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CONFLICT OF LAWS IN FLORIDA 1957-1963

S. A. BAYITCH

As stated in a recent opinion, "[t]he field of conflict of laws, the most underdeveloped in our jurisprudence from a practical standpoint, is just now breaking loose from the ritualistic theory of the last century."¹ It is true, of course, that traditional doctrines only rarely meet demands arising in a rapidly developing society. In this country, the transition of economic, social and political life from the intrastate level to interstate, if not international dimensions, and the vanishing significance of state lines in everyday life have profoundly changed propositions upon which our conflicts law has developed. And even though Florida may not be found among the new *avant-garde*, the work of her courts and legislatures bear evidence of a solid determination not to lag far behind.²

GENERAL PROBLEMS

Florida courts only rarely tackle problems involving general rules of conflicts law. In regard to *characterization*,³ two cases deserve mention. In an action by a trustee in bankruptcy to recover refund of taxes,⁴ the issue was whether the underlying transaction was to be characterized as "usury, or a kind of illegality distinct from usury."⁵ The court noted that under the "accustomed concepts of the common law system, it seems clear that the problem falls into the category of the charging of excessive interest, that is, usury; but the authorities relating to New York law . . . appear to conceive of the matter as something distinct from usury . . ."⁶ Restating the rule that characterization is governed by the *lex fori*, the court held that "as a federal court or in the role of a Florida court, we conceive of the matter as one of usury for the purpose of applying conflict of laws rules."⁷ This holding was predicted both on federal and Florida conflicts rules, and excluded the consideration of New York law. The second Florida case involving characterization dealt with the law de-

1. *Pearson v. Northeast Airlines, Inc.*, 309 F.2d 553, 563 (2d Cir. 1962); Harrison, *Recent Trends in the Field of Conflict of Laws*, 15 ALA. L. REV. 1 (1962).

2. For prior developments see Stern, *Conflict of Laws*, 8 MIAMI L.Q. 209 (1954), 10 MIAMI L.Q. 257 (1956), and 12 U. MIAMI L. REV. 383 (1958). Recently valuable treatises have appeared, among them: EHRENZWEIG, *CONFLICT OF LAWS* (1962); LEFLAR, *CONFLICT OF LAWS* (1959); and STUMBERG, *PRINCIPLES OF CONFLICT OF LAWS* (3d ed. 1963), hereinafter cited as EHRENZWEIG, LEFLAR and STUMBERG.

3. LEFLAR, 93; EHRENZWEIG, 326. See also *Characterization in the Conflict of Laws: An Unwelcome Addition to American Doctrine*, in XXTH CENTURY COMPARATIVE AND CONFLICTS LAW 395 (1961); Harper, *Torts, Contracts, Property, Status Characterization, and the Conflict of Laws*, 59 COLUM. L. REV. 440 (1959).

4. *Fahs v. Martin*, 224 F.2d 387 (5th Cir. 1955).

5. *Id.* at 396.

6. *Ibid.*

7. *Id.* at 397.

fining the movable or immovable nature of an asset. While characterization generally follows definitions contained in the *lex fori*, an exception is well recognized in regard to immovable property, which is characterized by the *lex situs*. This rule was followed in proceedings by a widow for the assignment of dower in *In re Binkow's Estate*.⁸ The estate of the intestate husband, who died domiciled in Florida, held an interest in partnerships in Michigan and Maryland consisting principally of land. After a careful survey of the question according to the *lex situs*, i.e., Michigan and Maryland, and particularly of the Uniform Partnership Act, in force in both jurisdictions, as well as pertinent case law, the court found that such interests are considered to be movable and applied in regard to dower the law of decedent's domicile.⁹

Even though no Florida case dealt with *renvoi*,¹⁰ it is proper to record recent developments. Still insisting that *renvoi* is no part of the law in the United States, the court in *Hobbs v. Firestone Tire & Rubber Co.*¹¹ declined to use the *renvoi* method by interpreting the forum's borrowing statute directing the application of the statute of limitations of the place where the defendant resides, regardless of that place's borrowing statute ordering the application of the statute of limitations of the *locus delicti*. However, recent statutory enactments, both on the federal and state level as well as decisions of the Supreme Court, have shown no reluctance to accept *renvoi*. In *Richards v. United States*,¹² involving the Federal Tort Claims Act, the Court interpreted the statutory provision "in accordance with the law of the place where the act or omission occurred"¹³ to mean the whole law of the alleged place of omission (Oklahoma), including its conflict rules making the law of the place of the accident (Missouri) controlling.

The question of *public policy*¹⁴ in conflict situations was discussed in a number of cases. In *Young v. Sands, Inc.*,¹⁵ an action was brought by a Nevada hotel on a check issued by the defendant. The appellate court accepted the finding of the trial judge that the check was not issued

8. 120 So.2d 15 (Fla. 1st Dist. 1960); 16 U. MIAMI L. REV. 92, 98-99 (1961).

9. FLA. STAT. § 731.34 (1963).

10. For recent analyses, see Mehren, *The Renvoi and Its Relation to Various Approaches to the Choice-of-law Problem*, in XXTH CENTURY COMPARATIVE AND CONFLICTS LAW 380 (1961); and Wengler, *General Principles of Private International Law*, 104 RECUEIL DES COURS 279, 375 (1962). See also the discussion of *renvoi* in *Duskin v. Pennsylvania-Central Airlines Corp.*, 167 F.2d 727 (6th Cir. 1948), *cert. denied*, 335 U.S. 829 (1948) (without the use of the Erie-Klaxon test); *Taormina v. Taormina Corp.*, 35 Del. Ch. 17, 109 A.2d 400 (1954). See also EHRENZWEIG 334.

11. 195 F. Supp. 56 (N.D. Ind. 1961).

12. 369 U.S. 1 (1962).

13. *Id.* at 6.

14. EHRENZWEIG 342.

15. 122 So.2d 618 (Fla. 3d Dist. 1960), 15 U. MIAMI L. REV. 326 (1961). *Accord*, *Intercontinental Hotels Corp. v. Golden*, 18 App. Div. 2d 45, 238 N.Y.S.2d 33 (1963); *reversing*, 36 Misc. 2d 786, 23 N.Y.S.2d 96 (1962). *Cf.* *Caribbean Mills, Inc. v. McMahon*, 217 F. Supp. 639 (N.D. Okla. 1963).

for gambling, as alleged by the defendant and affirmed judgment for the hotel, adding as obiter dicta that under section 849.26 of Florida Statutes¹⁶ a check "given for the repayment of money lent or advanced at the time of a gambling transaction for the purpose of being wagered is void. A gambling obligation, although valid in the state where created cannot be enforced in Florida because it is contrary to public policy."¹⁷ The impact of the public policy of the forum in regard to an insurance contract entered into by a foreign insurer in Illinois was at issue in the protracted litigation arising out of *Sun Ins. Office Ltd. v. Clay*, discussed later.¹⁸

The general rule that *statutes of limitation* are considered procedural and therefore controlled by the *lex fori* does not apply when (i) the borrowing statute of the forum provides, in certain situations, for the application of the statute of another jurisdiction, or (ii) the statute of limitations of the forum is affected by agreements by the parties, or (iii) the statute of limitations is considered to be built into a substantive statute of another jurisdiction controlling under the conflict law of the forum.

A particular aspect of the borrowing statute¹⁹ was judicially interpreted in *Courtland Corp. v. Whitman*.²⁰ The question involved the determination of where the "cause of action has arisen." The action was brought on a promissory note executed by defendant in France. The trial court dismissed the action as barred by the French equivalent of the statute of limitations which was said to be the law of the place of making. However, on appeal the judgment was reversed. The court indicated various factors to be considered in determining the place where the cause of action may have arisen, particularly in view of the fact that the payee was a Swiss bank. In *Vega v. The Malula*,²¹ the court took what it termed a "juridical conflicts voyage" through the Caribbean. A Puerto Rican longshoreman was injured while loading in Puerto Rico a Honduran vessel owned by a Cuban defendant now in Florida. The plaintiff appealed not only because the action was dismissed for laches but also on the basis that his action, brought after five years since the accident, was not yet barred by the controlling statute of limitations. The appellant started his reasoning from the fact that the federal court

16. Textual references to Florida Statutes will hereinafter be made in this fashion: "Section 100.00" (omitting the words "Florida Statutes").

17. *Young v. Sands, Inc.*, *supra* note 15, at 619.

18. *Sun Ins. Office Ltd. v. Clay*, 265 F.2d 522 (5th Cir. 1959). See text with note 32 *infra*. Other cases involving public policy are discussed later: *Sunbeam Corp. v. Masters of Miami, Inc.*, 225 F.2d 191 (5th Cir. 1955) (fair trade practices); *Davis v. Ebsco Industries, Inc.*, 150 So.2d 460 (Fla. 3d Dist. 1963) (contract not to compete); *Tsilidis v. Pedakis*, 132 So.2d 9 (Fla. 1st Dist. 1961) (adoption).

19. FLA. STAT. § 95.10 (1963).

20. 121 So.2d 57 (Fla. 2d Dist. 1960).

21. 291 F.2d 415 (5th Cir. 1961).

sitting in admiralty had no federal statute of limitations and, consequently, had to turn to the statute of the state where it sat, *i.e.*, Florida, which provides four years for negligence, and "perhaps" three years for unseaworthiness. This attempt did not succeed, the appellate court reasoning that even if the late bringing of action may be "circumvented" by the tolling provision of the Florida statute²² by reason of the defendant's absence from the jurisdiction, nevertheless "one must take the bitter with the sweet." Consequently, the Florida borrowing statute was consulted. This led to the law of Puerto Rico—not fatal to plaintiff's claim since the Florida borrowing statute "incorporates by reference not only the time periods but the tolling provisions of the foreign limitation statute as well."²³ This voyage, the court continued, brought the plaintiff back from where he started, to Puerto Rican statutes which suspend the statute of limitations for the time when the defendant or the res is absent from the jurisdiction. Since the trial court ignored the tolling provisions of Puerto Rican law and held that the action was not barred by laches, the appellate court reversed and remanded.²⁴

The effect of an agreement of the parties on the otherwise inapplicable statute of limitations presents a complicated problem. Such an agreement may be included in a parties' arrangement making the law of a particular jurisdiction applicable to their transaction in toto,²⁵ or it may appear as an express clause in the transaction, establishing the period during which claims arising out of that transaction may be enforced in court. Limiting the discussion to the second alternative, it is not surprising that there is no uniform solution, some states considering such change of the statutes of limitation to be within the contractual power of private parties, while others, for some reasons of public policy, take an opposite position. These include Florida, which declares a contractual shortening of the statutory periods to be contrary to public policy

22. FLA. STAT. § 95.07 (1963).

23. Vega v. The Malula, 291 F.2d 415, 417 (5th Cir. 1961).

24. Vega v. The Malula, 291 F.2d 415 (5th Cir. 1961). See, on Puerto Rican law, Marrero Morales v. Bull Steamship Co., 279 F.2d 299 (1st Cir. 1960); Marrero v. The S.S. Kathryn, 171 F. Supp. 420 (1958), *on reconsideration*, 171 F. Supp. 458 (D. Puerto Rico 1959); Hernandez v. The Flying Arrow, 181 F. Supp. 951 (S.D.N.Y. 1959). See also McMahon v. Pan American World Airways, Inc., 297 F.2d 268 (5th Cir. 1962) (Florida statute of limitations on admiralty suit); Alexander v. Buckeye Cellulose Corp., 281 F.2d 187 (6th Cir. 1960) (Tennessee borrowing statute referring to Florida statutes of limitation); Bachman v. Blaw-Knox Co., 198 F. Supp. 617 (W.D. Pa. 1961) (Venezuelan statute of limitations). Vernon, *Statutes of Limitation in the Conflict of Laws: Borrowing Statutes*, 32 ROCKY MT. L. REV. 287 (1960); Ester, *Borrowing Statutes of Limitation and Conflict of Laws*, 15 U. FLA. L. REV. 33 (1962). See also EHRENZWEIG 428.

25. E.g., Pisacane v. Italia Societa Per Azioni di Navigazione, 219 F. Supp. 424 (S.D.N.Y. 1963). The court considered Italian law as *lex voluntatis* as well as applicable under the center-of-gravity doctrine with respect to federal maritime choice-of-law rules, including Italian provisions concerning the question of shortening the periods of the Italian statutes of limitation, but without regard to the *lex fori* (which included New York law). Kaplan, *Certification of Questions from Federal Appellate Courts to the Florida Supreme Court and Its Impact on the Abstention Doctrine*, 16 U. MIAMI L. REV. 413 (1962).

of this state, and to be illegal and void.²⁶ Conflicts are unavoidable when transactions entered into in the first group of states are litigated in the courts of the second; moreover, additional difficulties arise from the literal universality of the Florida statutory language as well as from constitutional issues involved.

This very issue was presented for adjudication in *Sun Ins. Office Ltd. v. Clay*,²⁷ involving an action on a personal property "floater policy," issued by a British corporation doing business in Illinois to an Illinois resident who subsequently moved to Florida, where the loss occurred. The appellate court reversed the judgment for the plaintiff on the ground that a suit clause of twelve months was valid under the law of Illinois, which would apply also in Florida under her own conflict rules. In regard to the public policy expressed in the Florida statutes²⁸ the court held that Florida had no power to affect such foreign contracts because of the lack of significant contacts with them and, on constitutional grounds, since the state's rewriting of the policy would enlarge defendant's obligations in the sense delineated in *Home Ins. Co. v. Dick*.²⁹ On certiorari³⁰ a divided Supreme Court, avoiding the constitutional issue, remanded with instructions to secure an "authoritative state court's determination of an unresolved question of its local law under the Florida certification statute."³¹ Of the two questions so certified, one involved a conflicts issue—whether under the law of Florida, section 95.03³² is applicable to the insurance contract involved. In this regard the supreme court of Florida held that "this state's contact with the subject contract and parties thereto is abundantly sufficient to give a court jurisdiction of a suit thereon." Though this hardly represents an answer to the question asked, the court decided the question in the affirmative.³³ The unprecedented solution of a conflicts question on judicial jurisdictional grounds was immediately noticed when the case again reached the federal court

26. FLA. STAT. § 95.03 (1963).

27. 265 F.2d 522 (5th Cir. 1959).

28. FLA. STAT. § 95.03 (1963).

29. 281 U.S. 397 (1930).

30. *Clay v. Sun Ins. Office Ltd.*, 363 U.S. 207, *vacating & remanding* 265 F.2d 522 (5th Cir. 1959).

31. FLA. STAT. § 25.031 (1963).

32. This statute provides that stipulations in a contract shortening a period of limitation are illegal. A charter party made subject to portions of the Carriage by Sea Act, 46 U.S.C. §§ 1, 1300, limiting period to bring suit to one year was held to be binding notwithstanding Florida statute and policy, the charter being a matter of maritime law rather than of the common law of Florida. *J. B. Effenson Co. v. Three Bays Corp.*, 238 F.2d 611 (5th Cir. 1956).

33. *Sun Ins. Office Ltd. v. Clay*, 133 So.2d 735 (1961); followed in *Schluter v. National Union Fire Ins. Co.*, 144 So.2d 95 (Fla. 2d Dist. 1962). On the question of shortening the statute of limitations in situations involving federal law but connected with the Florida statute of limitations, see *J. B. Effenson Co. v. Three Bays Corp.*, 238 F.2d 611 (5th Cir. 1956); *Scheibel v. Aquilines, Inc.*, 156 F.2d 636 (2d Cir. 1946); *Hoagland v. Railway Express Agency*, 75 So.2d 822 (Fla. 1954).

of appeals.³⁴ The court again reversed the decision in favor of plaintiff, questioning not only the "novel doctrine" adopted by the Florida Supreme Court in answering the conflicts question but also the very effect to be given the opinion. Limiting the discussion to the first issue, it is apparent that the reluctance of the appellate court to accept the reasoning behind the answer to the conflict question is well founded since it is generally recognized that requirements for the establishment of judicial jurisdiction are not identical with those determining the applicable substantive law.³⁵ The appellate decision, however, relies mainly on constitutional grounds which, in its opinion, cannot be finally decided by a state supreme court. In this respect the appellate court held that the contacts of the insured having moved to Florida and the occurrence of the loss there were not sufficient to give Florida the necessary legislative power on the interstate level. This evaluation, however, is not persuasive since the court overlooked the fact that the policy was expressly concluded as a "floater policy" insuring chattels wherever they may be and failed to note as well the governmental interest of Florida in protecting her own insured residents as compared with the governmental interest of Illinois to have its statute concerning suit clauses enforced in Florida in an action against a British insurance company. The latter interest is not to be evaluated in isolation but by comparison with the competing governmental interests claimed by the state exercising judicial jurisdiction in the case.³⁶

A third qualification on the general rule regarding statutes of limitations may be affected by the built-in nature of such statutes in the sense of *Wells Adm'r[x] v. Simonds Abrasive Co.*³⁷ However, no Florida cases involving this alternative have been reported.

Similar difficulties accompany the application of the *statute of frauds*, which may be characterized as procedural or substantive. These characterizations may decide in favor of the *lex fori* or the *lex causae*, respectively. Without the court discussing this aspect of the case, it was

34. 133 So.2d at 738.

35. *Sun Inc. Office Ltd. v. Clay*, 319 F.2d 505 (5th Cir. 1963), *affirming*, 265 F.2d 522 (5th Cir. 1959).

36. The distinction between jurisdiction and choice-of-law was forcefully brought out in *Hanson v. Denckla*, 357 U.S. 235, *reversing*, 100 So.2d 378 (Fla. 1956).

