while in her custody. The Minnesota Supreme Court held that under the UCCJA the Ohio judgment must be recognized unless the

149. *In re Mullins*, 298 N.W.2d 56 (Minn. 1980), *noted in* 8 WM. MITCHELL L. REV. 245 (1982).
150. MINN. STAT. §§ 518A.01-.25 (1982).
152. 298 N.W.2d at 62.
155. 313 N.W.2d 423 (Minn. 1981).
Ohio court relinquished jurisdiction.\textsuperscript{157} 

\textit{Matson v. Matson}\textsuperscript{158} dealt with the recognition of the judgment of a sister state for child support and alimony. Wisconsin residents were divorced in Wisconsin and the wife was awarded child support and alimony. The father moved to Minnesota and established a residence there. The mother and children remained in Wisconsin. Several years later the mother filed a motion in the divorce action for judgment for delinquent child support and alimony payments. The father was personally served in Minnesota with notice of the motion. He defaulted and a default judgment was entered for the mother.

The judgment was registered in Minnesota under the Uniform Enforcement of Foreign Judgments Act.\textsuperscript{159} The father moved in a Minnesota court to vacate the judgment for lack of subject matter and personal jurisdiction. The Minnesota Supreme Court held that the Wisconsin court had continuing jurisdiction to enforce the Wisconsin divorce decree.\textsuperscript{160} The Wisconsin court also had personal jurisdiction over the father by service of notice in Minnesota and Minnesota was required by the full faith and credit clause to recognize the Wisconsin judgment although it was modifiable.\textsuperscript{161}

\section*{VI. FEDERAL-STATE CONFLICTS}

A recent decision of the United States District Court for the District of Minnesota\textsuperscript{162} provided an interpretation of the Supreme Court's opinion in \textit{Walker v. Armco Steel Corp.},\textsuperscript{163} the most recent of the progeny of \textit{Erie Railroad Co. v. Tompkins}\textsuperscript{164} and \textit{Hanna v. Plumer}.

In \textit{Walker}, a diversity suit, the complaint was filed under Rule 3 of the Federal Rules of Civil Procedure\textsuperscript{166} before the

\textsuperscript{157} 313 N.W.2d at 424-25.
\textsuperscript{158} 310 N.W.2d 502 (Minn. 1981).
\textsuperscript{159} MINN. STAT. §§ 548.26-.33 (1982).
\textsuperscript{160} 310 N.W.2d at 507; see also Bjordahl v. Bjordahl, 308 N.W.2d 817 (Minn. 1981).
\textsuperscript{161} 310 N.W.2d at 507. The petitioner's further attempts to modify the Wisconsin judgment were again rejected by the Minnesota Supreme Court. \textit{See Matson v. Matson}, 333 N.W.2d 862 (Minn. 1983).
\textsuperscript{163} 446 U.S. 740 (1980).
\textsuperscript{164} 304 U.S. 64 (1938).
\textsuperscript{165} 380 U.S. 460 (1965).
\textsuperscript{166} Rule 3 provides that, "A civil action is commenced by filing a complaint with the court." FED. R. CIV. P. 3.
expiration of the statute of limitations of the state of suit, but the summons was not served until after the statute of limitations had elapsed. Under Federal Rule 3 an action is commenced by filing the complaint with the court while under the state statute an action is commenced by service of the summons.

The *Walker* Court held the state statute barred the suit because a direct conflict was not present between the state statute and the federal rule. The state statute was not intended to determine the time when a law suit is commenced for the purpose of statutes of limitations. The state statute, however, governed both the time period and the time of commencement of suit within that period. The two were integral parts of the statute, and because the time period was applicable in this diversity suit, the entire statute governed.\(^{168}\)

In *Foster v. Seattle Tent & Fabric*, a diversity suit, the complaint was also filed before the expiration of the state's statutory time period, but the summons was served afterward. The court held that Rule 3 of the Minnesota Rules of Civil Procedure providing that an action is commenced by service of the summons\(^{171}\) is not an integral part of the state's statute of limitation. Therefore, the federal rule is applicable.

Before the adoption of the Minnesota Rule 3, the provisions of the rule governing commencement of suit were contained in the statute of limitation but were removed from the statute to be-


\(^{168}\) Walker v. Armco Steel Corp., 446 U.S. at 752.

\(^{169}\) 31 Fed. R. Serv. 2d 517 (D. Minn. 1981). *But cf.* Sieg v. Karnes, 693 F.2d 803, 804-05 (8th Cir. 1982) (*Walker v. Armco Steel* construed as requiring federal district court to apply state law that, for statute of limitations purposes, deems an action commenced only when service is made).

\(^{170}\) *Id.* at 518-19.

\(^{171}\) Rule 3 states that:

3.01 Commencement of the Action

A civil action is commenced against each defendant when the summons is served upon him or is delivered to the proper officer for such service; but such delivery shall be ineffectual unless within 60 days thereafter the summons be actually served on him or the first publication thereof be made.

3.02 Service of Complaint

A copy of the complaint shall be served with the summons, except when the service is by publication as provided in Rule 4.04.

MINN. R. CIV. P. 3.

\(^{172}\) This statute provided that:

An action shall be considered as begun against each defendant when the summons is served on him, or on a codefendant who is a joint contractor or otherwise united in interest with him, or is delivered to the proper officer for such
come Rule 3. An argument may be made therefore, that the rule is an integral part of the statute and that the conflict between the federal rule and the state statute is indirect, leading to application of the state rule.

V. CONCLUSION

In solving tort and related insurance conflicts cases by choosing the plaintiff-favoring law as the better rule of law, the Minnesota Supreme Court has adopted a simple, yet pragmatic and common sense method of analysis\(^\text{173}\) in comparison to the controversial, perplexing theories and methods of the modern writers,\(^\text{174}\) including Professor Leflar himself who now sees a "Judicial Eclecticism" emerging from all of the proposed theories.\(^\text{175}\) The late Professor Prosser put it this way: "The realm of the conflict of laws is a dismal swamp, filled with quaking quagmires, and inhabited by learned but eccentric professors who theorize about mysterious matters in a strange and incomprehensible jargon. The ordinary court, or lawyer, is quite lost when engulfed and entangled in it.\"\(^\text{176}\) The route chosen by the Minnesota Supreme Court is one way of avoiding or getting out of these quagmires.

In most of the Minnesota cases here summarized, the conflict was between laws that are becoming obsolete and those that are in step with modern development.\(^\text{177}\) When considered in that light, service; but, as against any defendant not served within the period of limitation, such delivery shall be ineffectual, unless within 60 days thereafter the summons be actually served on him or the first publication thereof be made. When an action is begun it shall be deemed pending until the final judgment therein has been satisfied.


173. See Reese, supra note 9.
177. For a workable, understandable choice of law theory, when applied to many of the areas in which conflicts may occur, see Davies & Rathke, Choice of Law Based on the Seat of the Relationship, 10 Valparaiso L. Rev. 1 (1975). The Minnesota Supreme Court, however, in Hime v. State Farm Fire & Casualty Co., 284 N.W.2d 829, 833 n.3 (Minn. 1979), rejected this theory in favor of the better rule of law.
the results have not been patently unfair or unjust. To reach those results, however, the court in a few cases has stepped to the edge of the boundaries of its judicial and legislative jurisdiction.