37. 345 U.S. 514 (1953). "[T]he conflict is to be resolved, not by giving automatic effect to the full faith and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight." *Alaska Packers Ass'n v. Industrial Accident Comm'n*, 294 U.S. 532, 547 (1935). This view was restated recently in *Richards v. United States*, 369 U.S. 1, 15 (1962):

Where more than one State has sufficiently substantial contact with the activity in question, the forum State, by analysis of interests possessed by the States involved, could constitutionally apply to the decision of the case the law of one or another state having such an interest in the multistate activity. Currie, *The Constitution and the Choice of Law: Governmental Interests and the Judicial Function*, 26 U. CHI. L. REV. 9 (1958).

held that the statute of frauds is part of the *lex causae*,³⁸ in this case of the law of the making of a contract of employment for five years (Michigan). Thus, even though the contract was to be performed in Florida, it was found void. In a case arising from Florida a federal appellate court³⁹ affirmed the trial court's decision relying on the Wisconsin statute of frauds, apparently assuming that the contract was entered into in Wisconsin. However, it is interesting that the court did not bother to follow the Erie-Klaxon rule.

The position of *aliens* in Florida has been discussed in another study.⁴⁰ Since then few changes have occurred, the most important the adoption by Florida of the Iron-Curtain rule, to be discussed later. Additional statutory provisions have restricted professions open to aliens.

JURISDICTIONAL CONFLICTS

Generally speaking, "Jurisdiction in law is not a simple matter. To obtain a valid judgment, the party seeking it must (a) proceed in a competent court; (b) give his opponent reasonable notice of the litigation and grant him a reasonable opportunity to be heard; and (c) establish judicial jurisdiction over the defendant involved."⁴¹

Personal Jurisdiction

In regard to conflicts aspects of judicial jurisdiction it is well to keep in mind that besides selecting a competent court having jurisdiction over the subject matter, jurisdiction also must be perfected over the person of the defendant.⁴² All this must be coupled with reasonable no-

38. *Castorri v. Milbrand*, 118 So.2d 563 (Fla. 2d Dist. 1960); *accord*, *Buenger v. Kennedy*, 151 So.2d 463 (Fla. 2d Dist. 1963), involving an oral promise to create a trust for the promise to perform services which subsequently had been performed in Florida. The court considered the promise, both as an oral promise to create a trust or to make a will, void under New York law as the *lex loci actus*, while the claim for service performed was held barred by the one year Florida statute of limitations. FLA. STAT. § 95.11 (1963). HEILMAN, *THE CONFLICT OF LAWS AND THE STATUTE OF FRAUDS* (1961); Ehrenzweig, *The Statute of Frauds in the Conflict of Laws: The Basic Rule of Validation*, 59 COLUM. L. REV. 874 (1959).

39. *Bursten v. Tom Sawyer, Inc.*, 208 F.2d 542 (5th Cir. 1962).

40. Bayitch, *Aliens in Florida*, 12 U. MIAMI L. REV. 129 (1958). Regulations establishing control over Cuban assets, July 8, 1963, 28 Fed. Reg. 6974 (1963), affect assets in the United States belonging to Cuba and to persons there; prohibit persons subject to the jurisdiction of the United States from engaging in unlicensed transfer of United States dollars to or from Cuba; and prohibit all other unlicensed transactions with Cuba or Cuban nationals and transactions involving property in which there is a Cuban interest. However, Cuban refugees in the United States and elsewhere are regarded as unblocked nationals unless they are acting on behalf of the Cuban regime.

41. *L. D. Reeder Contractors v. Higgins Industries*, 265 F.2d 768, 770 (9th Cir. 1959); *Stimson, Conflict of Laws: When Does a Court Have Jurisdiction?*, 45 A.B.A.J. 569 (1959); *Developments in the Law: State-Court Jurisdiction*, 73 HARV. L. REV. 909 (1960). On judicial jurisdiction generally, see EHRENZWEIG 58; LEFLAR 43; STUMBERG 66.

42. Kurland, *The Supreme Court, The Due Process Clause, and the In Personam Jurisdiction of State Courts, 1877-1958*, 25 U. CHI. L. REV. 569 (1958); *Transient Jurisdiction—Remnant of Pennoyer v. Neff*, 9 J. PUB. L. 281 (1960).

tice. Limiting the discussion to jurisdiction over persons, it may suffice to point out that jurisdiction is perfected by service of process *on the defendant*⁴³ within the state, or by substituted service in case he is *domiciled*⁴⁴ there, thus making the question of domicile the crucial jurisdictional issue. *Nationality* of the defendant, as a rule, has no bearing upon access to courts or amenability to local jurisdiction, except in cases where the court might use the *forum non conveniens* doctrine. Even a *mere appearance* in court may establish jurisdiction. A party also may *consent* in advance to jurisdiction. However, this method is frowned upon by courts;⁴⁵ particularly where foreign jurisdictions are prorogated, it is considered beyond the parties power to oust jurisdiction vested in courts. A prorogation of the competent courts in Havana was held ineffective in *Huntley v. Alejandro*,⁴⁶ the court adopting the majority view that an agreement to limit future causes of action, arising out of an agreement, to the courts of a specific place is void as an attempt to oust the jurisdiction of all other courts over subsequent disputes arising out of the agreement.⁴⁷ Another method to modify otherwise applicable jurisdictional rules is available in the cognovit clause,⁴⁸ a consent not only to submit to jurisdiction but also to accept a judgment by confession. In regard to such agreements, the *lex loci actus* is held applicable by Florida courts, most recently in *Pearson v. Friedman*.⁴⁹ In this case a cognovit note executed in Florida to be used in Illinois was held invalid and, consequently, insufficient to make an Illinois judgment enforceable in Florida, in spite of the full faith and credit clause and comity. However, obiter dicta in the same case that a cognovit clause made in another state where it is valid will sustain the enforceability in Florida of judgment rendered in such other state, has been changed by a 1959 statutory amendment, adding to "made within" the word "without [this state]".⁵⁰ Finally, jurisdiction once established may be *continued*.⁵¹

43. Briggs, *Contemporary Problems in Conflict of Laws: Jurisdiction by Statute*, 24 MONT. L. REV. 85 (1963).

44. *Bloomfield v. City of St. Petersburg Beach*, 82 So.2d 364 (Fla. 1955); *Trowbridge, Domicile Problems of "Winter Residents,"* 11 MIAMI L.Q. 375 (1957).

45. *The Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180 (1959); *Insurance Co. of North America v. N. V. Stoomvaart-Maatschappij*, 201 F. Supp. 77 (E.D. La. 1961); *Chemical Carriers v. L. Smit & Co.'s Internationale Sleepdienst*, 154 F. Supp. 886 (S.D.N.Y. 1957).

46. 139 So.2d 911 (Fla. 3d Dist. 1962).

47. *Id.* at 912.

48. *Curtiss-Wright Corp. v. Exhaust Parts, Inc.*, 144 So.2d 822 (Fla. 3d Dist. 1962) (consent judgment in New Jersey); *Hopson, Cognovit Judgments: An Ignored Problem of Due Process and Full Faith and Credit*, 29 U. CHI. L. REV. 111 (1961); *Schuchman, Confession of Judgment as a Conflict of Laws Problem*, 36 NOTRE DAME LAW. 461 (1961).

49. 112 So.2d 894 (Fla. 3d Dist. 1959).

50. FLA. STAT. § 55.05 (1963). See also FLA. OPS. ATT'Y GEN. 061-73, May 11, 1961.

51. *E.g.*, *Grant v. Corbitt*, 95 So.2d 25 (Fla. 1957); *Watson v. Watson*, 88 So.2d 133 (Fla. 1956); *Moore v. Lee*, 72 So.2d 280 (Fla. 1954). In *Kosch v. Kosch*, 113 So.2d 547 (Fla. 1959), the supreme court quashed the appellate decision, 106 So.2d 600 (Fla. 3d Dist. 1958), holding that § 65.15 provides for continuing jurisdiction against the nonresident defendant regarding alimony imposed by the divorce court; consequently, the parties having been properly brought within the jurisdiction of the trial court at the outset, the supple-

Jurisdiction also must be properly established in equity cases.⁵² Jurisdiction vested in a Florida court to declare a resulting trust involving land located in the British West Indies because the agreement for the purchase of the land was made in Florida, one of the plaintiffs was domiciled in Florida and the defendant was served there. The basis for this decision was the generally accepted rule giving chancery courts "extraterritorial jurisdiction . . . where the court has jurisdiction of the parties, but not of the land in matters of resulting trusts."⁵³ In adoption proceedings in *Moses v. Moses*,⁵⁴ and a paternity suit in *Moya v. Pena*,⁵⁵ the court was held to have jurisdiction in an action brought by an allegedly resident⁵⁶ mother against a father about to depart, regardless of the fact that the child was residing abroad.⁵⁷

Recent developments in the area of general principles of judicial jurisdiction are marked by two significant decisions of the Supreme Court: *McGee v. International Life Ins. Co.* and *Hanson v. Denckla*.⁵⁸ The latter involved the full faith and credit effect of a Florida Supreme Court decision. Discussing the jurisdictional aspects of the Florida judgment under attack, the Court tested Florida's judicial jurisdiction both in regard to in rem as well as in personam aspects, always looking for what the Court termed "affiliating circumstances," i.e., contacts necessary under the due process clause to warrant the exercise by the state of judicial powers. Referring to the *McGee* decision, the Court emphasized that it would be "a mistake to assume that this trend [away from the rigid rule of *Pennoyer v. Neff*]⁵⁹ heralds the eventual demise of all restrictions on the personal jurisdiction of state courts,"⁶⁰ those guarantees being not so much protection against distant litigation as a "consequence of territorial limitations on the power of the respective States."⁶¹ Therefore, a nonresident defendant "may not be called upon to [defend a case in a foreign court] unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him."⁶² The Court failed to find such contacts since the defendant foreign trust company had no office in Florida and transacted no business there, nor had

mentary proceedings can be bottomed on a reasonable notice which affords an opportunity to be heard.

52. FLA. STAT. § 62 (1963).

53. *United States v. Ross*, 302 F.2d 831 (2d Cir. 1962) (transfer of securities within Bahamas); *Jackson v. Jackson*, 129 So.2d 692, 693 (Fla. 2d Dist. 1961).

54. *Moses v. Moses*, 141 So.2d 297 (Fla. 3d Dist. 1962).

55. *Moya v. Pena*, 148 So.2d 735 (Fla. 3d Dist. 1963).

56. FLA. STAT. § 742.021 (1963).

57. *Jorge v. Antonio Co.*, 151 So.2d 467 (Fla. 2d Dist. 1963) (litis pendency).

58. *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957). *Hanson v. Denckla*, 357 U.S. 235 (1958), reversing 100 So.2d 378 (Fla. 1956); Scott, *Hanson v. Denckla*, 72 HARV. L. REV. 695 (1959); noted, 13 U. MIAMI L. REV. 246 (1959).

59. 95 U.S. 714 (1877).

60. *Hanson v. Denckla*, 357 U.S. 235, 251 (1958).

61. *Ibid.*

62. *Ibid.*

any assets been held or administered in Florida and "no solicitation of business in that State either in person or by mail"⁶³ ever took place. In addition, the Court found that the "cause of action . . . is not one that arises out of an act done or transaction consummated in the forum State."⁶⁴ Consequently, the suit was held not to be one to "enforce an obligation that arose from a privilege the defendant exercised in Florida."⁶⁵ The other possible jurisdictional contact, the execution of powers of appointment under which the beneficiaries and appointees claimed, was also declined by the Court on the ground that the validity of the trust agreement and not the appointment was in issue. The Court conceded that the Florida rule determined the validity of a trust including its extension, under the law of the state of its creation, by considering the appointment to be but a "republication" of the original trust agreement in Florida. However, in the opinion of the Court such a rule may be justified as a state choice-of-law rule but is insufficient "for purposes of determining the question of personal jurisdiction."⁶⁶ Finally, the Court disposed of the question of whether the "center of gravity" doctrine, adopted in a number of states as a choice-of-law rule, may be used in determining state judicial jurisdiction. Again, the answer was clearly negative, the Court repeating the distinction between choice-of-law and jurisdictional rules, the issue before the court being one of "personal jurisdiction, not choice of law."

Acting Within Jurisdiction

Acting within a jurisdiction may result in submission to the judicial power of that state under a number of recent statutory innovations.⁶⁷ Consequently, it depends on the proper statutory interpretation whether a certain type of activity or a given amount thereof will meet the particular statutory requirements. In addition, the constitutional validity of these statutes may play a significant role in view of the fact that the Supreme Court has developed a set of minimum standards required under the due process clause to support the allocation of judicial powers on the interstate level. This constitutional standard, however, has frequently radiated into the interpretation of state statutes in the sense that these statutes, regardless of their specific language, have been construed as imposing but minimum standards as established by the Supreme Court. This substitution of minimum constitutional requirements for the particular statutory provision is not warranted since state statutes may de-

63. *Ibid.*

64. *Ibid.*

65. *Ibid.*

66. *Ibid.*

67. Reese & Galston, *Doing an Act or Causing Consequences as Bases of Judicial Jurisdiction*, 44 IOWA L. REV. 249 (1959); Note, *Recent Interpretations of "Doing Business" Statutes*, 44 IOWA L. REV. 345 (1959); Comment, *Development in the Law of State Court Jurisdiction*, 73 HARV. L. REV. 909 (1960).

mand more than is necessary for the mere constitutional survival of the jurisdictional statute.

Following well established models, Florida has enacted a number of statutes giving her courts jurisdiction on the strength of defendants' having acted within the state in a defined manner, coupled with a connection between the particular cause of action and such activities:

(1) *Nonresident motorists* are subject to local jurisdiction in regard to claims "arising out of or by reason of any accident or collision within the state."⁶⁸ Recent cases have dealt only with minor questions. The turning of the ignition key and pressing of the starter, causing an auto to backfire and injure plaintiff, was considered an operation of the vehicle in *Hurte v. Lane*.⁶⁹ Compliance with the particular provisions concerning service on nonresident motorists was held sufficient to effectuate service on a minor.⁷⁰ The particular provisions contained in section 47.30 of the Florida Statutes have been discussed in *Convay v. Spencer*.⁷¹ The question of the statute of limitation was before the court in *Dibble v. Jensen*.⁷²

(2) Closely related to the nonresident motorist statute is section 47.162, enacted in 1959, regarding *nonresident operators of watercraft*. The new statute makes such operators amenable to Florida courts for actions "growing out of any accident or collision in which such nonresident . . . may be involved" during "operation, navigation or maintenance . . . of a boat, ship, barge or other watercraft in the state." In *Edmundson v. Hamilton*⁷³ the statute was held applicable to an action under the Jones Act against the owner of a tug for the death of an employee due to the owner's alleged neglect to provide a reasonably safe means of boarding a vessel.⁷⁴

(3) The fact that nonresidents "operate[d], conduct[ed], engage[d] in, or carr[ied] on a *business or business venture* in the state" is sufficient to bring such nonresidents under the jurisdiction of local courts for actions "arising out of any transaction or operation connected

68. FLA. STAT. § 47.29 (1963). Gibbons, *A Survey of the Modern Nonresident Motorist Statutes*, 13 U. FLA. L. REV. 257 (1960); Note, *Nonresident Motorist Statutes—Their Current Scope*, 44 IOWA L. REV. 384 (1959). See also *Vincent v. Leavitt*, 19 Fla. Supp. 57 (1962). For consideration of the Florida statute in a federal court, see *Howland v. Bevis*, 276 F.2d 906 (5th Cir. 1960).

69. *Hurte v. Lane*, 166 F. Supp. 413 (N.D. Fla. 1958).

70. *Culver v. Tucker*, 182 F. Supp. 385 (N.D. Fla. 1960).

71. *Convay v. Spence*, 119 So.2d 426 (Fla. 3d Dist. 1960).

72. *Dibble v. Jensen*, 129 So.2d 162 (Fla. 3d Dist. 1961).

73. *Edmundson v. Hamilton*, 148 So.2d 262 (Fla. 1962).

74. For construction of similar statutes see *Valkenburg v. The S.S. Henry Denny*, 295 F.2d 330 (7th Cir. 1961); *Summers v. Skibs A/S Myken*, 184 F. Supp. 745 (E.D. Pa. 1960) and 191 F. Supp. 929 (E.D. Pa. 1961); *Leport v. White River Barge Line*, 215 F. Supp. 220 (W.D. Pa. 1961).

with or incidental to such business or business venture."⁷⁵ Recent cases dealt both with the definition of business or business venture as well as the required connection between such activity and the cause of action. In *Strasser Constr. Co. v. Linn*,⁷⁶ the supreme court held that it constituted a business venture for defendants to enter into a contract for construction of an apartment building in Florida as income property. Similarly, the "alleged fraudulent activities on the part of the defendant . . . of attempting to defraud one who rightfully imposed trust and confidence" in the defendant in the course of business dealings was also considered a business venture in *Matthews v. Matthews*,⁷⁷ as was the conveyance of land in Florida to defendant as security for a usurious loan which could under an option agreement be repaid by way of repurchase.⁷⁸ On the contrary, the sale by a nonresident owner of land in Florida, the taking back of a purchase money mortgage and the designation of a Florida bank as collection agent was not considered to constitute a business venture in *Toffel v. Baugher*,⁷⁹ distinguishing the leading case, *State ex rel. Weber v. Register*.⁸⁰ The rule was followed in *Hayes v. Greenwald*,⁸¹ in which the court held that the selling of a home by a defendant moving to another state did not constitute a business venture, and added that defendants in such proceedings were "never subjected to the jurisdiction of the court." Consequently, a judgment thus obtained, appearing from the record to be void, may be "set aside and stricken from the record on motion at any time."⁸² On the contrary, in *Forston v. Atlantic Eng'r & Mfg. Corp.*⁸³ the court found that the defendant, a resident of Texas, was engaged in a "business venture" in Florida because he had an agent in the state, because the plaintiff had purchased merchandise from him "over a period of years" through the defendant's Florida agent who also served the plaintiff by the "securing of engineering information, processing of complaints and requests for replacements and repairs and similar matters," and because invoices "included a box . . . labeled 'Salesman' in which were customarily typed the initials"⁸⁴ of defendant's Florida agent.

75. FLA. STAT. § 47.16 (1963) (Emphasis added.); Comment, *Substituted Service of Process: Nonresidents Doing Business Within the Forum*, 13 U. MIAMI L. REV. 205 (1958).

76. 97 So.2d 458 (Fla. 1957).

77. 122 So.2d 571 (Fla. 2d Dist. 1960).

78. *Oxley v. Zmistowski*, 128 So.2d 186 (Fla. 2d Dist. 1961).

79. 125 So.2d 321 (Fla. 2d Dist. 1960), *cert. denied*, 133 So.2d 420 (Fla. 1961).

80. 67 So.2d 619 (Fla. 1953).

81. *Hayes v. Greenwald*, 149 So.2d 586 (Fla. 3d Dist. 1963).

82. *Id.* at 587. Without ruling on the question whether or not a mere renting of property in Florida constituted "doing business" there, the court in *James v. Kush*, 157 So.2d 203 (Fla. 2d Dist. 1963) found that such venture not only has terminated before the accrual of the action by parents for the injury of their child by a limb from a tree located on the defendant's property and falling on adjoining land but also that the cause of action did not arise from any transaction or operation connected or incidental to the renting of property.

83. *Forston v. Atlantic Eng'r & Mfg. Corp.*, 143 So.2d 364 (Fla. 2d Dist. 1962).

84. *Id.* at 366.

Service on persons "not residing or having their principal of business in this state" and engaging in business there in the sense of section 47.16 of the Florida Statutes may be performed not only according to paragraph (1) of section 47.16, but also under section 47.161, enacted in 1959.

Jurisdiction Over Corporations

Generally speaking, jurisdiction over corporations⁸⁵ may be established the same way it is established over persons, with adjustments dictated by the legal nature of the former and, in a few cases, due to particular statutory provisions. Some of the basic principles have been restated in *Hanson v. Denckla*.⁸⁶ In regard to the foreign trust company, the Supreme Court failed to find necessary minimum jurisdictional contacts since the company had no office in Florida, transacted no business there and none of the trust assets had ever been held or administered in Florida; the company also did not solicit business there in person or by mail. Moreover, the Supreme Court took into consideration the fact that the "cause of action . . . is not one that arises out of an act done or transaction consummated in the forum State."⁸⁷

For purposes of jurisdiction, corporations subject to Florida judicial powers are served in a place to be designated by the corporation,⁸⁸ or in a court,⁸⁹ or by service on any person listed in section 47.17 of the Florida Statutes, and in accordance with section 47.33. Special rules exist for insurance companies.⁹⁰ In case a corporation has not designated a place for service of process, then section 47.171 controls.

Foreign corporations become amenable to local jurisdiction regularly through steps they are required to take in order to qualify to do business in the state, among them by designating the place of service.⁹¹ Foreign corporations not qualified to do business in the state may subject themselves to local jurisdiction by their presence in the state brought about by activities as defined by statute as the basis for jurisdiction. Like nonresident persons, foreign corporations may be sued in Florida under the nonresident motorist statute,⁹² under the nonresident watercraft operator statute,⁹³ or by engaging in a business or business venture in the state.⁹⁴ To perfect jurisdiction in these cases, three requirements must be

85. LEFLAR 58; EHRENZWEIG 110. Note, *The Foreign Corporation, An Elusive Defendant*, 10 U. FLA. L. REV. 345 (1957).

86. *Hanson v. Denckla*, 357 U.S. 235 (1958).

87. *Id.* at 251.

88. FLA. STAT. §§ 47.34-47.35 (1963).

89. FLA. STAT. § 47.36 (1963).

90. FLA. STAT. § 624.0221(3) (1963).

91. FLA. STAT. § 47.34 (1963).

92. FLA. STAT. § 47.29 (1963).

93. FLA. STAT. § 47.162 (1963).

94. FLA. STAT. § 47.16 (1963).

met: the defined kind and place of activity, the connection of the cause of action with such activity, and proper service as provided by statute.⁹⁵

Limiting this survey to cases involving nonresident business,⁹⁶ we have to start with the interpretation given by courts to the statutory requirement of "operate, conduct, engage in, or carry on a business or business venture."⁹⁷ In *Zirin v. Charles Pfizer & Co.*,⁹⁸ the appellate court found that the defendant corporation employed agents "solely to go into drug stores, doctors' offices and hospitals, and talk to them favorably about the defendant's products,"⁹⁹ while orders were forwarded to defendant's home office. In view of this the appellate court affirmed dismissal relying erroneously on section 47.171 of the Florida Statutes, instead of section 47.16. The supreme court,¹⁰⁰ although adopting the position taken by the dissenting appellate judge that the defendant corporation did engage in business in the state, nevertheless affirmed on the ground that plaintiff failed to show that the cause of action arose in connection with defendant's activities within the state. In *Newark Ladder & Bracket Co. v. Eadie*,¹⁰¹ it was held that the "mere shipping of goods to a single customer, who is not a broker, jobber, wholesaler or distributor [according to section 47.16(2)], from a point outside the state does not subject one to the jurisdiction of the courts of this state."¹⁰² In *Amphicar Corp. of America v. Gregstad Distrib. Corp.*¹⁰³ the appellate court held that the exhibiting of cars at sport shows as well as the soliciting of business and the "sending of the principal officers of the corporation into this

95. Venue is discussed in *Greyhound Corp. v. Rosart*, 124 So.2d 708 (Fla. 3d Dist. 1960), upholding as constitutional FLA. STAT. § 46.04 (1963). In *Hollywood Memorial Park, Inc. v. Rosart*, 124 So.2d 712 (Fla. 3d Dist. 1960), it was further held that general venue rules of the forum apply; since the nonresident motorist statute has no venue provisions of its own, the common law rule allows venue in a transitory action to be laid in any county where the court could secure jurisdiction of the defendant, the privilege of venue being denied to foreign corporations not doing business in Florida. Cf. *Enfinger v. Baxley*, 96 So.2d 538 (Fla. 1957). On service in federal court, see *Bowman v. Atlanta Baggage & Cab Co.*, 173 F. Supp. 282 (N.D. Fla. 1959). On venue, see generally Burnes, *Venue, FLORIDA CIVIL PRACTICE BEFORE TRIAL* 181 (Florida Bar Continuing Legal Education ed. 1963).

96. Interpreting the federal "doing business" by a Florida hotel, see *MacInnes v. Fontainebleau Hotel Corp.*, 152 F. Supp. 459 (S.D.N.Y. 1957), *aff'd*, 257 F.2d 832 (2d Cir. 1958).

97. FLA. STAT. § 47.16 (1963). Cf. *Beverly v. Norfolk & Western Ry.*, 16 Fla. Supp. 156 (1960); *Graves v. Illinois Cent. R.R.*, 16 Fla. Supp. 161 (1960).

98. 121 So.2d 694 (Fla. 3d Dist. 1960), followed in *Glisson v. Central of Ga. Ry. Co.*, 147 So.2d 5 (Fla. 3d Dist. 1963), involving an action against a foreign railroad company not authorized to do business in Florida and owning no tracks nor operating trains in the state, but maintaining agents here engaged in soliciting business to be handled by the company in other states; in addition, the cause of action (injury to an employee) did not arise out of the defendant's activities in Florida. Consequently, service on the company's freight agent in Florida was held not sufficient both under §§ 47.17 or 47.171. Cf. *Beverly v. Allied Chem. Corp.*, 17 Fla. Supp. 147 (1961).

99. *Zirin v. Charles Pfizer & Co.*, 121 So.2d 694, 695 (Fla. 3d Dist. 1960).

100. *Zirin v. Charles Pfizer & Co.*, 128 So.2d 594 (Fla. 1961).

101. *Newark Ladder & Bracket Co. v. Eadie*, 125 So.2d 915 (Fla. 3d Dist. 1961).

102. *Ibid.*

103. *Amphicar Corp. of America v. Gregstad Distrib. Corp.*, 138 So.2d 383 (Fla. 3d Dist. 1962).

state for the purpose of promoting and furthering the company's business in Florida and to encourage the use of its products"¹⁰⁴ amounted to doing business in the state. The court added that the burden to show such activity on the part of a foreign corporation not authorized to do business in the state is on the plaintiff. In two cases the issue of a publishing company not authorized to do business in the state but shipping magazine publications into the state was litigated. In *Fawcett Publications, Inc. v. Rand*,¹⁰⁵ the appellate court held that the plaintiff failed to show activities amounting to doing business since the corporation neither owned property in the state nor had an office, agents or telephone listing in the state, a holding followed in *Fawcett Publications v. Brown*.¹⁰⁶

In 1957 paragraph (2) of section 47.16 of the Florida Statutes, dealing with nonresident business, was amended by adoption of the following provision:

Any person, firm or corporation which through brokers, jobbers, wholesalers or distributors sells, consigns, or leases, by any means whatsoever, tangible or intangible personal property, to any person, firm or corporation in this state, shall be conclusively presumed to be operating, conducting, engaging in or carrying on a business or business venture in this state.¹⁰⁷

In an action by a widow against a manufacturer, a Delaware corporation with its principal place of business in Illinois was held to do business in Florida through its jobber, a Missouri corporation owned by the defendant corporation.¹⁰⁸ The court found that the defendant corporation was "indirectly doing business in Florida"¹⁰⁹ through its Missouri subsidiary whose "activities within this state and the degree of control which the appellant was capable of exercising over the operations and policies of the subsidiary,"¹¹⁰ brought the appellant corporation within the scope of paragraph (2) of section 47.16, the court distinguishing *Berkman v. Anne Lewis Shops*,¹¹¹ decided prior to the 1957 amendment of section 47.16(2).¹¹² Lack of such control was decisive in *Delray Beach Aviation Corp. v. Mooney Aircraft, Inc.*, based on a careful analysis of the Florida statutes and cases. In *Fawcett Publications, Inc. v. Rand*,¹¹³ the court interpreted section 47.16(2) as requiring "either (1) that the

104. *Id.* at 385.

105. 144 So.2d 512 (Fla. 3d Dist. 1962).

106. 146 So.2d 899 (Fla. 2d Dist. 1962). For a careful discussion of FLA. STAT. § 47.17 (1963), see *Delray Beach Aviation Corp. v. Mooney Aircraft, Inc.*, 217 F. Supp. 255 (W.D. Tex. 1963). *Cf. Jenkins v. Fawcett Pub., Inc.*, 204 F. Supp. 261 (N.D. Fla. 1962).

107. FLA. STAT. § 47.16 (1963).

108. *Deere & Co. v. Watts*, 148 So.2d 529 (Fla. 3d Dist. 1963).

109. *Id.* at 531.

110. *Ibid.*

111. 142 F. Supp. 417 (S.D.N.Y. 1956).

112. *Supra* note 107.

113. *Fawcett Pub. v. Rand*, 144 So.2d 512 (Fla. 3d Dist. 1962).

foreign corporation has some degree of control over the personal property referred to in § 47.16(2) . . . in the hands of the brokers, jobbers, wholesalers or distributors selling or distributing the personal property in this State, or (2) that the foreign corporation has some degree of control over the brokers, jobbers, wholesalers or distributors selling or distributing the personal property in this State."¹¹⁴

The second requirement, that of the cause of action arising out of the business activity conducted by defendant in the state, presents fewer difficulties. In *Zirin v. Charles Pfizer & Co.*,¹¹⁵ the supreme court affirmed dismissal on this ground, stating that "[t]his being a pivotal and basic point in determining the jurisdiction of the court to proceed,"¹¹⁶ the burden is on the plaintiff to show such connection. However, in *Amphicar Corp. of America v. Gregstad Distrib. Corp.*,¹¹⁷ the appellate court, finding that the record on appeal did not show "whether the breach of contract was a part of the activities of the defendant-corporation in this state," affirmed the lower court's dismissal of a motion to dismiss since "appellant has failed to demonstrate that the plaintiff did not carry its burden in the trial court."¹¹⁸

Finally, the question of proper service of process remains. In the situations under discussion service of process may not only be executed in accordance with section 47.16(1) of the Florida Statutes on the Secretary of State (section 47.30), or on the resident agent (section 47.16(1), in fine), or according to section 47.171, or even section 47.33, but also according to section 47.17 as amended in 1957—a provision expressly designated to be "cumulative to all existing laws."¹¹⁹ Some of these statutory provisions have been recently interpreted by courts. In *Zirin v. Charles Pfizer & Co.*, the supreme court interpreted section 47.171 as having the "purpose . . . to liberalize the scope of the operation of Section 47.17 and provide for service of process upon any agent of a foreign corporation doing business for it in this state."¹²⁰ The same provision was considered in *Compania Embotelladora Carty, S.A. v. Seven-Up Co.*,¹²¹ wherein the court held that service on the local corporate dealer in Miami as an alleged agent for the defendant was inadequate, since the local dealer supplied its own bottles and ingredients other than the extract, while the defendant company exercised "no control over the local bottler

114. *Id.* at 514.

115. *Zirin v. Charles Pfizer & Co.*, 128 So.2d 594 (Fla. 1961).

116. *Id.* at 600.

117. *Amphicar Corp. of America v. Gregstad Distrib. Corp.*, 138 So.2d 383 (Fla. 3d Dist. 1962).

118. *Id.* at 385.

119. FLA. STAT. § 47.17(7) (1963). In regard to service on the secretary of state under § 47.30, note *Conway v. Spence*, 119 So.2d 426 (Fla. 1960) and *Green Manor Constr. Co. v. Punta Gorda Ready Mix Concrete, Inc.*, 159 So.2d 255 (Fla. 1963).

120. *Zirin v. Charles Pfizer & Co.*, *supra* note 115, at 599.

121. 279 F.2d 175 (5th Cir. 1960).

except in the sense that unless the local bottler complies with certain standards . . . it may lose its franchise."¹²² Moreover, the Miami dealer had no power to bind the defendant, who profited only from the sales of extract while the dealer's sales were for its own benefit.

In this connection it seems helpful to point out that service of process on a foreign corporation under these particular statutes will only perfect jurisdiction if the corporation is subject to local courts on the basis of one or another activity defined by the statute as a contact justifying jurisdiction. The statutory reference to "transacting business" added, in some instances, to persons representing or connected with foreign corporations, cannot be interpreted as dispensing with the basic jurisdictional requirement as to a corporation's activity within the state. The statutory qualification is added only to identify the persons amenable for service of process on the corporation. Agents working for a foreign corporation may be served as agents for service on the foreign corporation only if they are "resident agents," under sections 47.16(1), 47.17(4), or, being nonresident agents, are present in the state on company business (sections 47.17 and 47.171). The business, of course, need not be business transacted in Florida nor must the cause of action in a particular case be connected with the agent's activity here. A further difficulty in interpreting these statutes results from the inconsistency between sections 47.17(5) and 47.171, the former allowing service on company agents only "if a foreign corporation shall have none of the foregoing officers or agents in this state," while the latter dispenses with this requirement. As distinguished from this lower echelon personnel, officers of a foreign corporation, again provided the corporation itself is subject to Florida jurisdiction by acting here in a manner defined by statute and the cause of action arises out of such activity, may be served effectively whenever present within the state, regardless of the motive of their presence here (section 47.17). To use an example, a president of a corporation may be served as its agent for service even when here on vacation, but this does not apply to a nonresident agent. Of course, it is possible that a corporate officer performs in Florida what the statute defines as "business or business venture." Then such activity may constitute the jurisdictional basis subjecting the foreign corporation to local courts (section 47.16), and the corporate officer may be served as agent for service of process (section 47.17), regardless of the nature of his presence in Florida.

These questions have constantly troubled our courts. Without a coherent interpretation of the controlling statutory law, piecemeal solutions have emerged. In *Amphicar Corp. of America v. Gregstad Distrib. Corp.*, service of process was had on the defendant corporation's president when he was in Florida on corporate business, a service considered by the court to be proper service "on the company's agent here," without

122. *Id.* at 176.

indicating whether the decision was based on section 47.17 or section 47.171. In contrast, in *H. Bell & Associates, Inc. v. Keasbey & Mattison Co.*,¹²³ the court was more articulate. The president of an Illinois family corporation was served in Florida, where he administered the affairs of the corporation, with an action arising out of a transaction which took place outside Florida. Nevertheless, the court upheld jurisdiction on the ground that the service of process was performed under section 47.17(1), misreading the *Zirin Enterprises* case as dispensing with the requirement that the cause of action accrue out of a transaction in this state.

Partnerships

In respect to service of process upon a partnership not engaged in business in Florida, the court in *Fidelity & Cas. Co., v. Homan*¹²⁴ relied on section 47.15, providing that service "on any one member of said firm shall be as valid as if served upon each individual member thereof," interpreting this statute as not distinguishing "whether the defendants or their partnership are residents or nonresidents."¹²⁵ Nevertheless, the court held that in the case where service was had on one partner in Florida, judgment may be enforced "against the individual assets of the partner who is served, although it does not bind the individual assets of any partner . . . not served,"¹²⁶ this in spite of the statutory provision contained in the same section that the plaintiff may "after service upon any one member as aforesaid, proceed to judgment and execution against them all." The court apparently felt that to rule otherwise would violate due process. It is doubtful, however, that this holding, restricting the effect of service under section 47.15 to the partner served personally within the state, was correct in view of the specific statutory provisions dealing with nonresident partnerships subjecting them to local jurisdiction only if they were engaged in a business or business venture in the state (section 47.16(1)). This doubt is strengthened by the fact that in 1959 an additional section 47.161 was enacted, providing, *inter alia*, for the service of process on "partnership[s] not residing or having their principal place of business in this state [which] shall engage in business in this state." Without considering that this provision, supplementing section 47.16, omitted to include expressly the engaging in a "business venture" as another basis for local jurisdiction, the new statute repeats the requirement of connection between the action and such activity ("arising out of such business"). In view of this it seems reasonable to conclude that foreign partnerships may be amenable to local jurisdiction only if they engage in business in the state and the action arises out of

123. *H. Bell & Assoc., Inc. v. Keasbey & Mattison Co.*, 140 So.2d 125 (Fla. 3d Dist. 1962).

124. 116 So.2d 444 (Fla. 2d Dist. 1959).

125. *Id.* at 447.

126. *Ibid.*

such activity, with service of process performed on the secretary of state under section 47.16(1) or under the newly enacted section 47.161.

Special provisions have been enacted in 1959 in regard to foreign limited partnerships (section 620.40). Service of process may be had on "any partner found in Florida," which service shall be valid "as if served on each individual member of the partnership." In the event that such service cannot be had, service may be "effected upon the secretary of state as agent of said limited partnership as provided in section 47.16." There is no statutory requirement added here as to the engaging in business within the state nor as to the connection of the action with such activities, even though the reference to section 47.16 may be interpreted as incorporating these general jurisdictional requirements. Until now these questions have received no judicial interpretation.

Insurance Companies

The Insurance Code¹²⁷ enacted in 1959 contains important jurisdictional provisions, mostly re-enacting prior laws. In regard to jurisdiction over insurance companies the code distinguishes between two classes of insurers: authorized insurers, domestic, foreign, and alien, the latter term meaning insurers incorporated in a foreign country; and unauthorized insurers without regard to their state of incorporation, *i.e.*, insurers not authorized to engage in insurance business in Florida in accordance with the code.¹²⁸

Authorized insurers are required to appoint the Commissioner of Insurance their agent for service of process,¹²⁹ to be served in the manner prescribed in section 624.0222 of the Florida Statutes. This method of establishing jurisdiction is declared to be exclusive and includes litigation of all claims against the insurer regardless of whether the claim arose within the state or not.¹³⁰ This question arose in *Confederation of Can. Life Ins. v. Vega y Arminan*.¹³¹ After carefully analyzing the statutory provision,¹³² the court found that the appointment by the foreign authorized insurer of the Commissioner of Insurance was not only an implied but an express appointment authorizing the commissioner "as attorney to receive service of all legal process issued against it in any civil

127. FLA. STAT. ch. 624 (1963).

128. FLA. STAT. § 624.0200 (1963). For due process requirements in regard to unauthorized insurers, see *McGee v. International Life Ins. Co.*, 355 U.S. 220 (1957).

129. FLA. STAT. § 624.0221 (1963).

130. FLA. STAT. § 624.0221(3) (1963).

131. 135 So.2d 867 (Fla. 3d Dist. 1962), *cert. denied*, 144 So.2d 805 (Fla. 1962).

132. The provision of FLA. STAT. § 47.33 (1963), that service of process "on corporations, associations, firms or individuals doing an insurance business in this state, may, in addition to methods of service provided in chapter 47, also be had" under § 624.0221 seems to contradict the latter provision. For constitutional standards see *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, 308 U.S. 165 (1939), and *Olberding v. Illinois Cent. R.R.*, 346 U.S. 338 (1953).

action or proceeding in this state." The court dismissed appellant's argument that the last part of the same paragraph providing that such authority "shall remain in effect as long as there is outstanding in this state any obligation or liability of the insurer resulting from its insurance transactions therein," limits the authority given the commissioner. The court interpreted this provision as limiting only the duration and not the extent of the commissioner's authority, thus attempting the reconciliation of two conflicting statutory provisions.¹³³

The same provision applies to fraternal benefit societies (section 632.501) and to reciprocal insurers (section 629.151), while section 626.0115 applies to nonresident general lines agents.

With respect to *unauthorized insurers* section 626.0505 lists the following acts, effected by mail or otherwise, as constituting sufficient contacts to bring these insurers within the reach of local courts, construing such contacts as appointment by the insurer of the Commissioner of Insurance as its agent for service of process: issuance or delivery of contracts of insurance to residents of Florida or to corporations authorized to do business there; solicitation of applications for such contracts; collection of premiums and other consideration for such contracts; or "any other transaction of insurance" service to be performed in accordance with section 626.0506. This jurisdiction applies, of course, only for actions by the insured or beneficiary "arising out of any such contract of insurance." However, the method of service on the Commissioner of Insurance is not exclusive since service may also be made on "any person within this state, who, in this state on behalf of such insurer" solicits business, or makes, issues or delivers contracts of insurance, or collects or receives premiums or other consideration for insurance (section 626.0506(2)), or in any other way provided for by any other statute (section 626.0506(4)). From the operation of these provisions are excepted insurers in actions arising out of contracts of insurance covering "reinsurance, ocean marine, commercial aircraft or railway insurance risks, or against legal liability arising out of the ownership, operation or maintenance of any property having permanent situs outside of this state, or against loss of or damage to any property having a permanent situs outside this state," unless such insurer "enters a general appearance or where such contract of insurance contains a provision designating the [insurance] commissioner . . . or a Florida resident agent" as agent for service, under section 626.0509(4).

Quasi-in-rem Jurisdiction

In action against nonresident defendants jurisdiction may also be established by attachment for jurisdictional purposes of defendant's

133. Compare *Stuyvesant Ins. Co. v. Nardelli*, 286 F.2d 600 (5th Cir. 1961), with *Kansas City Fire & Marine Ins. Co. v. Dan Arias Shrimp Co.*, 261 F.2d 490 (5th Cir. 1959).

assets within the jurisdiction, thus bringing them under the control of the court and authorizing it to adjudicate the case effective against such assets.¹³⁴ Recently this method of establishing jurisdiction was used in actions against foreign sovereigns. The Third District in *Harris & Co. Advertising v. Republic of Cuba*,¹³⁵ ruled that:

[a]lthough the action sounds in personam, the remedy is by attachment of personal property and attachment of debts owing the defendant by garnishment. Personal jurisdiction is required before a personal judgment may be entered against a defendant not a citizen of this State, but a judgment in rem may be entered in the absence of personal jurisdiction in actions on a debt due and owing, and personal judgments may be entered against garnishee over whom the court has acquired jurisdiction; provided always that the statutory requirements are first met and complied with. Personal jurisdiction of the defendant is not a condition precedent in order to maintain a quasi-in-rem action and prosecute it to final judgment.¹³⁶

This holding was further elaborated in *Berlanti Constr. Co. v. Republic of Cuba*,¹³⁷ in the sense that such judgments have

no binding effect on persons without the territorial jurisdiction of the court who have not been brought within its jurisdiction by personal or constructive service or a voluntary appearance. Nor does it affect any property, whether without or within the territorial jurisdiction of the court, other than that property brought within the court's jurisdiction by a valid attachment or seizure at or before the commencement of the action. . . . "[A] subsequent accidental, fraudulent or improper removal of the res from its [*i.e.*, the court's] control may render its judgment hollow, and as a practical matter, unenforceable, but it will not destroy jurisdiction or the validity of the judgment."¹³⁸

In rem Jurisdiction

According to *Hanson v. Denckla*,¹³⁹ the basis for jurisdiction in rem is the "presence of the subject property within the territorial jurisdiction of the forum State." While tangible property "poses no problem for the application of this rule, the situs of intangibles is often a matter of controversy."¹⁴⁰ In the *Hanson* case trust assets were located in Dela-

134. EHRENZWEIG 999. Carrington, *The Modern Utility of Quasi In Rem Jurisdiction*, 76 HARV. L. REV. 303 (1962); *State Court Jurisdiction*, 73 HARV. L. REV. 909, 948 (1960); Note, *Ownership, Possession, or Use of Property as a Basis of In Personam Jurisdiction*, 44 IOWA L. REV. 374 (1959).

135. 127 So.2d 687 (Fla. 3d Dist. 1961).

136. *Id.* at 693.

137. 145 So.2d 256 (Fla. 3d Dist. 1962).

138. *Id.* at 258.

139. 357 U.S. 235, 246 (1958).

140. *Ibid.*

ware; however, the Florida court¹⁴¹ held that the presence of this property was not essential to its jurisdiction, relying on jurisdiction over the probate and construction of its domiciliary's will under which the assets might pass. However, the Supreme Court declined to consider the "contingent rule of this Florida will" as sufficient for jurisdictional purposes on the ground that "Whatever the efficacy of a so-called '*in rem*' jurisdiction over assets admittedly passing under a local will, a State acquires no *in rem* jurisdiction to adjudicate the validity of *inter vivos* dispositions simply because its decision might augment an estate passing under a will probated in its court."¹⁴² Equally unavailing was held the settlor-decedent's domicile in Florida, since the maxim that personalty has its situs at the domicile of its owner is "a fiction of limited utility."¹⁴³ In general sense, the Court stated that "[t]he fact that the owner is or was domiciled within the forum State is not a sufficient affiliation with the property upon which to base jurisdiction *in rem*."¹⁴⁴

The difference between *in rem* and *in personam* jurisdiction was clearly demonstrated in *Matz v. O'Connell*.¹⁴⁵ Even though the controlling Florida statute¹⁴⁶ provided that the sale price at the foreclosure sale "shall be conclusively presumed" to be the value of the property sold, in an action on a promissory note for deficiency on a mortgage sale the court held such effect to be forthcoming only in cases where personal jurisdiction over the mortgagor was perfected. Since only constructive service was had against the nonresident mortgagor, the court, quoting extensively from *Pennoyer v. Neff*, held such proceedings to be "effectual and binding [only] . . . as a proceeding *in rem*, and as having no operation beyond the . . . property or some interest therein,"¹⁴⁷ without preventing the mortgagor from showing in a subsequent action that property was of greater value than the price it brought at the foreclosure sale.

Jurisdictional aspects of the Unclaimed Property Act¹⁴⁸ enacted in Florida in 1961 will be taken up later.

State Jurisdictional Rules in Federal Courts

The gradual infiltration by state law on the jurisdiction of federal courts has registered an important advance. The extended jurisdictional powers exercised by state judiciaries over nonresidents brought pressures on the jurisdictional powers vested in federal courts in cases without a

141. *Hanson v. Denckla*, 100 So.2d 378 (Fla. 1956).

142. *Hanson v. Denckla*, 357 U.S. 235, 248 (1958).

143. *Id.* at 249.

144. *Ibid.*

145. 155 So.2d 705 (Fla. 2d Dist. 1963).

146. FLA. STAT. § 702.02(5) (1963).

147. *Matz v. O'Connell*, *supra* note 135, at 708.

148. FLA. STAT. § 717 (1963).

nationwide service, particularly in diversity litigation, and resulted in a gradual though reluctant adoption by federal courts of jurisdictional rules relied upon by courts of the state where federal courts sit. As a result, the recent amendments of the Rules of Civil Procedure for the United States District Courts, prepared in 1961, and now in force, have attempted to eliminate serious discrepancies between rulings by federal courts in this matter as well as to adopt for federal courts some of the jurisdictional principles applicable until now only in state courts.

Briefly, service on the defendant may now also be had "in the manner prescribed by the law of the state in which the district court is held for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state."¹⁴⁹ The words "district court is held" replace "service is made." Furthermore, the amendment makes possible service of process upon parties non-inhabitant or found within the state¹⁵⁰ in accordance with a "statute or rule of court of the state in which the district court is held," including service or notice "by reason of the attachment or garnishment or similar seizure of his property located within the state," thus introducing quasi-in-rem jurisdiction into federal courts.¹⁵¹ Consequently, service of process may be had "beyond the territorial limits of that state" not only when "a statute of the United States so provides" but also "when authorized by these rules."¹⁵² At this time it can only be said that the full impact of these amendments cannot be foreseen.

It may be added that significant improvements have been introduced by the amendment with alternate provisions for service¹⁵³ as well as in regard to depositions in foreign countries.¹⁵⁴

Limitations Upon Jurisdiction

The rule that nonresidents entering another jurisdiction as witnesses or as suitors in judicial and similar proceedings are immune from service of process also prevails in Florida.¹⁵⁵ This rule is qualified to allow service in local proceedings "incidental to or correlated with the subject matter of the proceedings during attendance upon which the non-resident suitor

149. FED. R. CIV. P. 4(d)(7).

150. FED. R. CIV. P. 4(e). For a discussion see Kaplan, *Amendments of the Federal Rules of Civil Procedure, 1961-1963*, 77 HARV. L. REV. 601 (1964).

151. Currie, *Attachment and Garnishment in Federal Courts*, 59 MICH. L. REV. 337 (1961); Elliott & Green, *Quasi In Rem Jurisdiction in Federal Courts: The Proposed Amendments to Rule 4*, 48 IOWA L. REV. 300 (1963). See also 48 IOWA L. REV. 410.

152. FED. R. CIV. P. 4(f).

153. FED. R. CIV. P. 4(1).

154. FED. R. CIV. P. 28.

155. *Lawson v. Benson*, 136 So.2d 353 (Fla. 3d Dist. 1962); *Process: Immunity of Non-resident From Service While in Attendance at Litigation*, 5 U. FLA. L. REV. 210 (1952); Stimson, *Limitations on the Jurisdiction In Personam*, 10 HASTINGS L.J. 139 (1958).

was served"¹⁵⁶ Such correlation was found to exist in *L. P. Evans Motors v. Meyer*,¹⁵⁷ since the process "involved the same subject matter and grew out of the same transaction that was involved in the suit in which he was to testify."¹⁵⁸ But it was denied in *Lawson v. Benson*,¹⁵⁹ involving a suit for child custody and attorney's fees arising out of an earlier unsuccessful suit for similar relief. A nonresident defendant served when he was in the hearing room of the commissioner in connection with workmen's compensation proceedings against the corporation which employed plaintiff and of which the defendant was an officer, was held immune from service of process in an action brought against him personally, on the ground that "there is no such [close] identity of [the] parties, issues and prospective results."¹⁶⁰ Affirming,¹⁶¹ the supreme court took exception only to the part of the opinion related to the "prospective results," considering it "not necessary," and adding it "may serve to further complicate an already complex situation."¹⁶²

Another immunity from local jurisdiction is of statutory origin. The Uniform Reciprocal Enforcement of Support Law,¹⁶³ enacted in Florida, provides that "[p]articipation in any proceedings under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding."¹⁶⁴

It may be added that federal courts generally grant immunity from process in similar situations, not under the Erie rule but as federal law.¹⁶⁵

The doctrine of *forum non conveniens* is part of Florida law. It is an equitable doctrine exercised by a court to prevent the imposition upon its jurisdiction of the trial of causes of action when the court determines that for the convenience of the litigants and witnesses, and in the interest of justice, the action should be instituted in another forum. This doctrine presupposes at least two forums in which the defendant is amenable to process and furnishes criteria for a choice between such forums.¹⁶⁶

However, the doctrine applies only on the interstate and international level and is out of place where change of venue in state courts is involved.¹⁶⁷ The use of the doctrine is discretionary with the court. Un-

156. *State ex rel. Ivey v. Circuit Court of Eleventh Judicial Circuit*, 51 So.2d 792, 793 (Fla. 1951).

157. 119 So.2d 301 (Fla. 3d Dist. 1960).

158. *Id.* at 303.

159. 136 So.2d 353 (Fla. 3d Dist. 1962).

160. *Lienard v. DeWitt*, 143 So.2d 42, 44 (Fla. 2d Dist. 1962).

161. *Lienard v. DeWitt*, 153 So.2d 302 (Fla. 1963).

162. *Id.* at 303. *Cf. Caugali v. Caugali*, 15 Fla. Supp. 34 (1959).

163. FLA. STAT. ch. 88 (1963).

164. FLA. STAT. § 88.291; *Blois v. Blois*, 138 So.2d 373 (Fla. 1st Dist. 1962).

165. *Marlowe v. Baird*, 301 F.2d 169 (6th Cir. 1962).

166. *Greyhound Corp. v. Rosart*, 124 So.2d 708, 711 (Fla. 3d Dist. 1960). See also EHRENZWEIG 120.

167. *Ibid.*; *Atlantic Coastline R.R. v. Ganey*, 125 So.2d 576 (Fla. 3d Dist. 1961); Gold-

less "clear abuse of discretion in the part of the trial judge" is shown, the trial court's ruling will be allowed to stand.¹⁶⁸

Sovereign immunity as well as diplomatic and consular privileges are discussed in surveys of international law.

Foreign Judgments

*Interstate situations.*¹⁶⁹ In general terms the rule followed by Florida courts was restated well in *Milligan v. Wilson*.¹⁷⁰

An action may be predicated on a foreign judgment under the authority of the full faith and credit clause of the Federal Constitution. . . . Such an action is considered as a new and independent action and is not regarded as the same cause [of action] as the original action on which the judgment was recovered. . . . Where an action is instituted in one state on a judgment recovered in another, the question of the jurisdiction of the court rendering the judgment over the subject matter and over the person sued is open to challenge and adjudication in the latter court. However, the validity of the judgment is generally determined by the law of the . . . [rendering state].¹⁷¹

To plead properly such a foreign judgment it is sufficient to "aver the judgment without setting forth matter showing jurisdiction of that court to render it,"¹⁷² while lack of jurisdiction of the foreign court is a "de-

stein v. Wometco Enterprises, Inc., 139 So.2d 892 (Fla. 3d Dist. 1962); Note, 15 U. MIAMI L. REV. 420 (1961). Cf. Menendez Rodriguez v. Pan American Life Ins. Co., 311 F.2d 429 (5th Cir. 1962).

168. Southern Ry. v. Bowling, 129 So.2d 433, 434 (Fla. 3d Dist. 1961). Comment, *The Problem of the Inconvenient Forum*, 15 U. MIAMI L. REV. 273 (1961). The *forum non conveniens* doctrine in relation to Latin American countries: Argentina: James H. Rhoades & Co. v. Chaudovsky, 137 N.L.L. 459, 60 A.2d 623 (1948); Brazil: Latineis v. S.A. Industrias Reunidas F. Matarazzo, 91 F. Supp. 469 (S.D.N.Y. 1950); Columbia: Swift & Co. Packers v. Compania Columbiana del Caribe, S.A., 339 U.S. 684 (1950); Mexico: Burt v. Isthmus Development Co., 218 F.2d 353 (5th Cir. 1955), *cert. denied*, 349 U.S. 922 (1955), Root v. Superior Court, 25 Cal. Rptr. 784 (1962); Venezuela: Reich v. National Union Fire Ins. Co., 114 F. Supp. 202 (N.D. Tex. 1953).

169. EHRENZWEIG 161; LEFLAR 129; Reese, *Full Faith and Credit to Foreign Equity Decrees*, 42 IOWA L. REV. 183 (1957); Comment, *Full Faith and Credit to Foreign Injunctions*, 26 U. CHI. L. REV. 633 (1959). Speaking of a judgment rendered by a federal court in Florida, another federal court held that the Erie doctrine

requires conformity to the substantive practices of the state wherein lies the Federal Court. Hence, the judgment . . . is essentially a decree of the State of Florida. It would therefore appear that pleading the Florida judgment ceases to be a matter solely of res judicata but also one of enforceability and effect to be accorded a foreign judgment. Newport News Shipbuilding & Drydock Co. v. Seaboard Maritime Corp., 174 F. Supp. 466, 468 (D. Del. 1958).

170. Milligan v. Wilson, 107 So.2d 773 (Fla. 2d Dist. 1958).

171. *Id.* at 774.

172. *Id.* at 775. Futterman v. Gerber, 109 So.2d 575 (Fla. 3d Dist. 1959). The effect of a Florida judgment pleaded in a federal court in New York as collateral estoppel was at issue in Pallen v. Allied Van Lines, 233 F. Supp. 394 (S.D.N.Y. 1963). Without referring to the full faith and credit clause the court relied on the Erie trilogy [*Erie R.R. v. Tompkins*, 304 U.S. 64 (1938); *Guarantee Trust Co. of N.Y. v. York*, 327 U.S. 99 (1945); and *Byrd v.*

fense and should be presented and invoked through an answer." However, if the plaintiff alleges such jurisdictional facts, the "sufficiency of allegations on this jurisdictional phase may be tested by a motion to dismiss."^{172a}

International situations. No cases involving recognition of judgments rendered abroad have been reported, except a few cases involving Mexican divorces. They follow well established rules.¹⁷³

Arbitration. Recognition of foreign arbitral awards is regulated by statute. Only one reported case touched upon the question.¹⁷⁴

Erie-Klaxon Doctrine

In the area of the *Erie-Klaxon* doctrine¹⁷⁵ two decisions by the Supreme Court may be noted: one involving the impact of the doctrine on relations between judge and the jury, emphasizing the independence of the federal judiciary,¹⁷⁶ and the other, slightly touching upon the determina-

Blue Ridge Rural Elec. Co-op., Inc., 356 U.S. 525 (1958)], and after finding that there is no "strong federal policy under the facts of this case to mollify the result seemingly compelled by Guaranty Trust," 223 F. Supp. 394, 395, referred to New York choice of law according to *Klaxon Co. v. Stentor Mfg. Co.*, 313 U.S. 487 (1941). Since the New York choice-of-law rule determines the effect of the *res judicata* by the law of the state where the judgment was rendered, in the absence of "compelling circumstances requiring the application of New York law," the federal court finding Florida law regarding a passenger as not barred from suing by an adverse judgment obtained in a prior suit by another passenger. *Pallen v. Allied Van Lines*, *supra* at 396.

172a. Relying on a Florida decree granting divorced wife alimony also after husband's death, the widow brought an action in West Virginia against the deceased's estate for past due installments. The West Virginia supreme court, in *Aldrich v. Aldrich*, 127 S.E.2d 358 (W. Va. 1962), affirmed dismissal on ground of lack of jurisdiction in the Florida divorce court to award alimony beyond the husband's life, interpreting statutory as well as case law as not allowing such grant except on the basis of an express agreement between spouses and holding such order beyond the jurisdiction of a Florida court. Consequently, it held the alimony decree as *ultra vires* of Florida and not entitled to recognition under the full faith and credit clause. In a forceful dissent the presiding judge considered the power to award alimony as inherent in the equitable powers of a court and the question as to the duration of such alimony a question of substantive law subject to the rule of *res judicata* and closed to re-examination by the courts of a sister-state. *Id.* at 394. The Supreme Court granted certiorari, 84 Sup. Ct. 184, and certified to the Florida supreme court a number of questions on Florida law. 84 Sup. Ct. 305 (1963).

173. Reese, *The Status in This Country of Judgments Rendered Abroad*, 50 COLUM. L. REV. 783 (1950); Peterson, *Res Judicata and Foreign Country Judgments*, 24 OHIO ST. L.J. 291 (1963); Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 U.C.L.A.L. REV. 44 (1962), see also *The Enforcement of Foreign Judgments in American Courts*, MILITARY L. REV. 1 (Jan. 1963).

174. FLA. STAT. § 57.27 (1963). *Motion Pictures v. Gulfport Broadcasting Co.*, 13 Fla. Supp. 175 (1958).

175. For a helpful survey, see WRIGHT, *HANDBOOK OF THE FEDERAL COURTS* 187 (1963). See also Kurland, *The Erie Doctrine*, 67 YALE L.J. 187 (1957); Hill, *The Erie Doctrine and the Constitution*, 53 N.W.U.L. REV. 427 (1958); Storke, *Conflicts Erie Cases*, 32 ROCKY MT. L. REV. 20 (1959); Boner, *Erie v. Tompkins: A Study in Judicial Precedent*, 40 TEXAS L. REV. 509 (1962); Vestal, *Erie R.R. v. Tompkins: A Projection*, 48 IOWA L. REV. 248 (1963); Sedler, *The Erie Outcome Test, as a Guide to Substance and Procedure in the Conflict of Laws*, 37 N.Y.U.L. REV. 813 (1962).

176. *Byrd v. Blue Ridge Rural Elec. Co-op., Inc.*, 356 U.S. 525 (1958). For examples

tion question of sufficiency of evidence under state or federal law.¹⁷⁷ Although the latter question was held not to be properly before the court, the dissent warned of "fabulous inflation" which would turn conventional procedural motions into constitutional issues if "contested questions of evidentiary weight be . . . transformed by insisting . . . that the Constitution was violated."¹⁷⁸

The question of applicability in federal courts of a Florida statute involving inadmissibility of evidence was presented squarely in *Monarch Ins. Co. of Ohio v. Spach*.¹⁷⁹ Relying on section 92.33 of the Florida Statutes, providing that "no written statement by an injured person shall be admissible in evidence . . . unless . . . a true copy thereof was furnished" to such person, plaintiff successfully objected to the introduction in evidence of a statement of which no copy was furnished to him. On appeal the court, declining to follow the "talismanic label" of procedural versus substantive, as well as the "substantive uniformity in decisions . . . concerning state created rights," preferred to follow the trend stressing the independence of the federal judiciary and expanded it to include rules of evidence. Interpreting Rule 43(a) in this spirit, it reached the conclusion that the inadmissibility rule contained in section 92.33 is not binding on a federal court sitting in diversity cases.

Numerous cases have been decided in routine situations. Among them the following categories are typical: Insurance policy,¹⁸⁰ construction of deeds,¹⁸¹ statute of limitations,¹⁸² invasion of privacy by undue harassment,¹⁸³ and fair trade practices.¹⁸⁴

Whenever Florida law is to be ascertained, this may also be done according to section 25.031¹⁸⁵ by certifying such questions to the Florida Supreme Court.¹⁸⁶ However, the exact effect of such opinions is not clear, as indicated in a recent decision by a federal appellate court, pointing out that such an opinion may have only an advisory character and is

of the same trend, see *Jaftex Corp. v. Randolph Mills, Inc.*, 282 F.2d 508 (2d Cir. 1960), now overruled by *Arrowsmith v. United Press Int'l*, 320 F.2d 219 (2d Cir. 1963), and *Monarch Inc. v. Spach*, 281 F.2d 401 (5th Cir. 1960). See also Whicher, *The Erie Doctrine and the Seventh Amendment: A Suggested Resolution of Their Conflict*, 37 TEXAS L. REV. 549 (1959); Smith, *Blue Ridge and Beyond: A Byrd's-Eye View of Federalism in Diversity Litigation*, 36 TUL. L. REV. 443 (1962).

177. *Dick v. New York Life Ins. Co.*, 359 U.S. 437 (1959).

178. *Id.* at 455.

179. 281 F.2d 401 (5th Cir. 1960); Note, 15 U. MIAMI L. REV. 444 (1961).

180. *Williams v. Mutual of Omaha*, 297 F.2d 876 (4th Cir. 1962); *Peddy v. Pacific Employees Inc. Co.*, 246 F.2d 306 (5th Cir. 1957).

181. *Winchester v. Wells*, 265 F.2d 405 (5th Cir. 1959).

182. *J. M. Blythe Motor Lines Corp. v. Blalock*, 310 F.2d 77 (5th Cir. 1962).

183. *Santiesteban v. Goodyear Tire & Rubber Co.*, 306 F.2d 9 (5th Cir. 1962).

184. *Sunbeam Corp. v. Masters of Miami*, 225 F.2d 191 (5th Cir. 1955).

185. Implemented by FLA. R. APP. P. 4.61. Kaplan, *op. cit. supra* note 25. For a recent discussion of the abstention doctrine, see *England v. Louisiana State Board of Medical Examiners*, 84 S. Ct. 461 (1964).

186. Kaplan, *op. cit. supra* note 25.

"entitled, like dicta, to be given persuasive but not binding effect as a precedent, or . . . is to be credited under the Erie-Tompkins doctrine and the rule of stare decisis as though it were the ratio decidendi of a decision made in adversary litigation before the court."¹⁸⁷ Without deciding this issue, the court, considering itself "only another court of the State" in the sense of *Guaranty Trust Co. v. York*,¹⁸⁸ followed the opinion in regard to Florida law, but declined to be bound in regard to the "law of the United States and particularly with respect to constitutional issues."¹⁸⁹

CHOICE-OF-LAW RULES

Torts

The *lex loci delicti* rule obtains in Florida in regard to actions arising out of torts¹⁹⁰ subject to the public policy of the forum, the full faith and credit clause notwithstanding.¹⁹¹

The *Wrongful Death Act*¹⁹² was involved in a litigation arising out of an alleged tort which occurred on board a vessel in Florida territorial waters.¹⁹³ After disposing of the issue of assignability of such claims, the court held that the Florida act controls such maritime torts and that Florida courts have jurisdiction. The related question whether the unlimited recovery under this act is available also to plaintiffs suing under a *lex loci delicti* granting only limited recovery, as was the case in the *Kilberg* litigation,¹⁹⁴ is presently before Florida courts.¹⁹⁵

187. *Sun Ins. Office Ltd. v. Clay*, 319 F.2d 505, 509 (5th Cir. 1963).

188. 326 U.S. 99 (1945).

189. 319 F.2d 305, 309 (5th Cir. 1963).

190. *Astor Elec. Serv. v. Cabrera*, 62 So.2d 759 (Fla. 1953); see discussion *infra* note 210. See also EHRENZWEIG 541; LEFLAR 207.

191. *Sunbeam Corp. v. Masters of Miami*, 225 F.2d 191, 198 (5th Cir. 1955); EHRENZWEIG 541; LEFLAR 207; WEINTRAUB, *A Method for Solving Conflict Problems: Torts*, 48 CORNELL L.Q. 215 (1963).

192. FLA. STAT. ch. 768 (1963); Silver, *Death Damages and Conflicts of Laws*, 10 CLEV.-MAR. L. REV. 461 (1961); Alpert, *The Florida Death Acts*, 10 U. FLA. L. REV. 153 (1957). See also *Citrola v. Eastern Air Lines, Inc.*, 264 F.2d 815 (2d Cir. 1959) (Florida Wrongful Death Act applied as part of the *lex loci delicti*, while the *res ipsa loquitur* doctrine was determined by the *lex fori*, i.e., New York).

193. *United States Fid. & Guar. Co. v. Reed Constr. Corp.*, 149 So.2d 578 (Fla. 3d Dist. 1963).

194. *Kilberg v. Northeast Airlines, Inc.*, 9 N.Y.2d 34, 172 N.E.2d 526 (1961); *Pearson v. Northeast Airlines, Inc.*, 307 F.2d 131 (2d Cir. 1962) and 309 F.2d 553 (2d Cir. 1962), cert. denied, 372 U.S. 912 (1963), discussed in Comment, 17 U. MIAMI L. REV. 391 (1963); Currie, *Conflict, Crisis and Confusion in New York*, 1963 DUKE L.J. 1; Keefe, *Piercing Pearson*, 29 J. AM. L.L. COMM. 95 (1963). Another attack on the traditional rule of the *lex loci delicti* has been undertaken by New York courts in *Babcock v. Jackson*, 112 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963), extending the center-of-gravity doctrine into the conflict law of torts. See comments in a symposium in 63 COLUM. L. REV. 1212 (1963).

195. No cases involving conflicts situations under the Survival of Action statute, FLA. STAT. § 45.11 (1963), have been reported. See also Alpert, *The Florida Death Acts*, 10 U. FLA. L. REV. 153 (1957).

Vicarious liability was at issue in a litigation arising out of a car accident in Georgia. The action against the driver and the car-renting defendant was held barred under the Florida borrowing statute.¹⁹⁶ To save the claim plaintiff attempted to sue in contract to take advantage of the longer period of limitation. However, the appellate court agreed with the judge below, who characterized the action as one in tort, which was consequently barred under Georgia law applicable in Florida.¹⁹⁷ Plaintiff's further attempt to make the Florida dangerous instrumentality doctrine follow the car into Georgia, relying on *Levy v. Daniels' U-Drive Auto Renting Co., Inc.*,¹⁹⁸ was also futile, the court pointing out that Florida has no statute comparable to the one relied upon in that case.

The *Heart Balm Statute*, enacted in 1945 and containing express conflicts provisions, some of them claiming extraterritorial effect, has not been judicially interpreted recently.¹⁹⁹ The *Guest Statute*²⁰⁰ was involved in *Miami Beach First Nat'l Bank v. Fuchs*,²⁰¹ the court holding the statute of the locus delicti (*i.e.*, Georgia, where the accident occurred) controlling. Coverage provisions of the *Workmen's Compensation Act*²⁰² have been interpreted in *Peterson v. Ray-Hof Agencies, Inc.*,²⁰³ in regard to the requirement that "the contract of employment was made in this state." Relying on the general rule that a contract is deemed to have been made "where the last act necessary to make a binding agreement takes place," citing section 323 of the *Restatement of Conflicts of Laws*, and finding that the employee began his performance by leaving Miami for Georgia in accordance with the job offer, the First District reinstated an order by a deputy commissioner that the agency had jurisdiction. However, the supreme court²⁰⁴ quashed, holding on the authority of *Webster Lumber Co. v. Lincoln*²⁰⁵ and *Peters v. E. O. Painter Fertilizer Co.*²⁰⁶ that the place of making was Georgia.

In a few cases involving the *Federal Tort Claims Act*, particularly 28 U.S.C. section 1346(b) and 2674, federal courts applied Florida law. For example, in *Kunkler v. United States*,²⁰⁷ where plaintiff relied on

196. *Heilmann v. Wilson*, 129 So.2d 725 (Fla. 1st Dist. 1961), *cert. denied*, 135 So.2d 741 (Fla. 1961).

197. FLA. STAT. § 95.10 (1963); *Heilmann v. Hertz Corp.*, 306 F.2d 100 (5th Cir. 1962).

198. 108 Conn. 333, 143 Atl. 163 (1928).

199. FLA. STAT. § 771.01-.04 (1963); *Kolkey v. Grossinger*, 195 F.2d 525 (5th Cir. 1952); *Liappas v. Augoustis*, 47 So.2d 582 (Fla. 1950); *Rotwein v. Gersten*, 36 So.2d 419 (Fla. 1948).

200. FLA. STAT. § 320.59 (1963). *Tipton, Florida's Automobile Guest Statute*, 11 U. FLA. L. REV. 287 (1958).

201. *Miami Beach First Nat'l Bank v. Fuchs*, 137 So.2d 846 (Fla. 3d Dist. 1962).

202. FLA. STAT. § 440.09 (1963). *Urda v. Pan Am. World Airways, Inc.*, 211 F.2d 713 (5th Cir. 1954); *MacDonald, Flowers and Noah: New Developments in Conflicting Remedies Afforded Amphibious Employees*, 18 U. FLA. L. REV. 83 (1960).

203. 117 So.2d 497 (Fla. 1st Dist. 1960).

204. *Ray-Hof Agencies, Inc. v. Peterson*, 123 So.2d 251 (Fla. 1960).

205. 94 Fla. 1097, 115 So. 498 (1927).

206. 73 Fla. 1001, 75 So. 749 (1917).

207. 187 F. Supp. 816 (N.D. Fla. 1960); *aff'd*, 295 F.2d 370 (5th Cir. 1960).

the rule establishing liability of the master for torts committed by his servants in the scope of his employment, the court held that this rule does not apply to a serviceman leaving Mississippi and driving his car in Florida one day before he was required to report for duty in Alabama.²⁰⁸

Conflict aspects of interspousal liability may involve complicated questions, since the applicable law may be determined by the *lex loci delicti*, by the *lex fori*, or by the law of the marital domicile. Applying Florida law as the *lex loci delicti*, a federal court sitting in South Carolina construed, against the weight of authority,²⁰⁹ Florida law as permitting interspousal tort actions.²¹⁰

The *Federal Death on High Seas Act*²¹¹ as well as conflicts aspects of liability arising out of international flights is discussed elsewhere.²¹² It may also be added that no statutes have been enacted in Florida regarding direct action by the insured or establishing dram-shop liability.²¹³

Contracts

Comparatively few recent Florida cases have dealt with situations involving conflicts aspects of contracts.²¹⁴ The decisive place of making

208. Note, 12 U. MIAMI L. REV. 247 (1958). See also *Lundy v. United States*, 78 F. Supp. 354 (N.D. Fla. 1948). The Act was amended by 28 U.S.C. § 2414, 75 Stat. 415 (1961). Note, *Choice of Law Under the Federal Tort Claims Act*, 45 Iowa L. REV. 125 (1959). For a recent interpretation of conflicts rule see *Richards v. United States*, 369 U.S. 1 (1962).

209. Comment, *Marital Disability in Personal Tort Actions*, 14 U. MIAMI L. REV. 99 (1954).

210. *Alexander v. Alexander*, 140 F. Supp. 925 (W.D.S.C. 1956). No conflicts problems were raised in the trial court, *Alexander v. Alexander*, 131 F. Supp. 605 (W.D.S.C. 1955), or on appeal, 229 F.2d 111 (4th Cir. 1956). Only when the case again reached the trial court was the issue considered without an ascertainment of the applicable conflicts rule under *Erie-Klaxon*.

In *Astor Elec. Serv. v. Cabrera*, 62 So.2d 759 (Fla. 1952), the issue concerned the husband's alleged contributory negligence imputable to the wife in accordance with their *lex domicilii*, i.e., Puerto Rico with its community property system. The *lex loci delicti* was Florida. Without going into a thorough analysis of the problem, the supreme court held that "to constitute joint agency or ownership in an automobile, there must be a showing of joint control or responsibility for its operation." The court declined to engraft "any aspect of community property on the law of Florida by interpretation, since the legislature has not seen fit to do so. . . ." and criticized

a relic of a social order different in every fundamental aspect from that which prompted the Common Law, much of which has been softened or abrogated by equity and legislative fiat. Change rather than rigidity must be recognized as the natural course of . . . law. One of the most important functions of the court is to direct its changes so as to preserve our moral and spiritual heritage. It is the only method we have found to make our conclusions square with justice.

On marital immunity generally see *Hancock, The Rise and Fall of Buckeye v. Buckeye, 1931-1959: Marital Immunity for Torts in Conflict of Laws*, 29 U. CHI. L. REV. 237 (1962). On interspousal liability: *Shaw v. Lee*, 258 N.C. 609, 129 S.E.2d 288 (1963).

211. 46 U.S.C. § 761-67 (1961).

212. *United States v. DeVane*, 306 F.2d 182 (5th Cir. 1962); *Prominski, Wrongful Death in Aviation: State, Federal, and Warsaw*, 15 U. MIAMI L. REV. 59 (1960).

213. *Davis v. Shiappacosse*, 155 So.2d 365 (Fla. 1963). For tort cases of potential interest, see *Bartie v. United States*, 216 F. Supp. 10 (W.D. La. 1963) (no governmental liability in weather reports concerning hurricane); *McGuire v. City of New York*, 192 F. Supp. 866 (S.D.N.Y. 1961) (injury to bather on public beach).

214. EHRENZWEIG 453; LELFAR 229. See also Reese, *Contracts and the Restatement of*

was determined in *Ray-Hof Agencies, Inc.*,²¹⁵ already mentioned. In *Corella v. McCormick Shipping Corp.*,²¹⁶ the multi-contact or center-of-gravity method, used in *Lauritzen v. Larsen*,²¹⁷ guided the court to find that the Jones Act does not apply in an action by a Cuban national hired in Miami by the defendant Panamanian corporation under the agreed upon Panamanian law and injured "in foreign waters, near Jamaica." Relying both on Florida and New York law, the court denied punitive damages to an air passenger from New York to Miami for having been put off to a later flight.²¹⁸

A considerable number of reported cases involved interstate as well as international insurance situations. Among the cases falling into the first group, the prolonged litigation in *Sun Ins. Office Ltd. v. Clay* is discussed elsewhere in this survey.²¹⁹ The recovery of punitive damages granted in a suit against the insured in a subsequent suit by the insured joined by the injured party against the insurer, was litigated in *Northwestern Nat'l Cas. Co. v. McNulty*.²²⁰ Dispensing with the preliminary *Erie-Klaxon* question, the appellate court took the position that liabilities between the insured tortfeasor and the injured party are governed by the *lex loci delicti*, i.e., Florida, while "the rights and obligations under the insurance contract between . . . [the insured tortfeasor] and the appellant [insurer] are governed by the law of Virginia, where the contract was made and issued, where . . . [the insured tortfeasor] resides, and where, at the time it was made the contract might be expected to have its more important effects."²²¹ Since this is an action on the contract, the court continued, "Virginia law governs the question whether an insurance policy against punitive damages contravenes public policy."²²² Virginia law happened to be the same as Florida's, namely that insurance against punitive damages would violate public policy. Consequently, the court denied recovery of the part of the demand which was to cover punitive damages granted to the injured party in his action against the tortfeasor.

It may be added that numerous conflict rules contained in the *Uniform Commercial Code* are now adopted in half of the states.²²³

Conflict of Laws, 9 INT'L & COMP. L.Q. 531 (1960); Leflar, *Conflict of Laws, Contracts and the New Restatement*, 15 ARK. L. REV. 163 (1961); Weintraub, *The Contracts Proposals of the Second Restatement of Conflict of Laws—A Critique*, 46 IOWA L. REV. 713 (1961). Conflict aspects of the Florida Uniform Sale of Securities Act (Fla. Stat. § 517) are discussed in Reckson, *A Comparison of the Florida and Uniform Securities Acts*, 16 U. MIAMI L. REV. 351, 386 (1962).

215. *Ray-Hof Agencies, Inc. v. Peterson*, *supra* note 204.

216. *Corrella v. McCormick Shipping Corp.*, 101 So.2d 903 (Fla. 3d Dist. 1958).

217. *Lauritzen v. Larsen*, 345 U.S. 571 (1953).

218. *Feinstein v. Northeast Airlines, Inc.*, 150 So.2d 487 (Fla. 3d Dist. 1963).

219. See discussion in text accompanying notes 27-37 *supra*.

220. 307 F.2d 432 (5th Cir. 1962).

221. *Id.* at 434.

222. *Ibid.*

223. *Davis v. Ebsco Indust., Inc.*, 150 So.2d 460 (Fla. 3d Dist. 1963).

A contract not to compete entered into in New York and held to be valid there was nevertheless held unenforceable in Florida in view of public policy as declared in section 542.12(2), limiting the agreed upon restraint beyond what the Florida statute terms "reasonably limited time and area."²²⁴

Another case in this area arose in *Century Indem. Co. v. United States Cas. Co.*²²⁵ In an action between two insurers for contribution, involving an insurance policy issued in Illinois and an accident occurring in Florida, the court, again dispensing with the *Erie-Klaxon* rule, held that the question of interpreting the "regular-use" clause in the policy is to be interpreted in accordance with Illinois law "if Illinois law differs from that of the former," *i.e.*, Florida. Finding the law of Illinois in accord with that of Florida, the court abstained from further pursuing the conflict aspects of the case.

Cases involving international insurance situations are discussed in the present survey of international law.

Negotiable Instruments

In 1961 the Florida legislature amended section 676.02, containing the definition of inland and foreign bills of exchange. While the original version of the article defined inland bills as those "both drawn and payable within this state," the amended version defined them as those which are, or on their face purport to be "both drawn and payable within the United States," thus including the states, territories, dependencies and possessions of the United States, the District of Columbia, and Puerto Rico."²²⁶ All other bills are foreign bills and must be protested.²²⁷

Property

Real property. The conflict rule regarding interests in real property,²²⁸ as recently restated in Florida, provides that:

one must look to the laws of the state where it [land] is situated for the rules which govern its descent, alienation, and transfer and for the construction, validity, and effect of conveyances of the property. It is the same law to which one must look for the rules governing the capacity of the parties to such contracts or conveyances and their rights under them. No sovereign state, without express legislative sanction, is presumed to surrender to owners of immovable property within its limits the

224. 306 F.2d 956 (5th Cir. 1962); EHRENZWEIG 511.

225. Nordstrom, *Choice of Law and the Uniform Commercial Code*, 24 OHIO ST. L.J. 364 (1963).

226. FLA. STAT. § 676.02 (1963).

227. FLA. STAT. § 676.19 (1963).

228. EHRENZWEIG 607; LEFLAR 270. Comment, *Choice of Law Governing Land Transactions: The Contract Conveyance Dichotomy*, 111 U. PA. L. REV. 482 (1963).

power to encumber or charge the title of it in any manner other than that prescribed by its law.²²⁹

In this case, the particular question was which law controlled the effect of an alleged relinquishment, on the part of the prospective wife, of her dower rights contained in an antenuptial agreement validly executed in Quebec in 1931, in regard to real property in Florida acquired by the husband in 1955, after the parties had been separated *a mensa et thoro* in Canada in 1945. The trial judge entered a declaratory judgment in favor of the husband, only to be reversed on appeal. The appellate court considered as possible contacts the marital domicile of the parties and the place of making of the agreement—both Canada—and the situs of the property in Florida. Starting from the premise that the law of making is “obscured under a plethora of conflicting judicial interpretations,” and may include the law of the place of performance or the “place intended by the parties,” apparently meaning the law chosen by parties, the court found authorities to be largely in accord as to the law governing instruments purporting to “convey title or an interest in real property,” namely the law of the situs. Distinguishing between contracts directly involving interests in land from those only indirectly affecting such interests, and classifying the no-dower clause in the antenuptial agreement as belonging to the first group, the court held that dower interests in Florida land may be relinquished only in accordance with the Florida statute concerning conveyances of interests in real estate,²³⁰ requiring two subscribing witnesses. Since the agreement in this case, even though complying with the notarial form under the *lex loci actus*, lacked the two attesting witnesses required under Florida law, the alleged relinquishment of defendant’s dower rights was held ineffective as to land situated in Florida.²³¹

Movable Property. Most conflict cases regarding movable property²³² involve motor vehicles. They

constitute a special class of personalty which, because of considerations too numerous to recite, has had thrown up around transactions for the sale thereof and transfer of title thereto a distinct body of case and statutory law differing in many important respects from that generally governing sales of other types of personalty. And although it varies to some extent in the

229. *Kyle v. Kyle*, 128 So.2d 427, 430 (Fla. 2d Dist. 1961), *cert. discharged*, 139 So.2d 885 (Fla. 1962).

230. FLA. STAT. § 689.01 (1963).

231. Under Florida law notaries public may take renunciations and relinquishment of dower. FLA. STAT. § 117.04 (1963); *compare*, FLA. STAT. § 693.04 (1963).

232. EHRENZWEIG 627; LEFLAR 286. The Florida Factor’s Lien Act enacted in 1959 (FLA. STAT. §§ 85.29-.35) contains no conflict rules; the same applies to the Trust Receipt Act (FLA. STAT. § 673), enacted in 1951. For recent adjudications in other states, see *Chattanooga Discount Corp. v. West*, 219 F. Supp. 140 (N.D. Ala. 1963), and *United States v. Menier Hardware No. 1, Inc.*, 219 F. Supp. 448 (W.D. Tex. 1963).

several states, the underlying trend and objective is to protect the interest and title of the rightful owner against fraudulent sales of such property, to establish a uniform method of transfer, and to insure, as far as practicable, the validity of title and possessory rights of the ultimate owner. To accomplish this, certain duties and limitations have been placed on the purchaser as well as the seller, and courts generally require strict compliance therewith.²³³

However, conflict aspects of enforcing such general policies remain still, in most situations, a matter of common law.²³⁴ The *lex loci actus* rather than the *lex situs* is applied in determining the effect of foreign created security interests²³⁵ in motor cars. This rule may be affected by a statute requiring recording or certificates and that law's provisions concerning its own applicability. In any case, Florida has adopted the general rule that interests in motor cars properly created in other states will be recognized here on the basis of comity. As restated in *Capital Lincoln-Mercury v. General Motors Acceptance Corp.*,²³⁶ and again in *Strickland v. Motors Acceptance, Inc.*,²³⁷ liens "validly created in other states [are given] priority over subsequent holders of such encumbered vehicles under the law of this jurisdiction," unless Florida has an express statute to the contrary.²³⁸ And vice versa, if the underlying transaction is not valid under the law of the state where it took place, it will not be given effect here.²³⁹ In some of the recent cases the interpretation of the pertinent statute, section 319.27(3), was involved.²⁴⁰

In regard to chattel mortgage agreements it should be pointed out that difficulties arising from different filing and recording statutes in force in the several states as well as various counties have been, to some extent, eliminated by a recent (1958) federal statute.²⁴¹ This law provides for a nation-wide recognition of security interests, including conditional sales, mortgages, equipment trusts and other liens or title retention contracts or leases, created in motor vehicles as defined,²⁴² owned

233. *Trumbull Chevrolet Sales Co. v. Seawright*, 134 So.2d 829, 837 (Fla. 1st Dist. 1961).

234. *State v. Pittman*, 10 Fla. Supp. 133 (1957) (sale of a foreign mortgaged boat in Florida).

235. *Allen v. Universal C.I.T. Credit Corp.*, 133 So.2d 442 (Fla. 1st Dist. 1961). See also Raphael, *Extraterritoriality of a Chattel Security Interest: A Plea for the Bona Fide Purchaser*, 28 *FORDHAM L. REV.* 419 (1959); Currie & Lieberman, *Purchase-Money Mortgages and State Lines*, 1960 *DUKE L.J.* 1; Vernon, *Recorded Chattel Security Interests in the Conflict of Laws*, 47 *IOWA L. REV.* 346 (1962).

236. 105 So.2d 899 (Fla. 1st Dist. 1958).

237. 126 So.2d 156 (Fla. 2d Dist. 1960).

238. *Greer v. Commercial & Exch. Bank*, 118 So.2d 566 (Fla. 2d Dist. 1960).

239. *Allen v. Universal C.I.T. Credit Corp.*, *supra* note 235.

240. *Ferry St. Motor Sales, Inc. v. Municipal Auto Sales Inc.*, 137 So.2d 842 (Fla. 3d Dist.), *aff'd*, 143 So.2d 323 (Fla. 1962), Note, 17 *U. MIAMI L. REV.* 241 (1962); *Strickland v. Motors Acceptance, Inc.*, 126 So.2d 156 (Fla. 2d Dist. 1960); *Capital Lincoln-Mercury v. General Motors Acceptance Corp.*, 105 So.2d 899 (Fla. 1st Dist. 1958); *Sinclair Refining Co. v. Rousseau*, 13 Fla. Supp. 88 (1958) (suit to foreclose a foreign created mortgage).

241. 49 U.S.C. § 313 (1958).

242. Meaning trucks, highway tractors, or property carrying trailers of 10,000 pounds

or operated by common or contract carriers under a federal license. If a certificate of title is issued permitting or indicating such security interests, then the interest is "perfected in all jurisdictions against all general creditors of, and subsequent lien creditors of, and all subsequent purchasers from, the debtor carrier,"²⁴³ as defined by the statute.²⁴⁴ Likewise, if a certificate of title is not issued and the law of the home state, as defined,²⁴⁵ requires or permits public filing or recording, and if there is such filing or recording, then the security interest is perfected.²⁴⁶ Where no certificate of title was issued nor the interest filed or recorded, then the perfection of the security interest "shall be governed by the law of the home state, and if such security interest has been perfected as to general creditors and subsequent lien creditors and under the law of the home State (including the conflict of laws rules), then such security interest is perfected in all jurisdictions . . . ,"²⁴⁷ to the extent indicated above.²⁴⁸

Extensive statutory rules regarding conflict aspects of security transactions are also in effect in those states that have adopted the *Uniform Commercial Code*.²⁴⁹

Escheat. As stated in a recent Supreme Court opinion, *Western Union Tel. Co. v. Pennsylvania*,²⁵⁰ "the rapidly multiplying state escheat laws, originally applying only to land and other tangible things but recently moving into the elusive and wide-ranging field of intangible transactions, have presented problems of great importance to the states and persons whose rights will be adversely affected by escheats."²⁵¹ To use cases involving money orders as an example, contacts supporting such legislation or adjudication may include the residence of the payee, that of the sender, the place where the order was delivered, the place where the fiscal agent on which the money order was drawn is located, in addition to contacts of the present situs of the funds as well as the state of incorporation of the business.²⁵²

In the *Western Union* case the Supreme Court, faced with a rather broad Pennsylvania escheat statute and latent objections to it by the state

or more, and motor buses with a seating capacity of ten persons or more. 49 U.S.C. § 313(a)(6) (1958).

243. 49 U.S.C. § 313(b) (1958).

244. 49 U.S.C. § 313(a)(1) (1958).

245. "State of the United States, or the District of Columbia where the principal place of business of the debtor carrier is located." 49 U.S.C. § 313(2) (1958).

246. 49 U.S.C. § 313(c) (1958).

247. 49 U.S.C. § 313(d) (1958).

248. On international recognition of security interests in aircraft, see BAYITCH, AIRCRAFT MORTGAGE IN THE AMERICAS 60 (1960). See also 13 U. MIAMI L. REV. 152, 424 (1959).

249. See note 215 *supra*.

250. 368 U.S. 71 (1961).

251. *Id.* at 79.

252. SENTELL, A STUDY OF ESCHEAT AND UNCLAIMED PROPERTY STATUTES (1962); Lake, *Escheat, Federalism and State Boundaries*, 24 OHIO ST. L.J. 322 (1963).

of New York, declined not only to explore the adequacy of notice and the validity of service by publication but also the existence *vel non* of Pennsylvania's legislative jurisdiction on the interstate level. Rather, it decided the question by considering it an issue of preventing multiple escheats to be decided between the states under article III, section 2 of the Constitution.

In 1961 Florida adopted the Uniform Disposition of Unclaimed Property Act.²⁵³ Compared with the Pennsylvania statute involved in the *Western Union* case, it is well drafted and properly provides for relieving the owner of liability, one of the points bearing heavily on the *Western Union* case. In addition, the Florida statute contains carefully drafted conflict rules, at least in the sense of unilateral coverage provisions as well as reciprocity and prior escheats of the same assets by other states. Defining its area of coverage, the statute relies on a number of contacts, among them the presence of holders, both individuals and corporations, in the jurisdiction, as well as incorporation or creation within the state or the transaction of business there. In regard to property, the Act uses, in some instances, the contact of situs within the state,²⁵⁴ or the contact of the place within Florida where the relationship, *e.g.*, deposit, was established, or the check certified or the instrument issued.²⁵⁵ The Act begins with banking and financial organizations. Property interests held by these institutions will be affected by the Act if the place where the deposit was made,²⁵⁶ or funds were paid or deposits made toward the purchase of shares,²⁵⁷ or checks certified or written instruments issued,²⁵⁸ or property removed from safe deposit boxes, is located in this state. These rules are limited to banking institutions as defined, and are not limited to their incorporation or doing business here.²⁵⁹ The statute is applicable also to financial organizations as defined,²⁶⁰ *i.e.*, those engaged in business in Florida. In regard to insurance corporations as defined,²⁶¹ *i.e.*, those engaging in business in the state, unclaimed funds consist, *inter alia*, of funds due to persons whose last known address is within this state.²⁶² Utilities as defined²⁶³ will be subject to the Act only if they "own or operate within this state" and if services involved had to be furnished within the state. Undistributed dividends and distributions of business associations will come under the provisions of the Act provided the association is "organized under the laws of or created in this

253. FLA. STAT. ch. 717 (1963).

254. FLA. STAT. § 717.03(4) (1963).

255. FLA. STAT. § 717.03 (1963).

256. FLA. STAT. § 717.03(1) (1963).

257. FLA. STAT. § 717.03(2) (1963).

258. FLA. STAT. § 717.03(3) (1963).

259. FLA. STAT. § 717.03(4) (1963).

260. FLA. STAT. § 717.02(3) (1963).

261. FLA. STAT. § 717.02(5) (1963).

262. FLA. STAT. § 717.04(1)(a) (1963).

263. FLA. STAT. § 717.02(8) (1963).

state,"²⁶⁴ or is only "doing business in this state . . . and the records . . . indicate that the last known address of the person entitled thereto is in this state."²⁶⁵ Intangible property held in a fiduciary capacity²⁶⁶ will be affected if it is held by a banking or financial organization or business association "organized under the laws of or created in this state,"²⁶⁷ or is held by a business association "doing business in this state, and . . . the last known address of the person entitled thereto is in this state."²⁶⁸ Besides these institutions, this section applies also to persons "in this state" holding tangible property in a fiduciary capacity.²⁶⁹ Finally, all intangible personal property not included in the previous provisions "held or owing in this state in the ordinary course of the holder's business"²⁷⁰ also falls under the provisions of the Act.

In regard to conflict provisions proper, the Act provides for reciprocity in regard to property subject to the Act but "held for or owed or distributable to an owner whose last known address is in another state, by a holder who is subject to the jurisdiction of that state . . ."²⁷¹ Such property will not be presumed abandoned in the sense of the Act, provided it may be claimed as abandoned or escheated under the laws of such other state,²⁷² and these laws "make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owned or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state."²⁷³ Another provision makes the Act inapplicable to property presumed abandoned or escheated "under the laws of another state . . ." prior to the effective date of the Act.²⁷⁴

Family Law

Marriage. In matters concerning domestic relations²⁷⁵ generally no fundamental changes have occurred recently. In 1959 Florida enacted a statute making it a condition for eligibility for state welfare benefits to children of common law marriages that such be recorded in the register of common law marriages of the county where "the parties reside."²⁷⁶ However, this requirement applies only to "dependent children of this state." The limited capacity of married women in regard to dealing with

264. FLA. STAT. § 717.06(1) (1963).

265. FLA. STAT. § 717.06(2) (1963).

266. FLA. STAT. § 717.08 (1963).

267. FLA. STAT. § 717.08(1) (1963).

268. FLA. STAT. § 717.08(2) (1963).

269. FLA. STAT. § 717.08(3) (1963).

270. FLA. STAT. § 717.10 (1963).

271. FLA. STAT. § 717.11 (1963).

272. FLA. STAT. § 717.11(1) (1963).

273. FLA. STAT. § 717.11(2) (1963).

274. FLA. STAT. § 717.29 (1963).

275. EHRENZWEIG 375; LEFLAR 305.

276. FLA. STAT. § 409.183 (1963). Common law marriages entered into in Florida are recognized in other states. *Unovitz v. Unovitz*, 210 N.Y.S.2d 286 (1960); *Chivers v. Couch Motor Lines, Inc.*, 159 So.2d 544 (La. App. 1964).

their assets may be changed to one of a free dealer.²⁷⁷ In regard to the jurisdictional requirements of these proceedings it was held in *Application of Jensch*²⁷⁸ that the provisions of the Free Dealer Law, enacted in 1943, are not jurisdictional but only procedural, including the statutory provision concerning notice to the husband by publication; consequently, he "does not by statute become a defendant in such proceedings; [and he] . . . has no property right being hereby adjudicated."²⁷⁹

Separate Maintenance. So long as the marital tie continues, spouses are presumed to take care of their mutual duties of support themselves without any interference by courts. Nevertheless, Florida statutory law allows both husbands and wives to have such relations determined by courts. The enforcement of the statutory right given to the wife to demand separate maintenance, either unconnected with divorce but based on the existence of a cause for divorce,²⁸⁰ or merely on the ground of what is termed husband's "fault,"²⁸¹ presents interesting jurisdictional questions. Since the statute itself, being drafted in the style of literal universality, contains no jurisdictional qualifications, the question arises how to perfect jurisdiction. Attempts have been made to equate such petitions to divorce actions and, consequently, to subject plaintiffs to the residence requirements for divorce actions.²⁸² However, a simple reading of the statute indicates that the residence requirement applies only to those who sue to "obtain divorce," and this regardless of the fact that one of the sections makes a reference to grounds for divorce.²⁸³ The Florida Supreme Court²⁸⁴ took this position by holding that the residence requirements in section 65.02 of the Florida Statutes are "wholly inapplicable to suits . . . under section 65.09," a doctrine following *Kiplinger v. Kiplinger*²⁸⁵ to the effect that no residence by either party is required. This concept was recently repeated in *Martin v. Martin*.²⁸⁶ Another at-

277. FLA. STAT. § 708.03 (1963).

278. 134 So.2d 285 (Fla. 2d Dist. 1961).

279. *Id.* at 287.

280. FLA. STAT. § 65.09 (1963).

281. FLA. STAT. § 65.10 (1963).

282. FLA. STAT. § 65.02 (1963).

283. FLA. STAT. § 65.09 (1963).

284. *Schwenk v. Schwenk*, 159 Fla. 694, 32 So.2d 734 (1947).

285. 147 Fla. 243, 2 So.2d 870 (1941).

286. 128 So.2d 386 (Fla. 1961). Prior to this decision, lower courts leaned toward the opposite position. *E.g.*, in *Tinsley v. Tinsley*, 116 So.2d 649 (Fla. 3d Dist. 1960), the non-resident dependant wife in a divorce action was held not entitled to relief under § 65.10 because of her inability as non-resident to allege causes for divorce listed in § 65.04. However, the supreme court simply quashed the judgment. *Tinsley v. Tinsley*, 125 So.2d 553 (Fla. 1960), pointing to its holding in the *Kiplinger* and *Schwenk* cases. In the meantime, the appellate ruling in the *Tinsley* case was followed in *Jones v. Jones*, 16 Fla. Supp. 124 (1960). In a reversed situation, *Hadley v. Hadley*, 140 So.2d 326 (Fla. 3d Dist. 1962), where the wife brought action under § 65.09, while the husband counter claimed for divorce, the wife urged lack of jurisdiction on the part of the defendant under § 65.02. The court, finding domicile on the part of the defendant, granted divorce. A complicated litigation developed in *Astor v. Astor*, 107 So.2d 201 (1958), *cert. denied* 119 So.2d 793 (1960), *reaff'd on rehearing*, 120 So.2d 176 (Fla. 1960). Plaintiff was first married to Gertrude but

tempt to facilitate perfection of jurisdiction in these suits was made by the plaintiff wife in *Greenberg v. Greenberg*,²⁸⁷ by equating a petition for separate maintenance under section 65.09 to a divorce action and serving the nonresident defendant by publication under section 47.01. The court, restating the rule that an action for "limited divorce" is not part of Florida law,²⁸⁸ held that the statutory provision of section 48.01, regarding "divorce or annulment of marriage," does not include actions for alimony under section 65.09, adding that [a] *casus omissus* can in no case be supplied by a court because that would be to make laws."²⁸⁹ Consequently, service by publication to a nonresident defendant was considered inadequate. On the other hand, from general principles it would follow that any method accepted as valid to establish jurisdiction over the person of the defendant would suffice. In *Martin v. Martin*²⁹⁰ defendant was brought under the jurisdiction of the court by personal service when changing planes in Miami on his way abroad; however, this facet of the case was discussed by the court in rather vague terms.²⁹¹ The question of jurisdiction was again raised in *St. Anne Airways, Inc. v. Webb*,²⁹² however, the challenge here was limited to jurisdiction over the subject matter and did not involve jurisdiction over the defendant "for want of . . . service in this state."²⁹³

The newly (1961) enacted section 65.101, giving the husband the right to have his duties toward wife and children adjudicated, limits the

later divorced her in Mexico to marry Dolores. This prompted Gertrude to file a successful suit in New York to have the Mexican divorce declared invalid. In the meantime, Dolores left plaintiff, and filed a suit in Florida under § 65.10. *Astor v. Astor*, 7 Fla. Supp. 29 (1955), *aff'd*, 89 So.2d 645 (1956). The chancellor granted alimony and held plaintiff estopped from invoking against Dolores the invalidity of his Mexican divorce. Plaintiff then brought an action in New York without success, against both Gertrude and Dolores for a declaratory judgment to determine his marital status and for relief from the Florida alimony decree. In the case cited at the beginning of this paragraph, an action instituted against Dolores, plaintiff demanded a review of the Florida separate maintenance decree as well as annulment of his marriage. The appellate court first considered whether the New York decree finding the plaintiff's Mexican divorce invalid rendered the maintenance untenable. The court denied this on the ground that the Florida decree held plaintiff estopped to take advantage of the invalidity of the Mexican decree as a defense against support claims by Dolores, the decision binding both parties as *res judicata*. While the court admitted that the New York decree invalidating plaintiff's Mexican divorce was entitled to full faith and credit, it held that this could not affect a prior Florida maintenance decree. In the suit for declaratory relief the New York court also pointed out that the earlier New York decree considering both the Mexican divorce and the Florida separate maintenance decree as not "necessarily inconsistent or repugnant," was tenable since the Florida decree "did not purport that plaintiff and Dolores were validly married, but rather that plaintiff was estopped to deny the marriage under the circumstances." *Id.* at 204. For background *NIZER, MY LIFE IN COURT* 222 (1961).

287. *Greenberg v. Greenberg*, 101 So.2d 608 (Fla. 3d Dist. 1958).

288. *Givens v. Givens*, 121 Fla. 270, 163 So. 574 (1935).

289. *Greenberg v. Greenberg*, 101 So.2d 608, 609 (Fla. 3d Dist. 1958).

290. See note 276 *supra*.

291. *Martin v. Martin*, *supra* note 276, at 388.

292. 142 So.2d 142 (Fla. 3d Dist. 1962).

293. *Id.* at 143.

application of this provision to husbands "residing in this state." It would seem that the residence requirement will be interpreted independently from section 65.02, as domicile without specific requirements as to duration. However, it is questionable whether such residence alone will withstand attack on due process grounds in cases where jurisdiction over the wife or children was not properly established, for reasons advanced in connection with the jurisdictional aspects of sections 65.09 and 65.10.

It may be added that the jurisdictional aspect of section 65.15 was questioned in *Margolis v. Margolis*²⁹⁴ on the basis that this statutory provision cannot give Florida courts the power to modify an agreement made by a nonresident in a foreign state. Relying on *Lopez v. Avery*,²⁹⁵ the court rejected the argument.

Divorce Jurisdiction. Jurisdiction in divorce litigation may involve three different aspects:²⁹⁶ power to divorce, power to adjudicate property claims between the spouses subsequent to divorce, including alimony; and finally power to settle the care of children, concerning their allocation to one or another of the parents or to a third person, as well as their support.

In regard to jurisdiction to divorce, it is well settled that domicile on the part of the plaintiff is sufficient to give the court power to sever the marital tie. As a consequence, three issues have appeared in divorce proceedings: one, involving the existence of the marital tie to be severed, the second the existence *vel non* of plaintiff's domicile, and the third, compliance with statutory requirement of six months of such "residence."²⁹⁷

On the assumption that divorce proceedings are in the nature of proceedings in rem, the res being the marital tie, and its "presence" in court established by the domicile within the jurisdiction of at least the plaintiff, it becomes crucial for the jurisdictional correctness of such ex parte proceedings that the marital tie still exists. This very issue was before the appellate court in *Camp v. Camp*.²⁹⁸ However, it was not decided since the court upheld the trial court's denial of the defendant wife's motion to dismiss for lack of jurisdiction, supported by the allegation of a divorce granted by the same court. In regard to a subsequent identical

294. 141 So.2d 1 (Fla. 3d Dist. 1962).

295. 66 So.2d 689 (Fla. 1953).

296. Note, *Domestic Relations—Florida Jurisdictional Requirements for Divorce*, 15 U. MIAMI L. REV. 409 (1961). On Indian divorces under Seminole tribal law, see ATT'Y GEN. REP. 1961-1962 at 10 (1963), relying on *Begay v. Miller*, 70 Ariz. 380, 222 P.2d 628 (1950). See also Baer, *The Law of Divorce Fifteen Years After Williams v. North Carolina*, 36 N.C. L. REV. 265 (1957); Comment, *Migratory Divorce: The Alabama Experience*, 75 HARV. L. REV. 568 (1962).

297. FLA. STAT. § 65.02 (1963); *Adkins v. Adkins*, 19 Fla. Supp. 174 (1962).

298. 120 So.2d 813 (Fla. 3d Dist. 1960); *Burger v. Burger*, 156 So.2d 905 (Fla. 3d Dist. 1963).

order, the appellate court simply held that the court below "properly rejected this argument"; it also ruled that the court below erred in assuming that the participation by defendant in the arguments on the motion, touching also on the merits, in spite of her express special appearance, did amount to a general appearance. As a result, the appellate court ruled that the "jurisdiction over the defendant is limited to that which was acquired by a substituted service,"²⁹⁹ whatever this may mean.

Being based on both *animus* and *corpus*, domicile once properly established is not lost by leaving for another state for medical treatment after filing of suit when there is no intent to make the latter state a new domicile.³⁰⁰ A recent case decided that a husband born in Florida and never absent from the state, except for military duty, was domiciled there,³⁰¹ distinguishing a previous holding.³⁰² An airline pilot is domiciled in Florida since his family lives there, in spite of the fact that for reasons of marital difficulties and exigencies of his job he is living away temporarily.³⁰³ He is thus entitled to counterclaim for divorce in his wife's action for alimony unconnected with causes for divorce.³⁰⁴ The proof of domicile is, according to *Fine v. Fine*,³⁰⁵ indispensable for the final decree but not for proceeding with the suit.

The six months "residence" requirement³⁰⁶ means actual and not constructive domicile in the state.³⁰⁷ Therefore, a wife has not complied with this requirement because her husband was in Florida for more than six months waiting for her to join him.³⁰⁸

Whenever non-status questions are involved, the special jurisdictional rules allowing ex parte divorce proceedings do not apply.³⁰⁹ Therefore, other claims between parties to a divorce proceeding or conse-

299. *Id.* at 815.

300. *Wetherstein v. Wetherstein*, 111 So.2d 292 (Fla. 2d Dist. 1959).

301. *Jeffries v. Jeffries*, 133 So.2d 751 (Fla. 3d Dist. 1961).

302. *Campbell v. Campbell*, 57 So.2d 34 (Fla. 1952).

303. *Hadley v. Hadley*, 140 So.2d 326 (Fla. 3d Dist. 1962).

304. FLA. STAT. § 65.10 (1963).

305. 122 So.2d 494 (Fla. 1st Dist. 1960); Murray, *Family Law*, 16 U. MIAMI L. REV. 179 (1962). In an action against the executor of the deceased divorced husband the wife divorced by him in Florida ex parte some eight years before his death demanded that the divorce decree be set aside on the ground, *inter alia*, that the court had no jurisdiction because of plaintiff's lack of domicile in Florida. *Simons v. Miami Beach First Nat'l Bank*, 157 So.2d 199 (Fla. 3d Dist. 1963). The appellate court affirming held that the "nonresident wife was precluded from filing suit years later to set aside the decree for matters which could have been litigated by her in defense of the divorce suit" of which she had due notice and opportunity. Equally of no avail was the other ground, namely a prior New York separate maintenance decree which was held, *id.* at 200, to be "not a bar to a divorce suit by the husband, and his failure to disclose it in his complaint was not a fraud on the court." *Id.* at 200.

306. FLA. STAT. § 65.02 (1963).

307. *Hostler v. Hostler*, 151 So.2d 672 (Fla. 1st Dist. 1963).

308. *Brown v. Brown*, 123 So.2d 382 (Fla. 2d Dist. 1960), 15 U. MIAMI L. REV. 409 (1961).

309. *Estin v. Estin*, 334 U.S. 541 (1948); EHRENZWEIG 647; STUMBERG 312.

quential to it can only be litigated in proceedings that comply with traditional in personam jurisdictional requirements. In regard to such patrimonial claims between the spouses related to divorce, it was held that a defendant husband appearing specially to contest jurisdiction without pleading to the merits, and relying also on an order issued by a court of his domiciliary state restraining the plaintiff wife from commencing a divorce action in any other state, did not subject himself to the Florida court. Consequently, the court had no jurisdiction to enter a money decree against the defendant. In *Jones v. Jones*,³¹⁰ the court accepted jurisdiction to determine the interests of spouses divorced in Kentucky in a trust consisting of land in Florida, but declined jurisdiction over a sum of money demanded by the plaintiff wife as a balance due under a property settlement in Kentucky, for "want of personal service of process within this state."³¹¹ It may be added here that changes in property interests between spouses occasioned by divorce are governed by the *lex situs* if interests in real property are involved. In *Bell v. Bell*³¹² the lower court relied on section 689.15 of the Florida Statutes in regard to real property situated in New York, when it decreed that property held by parties by the entireties became held by tenants in common. The appellate court pointed out that section 689.15 is applicable only to real property situated in Florida and added that, even though New York has no similar statute, its case law reaches the same result.

The Florida statute³¹³ grants divorce courts the power to make custody orders. In spite of the broad language of the statute it is safe to point out that not every divorce court will necessarily have the power to adjudicate custody matters. Characterizing the determination of custody as "in the nature of an action in rem," the court in *State ex rel. Galen v. Kuhl*³¹⁴ held that the presence of the child within the jurisdiction is a necessary requirement for the exercise of jurisdiction. As a con-

310. 140 So.2d 318 (Fla. 3d Dist. 1962).

311. *Id.* at 321.

312. *Bell v. Bell*, 112 So.2d 63 (Fla. 3d Dist. 1959). In a Florida divorce proceeding the lower court awarded to the wife as a lump sum alimony all of the non-resident defendant's interest in Florida land held theretofore by the entireties. Relying on the principles expounded in *Pennoyer v. Neff*, 95 U.S. 714 (1878), and *Pennington v. Fourth Nat'l Bank*, 243 U.S. 269 (1917), as well as in other state jurisdictions, the appellate court concluded that property "must be proceeded against or subjected to the process of the court *in limine*" (*id.* at 700). This requirement was not met since no attachment was had nor did the constructive service of process pursuant § 48.08(4) contain the "description of real property, if any, proceeded against." Apparently under the theory that plaintiff's action for alimony is a claim in personam rather than the enforcement of a claimed interest in rem, and as such requiring the bringing of the land under the control of the court by jurisdictional attachment, in addition to the deficiency in the contents of the notice by publication as required by statute, the court found lack of jurisdiction since the court below "did not have personal jurisdiction of the defendant and since, after filing of the complaint, there was nothing done which would, in effect, make it a proceedings in rem or quasi in rem" (*Id.* at 703.) *Webb v. Webb*, 156 So.2d 698 (Fla. 3d Dist. 1963).

313. FLA. STAT. § 65.14 (1963).

314. 103 So.2d 225 (Fla. 3d Dist. 1958).

sequence, it denied the benefit of full faith and credit to an Alabama custody decree because both the child and the father resided in Florida, adding that "The welfare of minor children is the concern of the state in which the child may reside or be domiciled."³¹⁵ However, this rule does not apply in cases in which the divorce court properly retained jurisdiction,³¹⁶ or, according to the concurring opinion, even without express retention, provided that jurisdiction over the subject matter and persons was properly established in the preceding divorce proceedings. Finding that neither the child nor the custodian were within the jurisdiction of Florida courts, the court held that absent jurisdiction of either of these persons, the power to adjudicate custody was lacking.³¹⁷

Grounds for Divorce. It is generally accepted that grounds for divorce are determined by the *lex fori*. In Florida one ground for divorce, namely that the defendant has "obtained a divorce from the complainant in any other state or country,"³¹⁸ has caused considerable difficulties. Limiting the discussion to interstate situations, it is clear that under the full faith and credit clause, a divorce obtained in a sister state in accordance with jurisdictional standards expounded by the Supreme Court will be entitled to the same effect as it has in the state of rendition and as such will bar a relitigation as *res judicata*. What then is the scope of section 65.04(8)? In *Keener v. Keener*,³¹⁹ the supreme court of Florida already has indicated that the provision applies to situations where jurisdiction over defendant was not perfected or "the divorce is not effective as to both parties or is for other reasons invalid," which would leave the plaintiff here unbound by the foreign decree, but in a "position to invoke the provisions of the statute in question to be relieved from it."³²⁰ Whether this would mean that such a plaintiff may take advantage of an ineffective foreign divorce decree and obtain a local decree has not been decided. The scope of section 65.04(8) was discussed in two recent cases. In *Chucherie v. Chucherie*³²¹ the appellate court, relying on the *Keener* case, held that the plaintiff husband was estopped from invoking an Alabama divorce decree in order to obtain a Florida divorce, regardless of the wife's cooperation in obtaining the Alabama divorce and regardless of the fact that the Alabama decree was, before the husband's filing for divorce in Florida, declared void by the Alabama court. The appellate court reasoned that the plaintiff was "not seeking a divorce in Florida in order to be relieved from the Alabama divorce" since he had already received such relief in Alabama. The court reiterated the holding in the *Keener* case by stating that the purpose of section 65.04(8) is "not to

315. *Id.* at 226.

316. *Dahlke v. Dahlke*, 97 So.2d 16 (Fla. 1957).

317. *Id.* at 17.

318. FLA. STAT. § 65.04(8) (1963).

319. 152 Fla. 13, 11 So.2d 180 (1942).

320. *Id.* at 15, 11 So.2d at 181.

321. 120 So.2d 821 (Fla. 3d Dist. 1960).

sanction the relitigation of divorce cases," but that "[i]t may be presumed that the purpose of the statute is to protect Florida residents from the unhappy situation of being divorced in other states and not divorced in their own state."³²² The interpretation of the same statute was involved in an action by wife for alimony unconnected with divorce.³²³ In addition to the ground of desertion the plaintiff also relied on the husband's having obtained an Ohio divorce. Again relying on the *Keener* case, the court held that the plaintiff could not rely on the Ohio divorce without questioning its validity.³²⁴ Quoting extensively from *Pawley v. Pawley*,³²⁵ the court indicated that the eighth ground for divorce listed in section 65.04 applies also to the situations of divisible divorce, in which the marital tie is severed without affecting incidents of marriage, such as duty to support, overlooking the fact that in the *Pawley* case an international, not an interstate situation was decided.

Foreign Divorces. A foreign divorce decree granting a wife separate maintenance and a divorce obtained by her husband on grounds of cruel treatment and a violent temper constitute a valid defense of *res judicata*.³²⁶ The effect of the decree may depend on the particular ground urged in the other state. In *Stone v. Stone*³²⁷ the court held that it was not enough that issues raised now in Florida could have been litigated in the foreign jurisdiction. A Maryland decree granting separation and declaring a Nevada divorce invalid was clear enough to dismiss an action for a declaratory judgment regarding the plaintiff's status.³²⁸ However, a New York separation judgment is no bar to an action for divorce in Florida.³²⁹

Mexican divorces appeared on both sides of the action in *Furman v. Furman*.³³⁰ The husband, who married after a Mexican divorce and brought an action for divorce in Florida against his wife, who also secured

322. *Id.* at 824.

323. FLA. STAT. § 65.09 (1963).

324. *Coppersmith v. Coppersmith*, 127 So.2d 711 (Fla. 2d Dist. 1961).

325. 46 So.2d 464 (Fla. 1950); *rehearing denied*, 47 So.2d 546 (Fla. 1950); *cert. denied*, 340 U.S. 866 (1950).

326. *Carducci v. Carducci*, 82 So.2d 360 (Fla. 1955). In *Smith v. Smith*, 288 F.2d 151 (D.C. Cir. 1961) wife's demand for difference between the alimony fixed in the separation agreement made part of a Florida divorce decree, as reduced on motion by husband under § 65.15, and the original amounts, was denied, the court considering the matter *res judicata* and such binding under the full faith and credit clause.

327. 111 So.2d 486 (Fla. 3d Dist. 1959), followed in *Taylor v. Taylor*, 130 So.2d 115 (Fla. 3d Dist. 1961).

328. *Colby v. Colby*, 120 So.2d 797 (Fla. 2d Dist. 1960).

329. *Berman v. Berman*, 103 So.2d 611 (Fla. 1958); *Katz v. Katz*, 159 So.2d 241 (Fla. 3d Dist. 1964). However, a prior divorce decree obtained in California prevents a new divorce action in Florida, *Smith v. Smith*, 19 Fla. Supp. 84 (1962). Where marriage between two Chilean nationals was invalid because of a preceeding fraudulent Mexican divorce, court has no divorce jurisdiction. *Burger v. Burger*, 156 So.2d 905 (Fla. 3d Dist. 1963). Collateral attack on a Florida divorce decree in New York, *Camp v. Camp*, 189 N.Y.S.2d 561 (1959).

330. 16 Fla. Supp. 31 (1960), *aff'd in part and rev'd in part*, 130 So.2d 316 (Fla. 3d Dist. 1961).

a Mexican divorce and subsequently lived with another man, was denied divorce since he failed to come into court with clean hands. The wife, who counterclaimed for separate maintenance, was estopped on the same ground. Indirectly Mexican divorce was involved in the *Astor* litigation discussed elsewhere in this survey.³³¹

Alimony and Support. Incidental to divorce proceedings courts may award alimony to a wife and support to children.³³² If an award is final, i.e., not subject to modification or cancellation under the law of the same forum, accrued as well as future installments enjoy the benefit of the full faith and credit clause. As expressed in a recent opinion, equity courts in this state are

open to nonresident wives for enforcement by equitable processes of final decrees for alimony and support, or for the enforcement of judgments representing past due and unpaid alimony and support awarded by courts of our sister states. Under the doctrine of comity this remedy is in addition to the remedy afforded by common law to secure a money judgment based upon the judgment of a sister state.³³³

Future alimony payments granted in a divorce decree may be modified here upon application under section 65.15 or on the strength of such rights expressly reserved in the foreign divorce decree.³³⁴ Installments accrued under a foreign decree may be modified only if this is possible under the law of the state where the decree was rendered, the burden of proof on that issue being on the defendant.³³⁵

The same rules prevail in regard to child support awarded in a foreign divorce decree. Accrued installments share the benefit of the full faith and credit clause "unless the law of the state where the decree is rendered is such that said decree may be modified as to accrued installments."³³⁶ The law of Kentucky disallowing any modification, defendant father tried to defeat the claim for support by counterclaiming on the basis of changed circumstances on the part of the children. Relying on *Sackler v. Sackler*³³⁷ the appellate court decided that this cannot be done. The father also demanded relief on the same grounds in regard to future payments. To this the plaintiff mother objected, urging that future payments may not be modified unless arrears are paid. The court, relying on *Selige*

331. See note 286 *supra*.

332. Stumberg, *Foreign ex parte Divorces and Legal Claims to Alimony*, 34 WASH. L. REV. 35 (1959); Ritz, *Migratory Alimony: A Constitutional Dilemma in the Exercise of In Personam Jurisdiction*, 29 FORDHAM L. REV. 83 (1960); Krauskopf, *Divisible Divorce and Rights to Support, Property and Custody*, 24 OHIO ST. L.J. 346 (1963); *Divisible Divorce*, 76 HARV. L. REV. 1233 (1963).

333. *Miller v. Miller*, 105 So.2d 386, 387 (Fla. 1st Dist. 1958).

334. *Fischbach v. Fischbach*, 112 So.2d 881 (Fla. 3d Dist. 1959).

335. *Miller v. Shulman*, 122 So.2d 589 (Fla. 3d Dist. 1960).

336. *Watson v. McDowell*, 110 So.2d 680, 681 (Fla. 2d Dist. 1959).

337. 47 So.2d 292 (Fla. 1950).

v. Selige,³³⁸ as qualified in *Blanton v. Blanton*,³³⁹ held that existing arrears do not preclude modification of a support decree, provided the defendant can show his inability to pay the arrears. Therefore, the fact of changed financial needs on the part of the children does not suffice. The same general rule as to arrears was followed in other cases. In *Edgar v. Edgar*,³⁴⁰ for example, involving a Maryland divorce decree, a subsequent claim for the full amount of support was unsuccessful in view of the fact that both parents agreed that installments should be reduced in case of financial difficulties on the part of the father.³⁴¹ Difficulties of another kind met the mother's suit to establish and enforce in Florida an Illinois divorce decree. The lower court granted the demand but refused to incorporate into the decree the amount of unpaid arrears for child support originally agreed by the parties. In this respect the appellate court affirmed but considered as too general to be enforceable the decree below that the defendant "otherwise abide by and comply with the Illinois decree hereby established as the decree of this Court."³⁴² In a diversity action based on a Florida judgment for delinquent support due under a Wisconsin divorce decree as well as for past support due as increased by a Florida court,³⁴³ a federal court decided for the plaintiff. The decision was based on the full faith and credit clause due to the Florida judgment modifying the Wisconsin decree which, under the law of this state, was subject to prospective and retrospective modifications. Even if Florida was under no duty to give full faith and credit because of the lack of finality involved, nevertheless Florida had the power to reach the same result under comity. Once Florida has rendered such a judgment, it is entitled to full faith and credit in federal courts.³⁴⁴

Finally, in *Gessler v. Gessler*,³⁴⁵ the question of the enforceability in Florida of a separation agreement providing for child support, made expressly binding upon the husband's heirs and administrators, was decided. Since the agreement was entered in Pennsylvania and payments had to be made there, the appellate court held the contract to be valid and enforceable against the estate under Pennsylvania law and not contrary to public policy in Florida. It also has been found that under Florida law³⁴⁶ such claims survive.

Uniform Reciprocal Enforcement of Support Law. Subsequent to the Uniform Support of Dependents Act (1953), Florida enacted in 1955

338. 138 Fla. 783, 190 So. 251 (1939).

339. 154 Fla. 750, 18 So.2d 902 (1944).

340. 126 So.2d 585 (Fla. 2d Dist. 1961).

341. *Kramer v. Kramer*, 146 So.2d 586 (Fla. 3d Dist. 1962).

342. *Morris v. Truax*, 152 So.2d 515, 519 (Fla. 2d Dist. 1963).

343. *Miller v. Shulman*, 122 So.2d 589 (Fla. 3d Dist. 1960).

344. *Shulman v. Miller*, 191 F. Supp. 418 (E.D. Wis. 1961).

345. 273 F.2d 302 (5th Cir. 1959).

346. *Simpson v. Simpson*, 108 So.2d 632 (Fla 2d Dist. 1959).

the present Uniform Reciprocal Enforcement of Support Law.³⁴⁷ Denying identity of the two enactments and, as a consequence, denying the defense of res judicata with respect to an action under the 1955 act based on a decree issued under the 1953 enactment, the supreme court in *Thompson v. Thompson*³⁴⁸ held that support claims by the wife on the basis of a Florida divorce decree may be enforced under the 1955 act, the court of the ex-husband's residence having jurisdiction. An authenticated transcript of proceedings determining child support under the act of Colorado has been held acceptable in Florida as prima facie correct.³⁴⁹ In habeas corpus proceedings in Florida against extradition to Illinois for criminal charges of non-support, the court held that a defaulting father may relieve himself from extradition by voluntary acceptance of the jurisdiction of the state of his residence and by compliance with its orders concerning support.³⁵⁰

Custody. In interstate custody cases³⁵¹ two issues appear with surprising regularity. One is the question of whether custody decrees share the benefits of the full faith and credit clause, and the other concerning jurisdiction in custody matters. In regard to the first question it may be stated that custody decrees have by now been eliminated from the constitutional guarantee because of the inherent lack of finality. This position, of course, opens to other jurisdictions the door for practically independent adjudication, particularly on the ever present ground of changed circumstances. In Florida developments move along the same lines. In regard to constitutional guarantees to foreign custody decrees, courts have adopted the position that they may be upheld or modified under the rules of comity. As expressed in *In re Vermeulen's Petition*,³⁵² since a decree of custody is "universally subject to modification from time to time as the interest of the minor may require," the decree is denied finality and consequently does not qualify under the full faith and credit clause. Nevertheless, it is

entitled to great weight and respect under the doctrine of comity absent a showing by clear and convincing evidence that such new conditions have arisen since [the] rendition of the decree as would justify a change in custody . . . or that old facts have come to light which had they been known to the chancellor would have impelled a different conclusion.³⁵³

347. FLA. STAT. § 88.001 (1963). In proceedings under this Act counterclaim for divorce is inadmissible. *Blois v. Blois*, 138 So.2d 373 (Fla. 1st Dist. 1962).

348. *Thompson v. Thompson*, 93 So.2d 90 (Fla. 1957).

349. *Clark v. Clark*, 139 So.2d 195 (Fla. 2d Dist. 1962).

350. *Jackson v. Hall*, 97 So.2d 1 (Fla. 1957). Florida support decrees in other jurisdictions. *Allain v. Allain*, 24 Ill. App. 2d 400, 146 N.E.2d 611 (1960); *Cobbe v. Cobbe*, 163 A.2d 233 (Mun. Ct. App. D.C. 1960).

351. EHRENZWEIG 283. Comment, *Full Faith and Credit: Extraterritorial Effect of Custody Decrees*, 13 U. MIAMI L. REV. 101 (1958), discussing *Kovacs v. Brewer*, 356 U.S. 604 (1958).

352. 114 So.2d 192 (Fla. 1st Dist. 1959).

353. *Id.* at 195.

The second issue is that of jurisdiction, which relates not only to the jurisdictional aspects of a foreign custody decree but also to jurisdictional requirements to be met by Florida courts in dealing with custody. In this respect the strict rule that such jurisdiction is vested only if the child whose custody is to be decided is factually present within the jurisdiction has been replaced with a more flexible rule relying on what is in the best interest of the child. However, the interrelations between various possible jurisdictional contacts and the best interests of the child are not always easily ascertainable.

In proceedings supplementary to a divorce, a Wisconsin court changed custody of the child from father to mother. The latter brought an action in Florida for possession and custody, relying on the Wisconsin decree. The appellate court remanded, holding that the foreign court had jurisdiction regardless of whether the minor was factually present in the jurisdiction, so long as his guardian was properly notified. With respect to full faith and credit, the court found that the foreign decree possessed "none of the attributes of finality so essential" to entitle it to recognition under this constitutional provision, but nevertheless upheld the lower court's power to grant relief under the rule of comity.³⁵⁴ The supreme court,³⁵⁵ discharging certiorari, held that in supplementary proceedings like the present the foreign court had continuing jurisdiction although the minor was not present within the jurisdiction, provided his custodian was notified and had opportunity to be heard. The court thus overruled *Dorman v. Friendly*³⁵⁶ and *State ex rel. Galen v. Kuhl*.³⁵⁷

In a similar case a child's grandparents instituted habeas corpus proceedings in Florida against the mother, who was awarded custody in divorce proceedings in Mississippi but lost it in subsequent proceedings. The appellate court³⁵⁸ reversed, relying on the rule that foreign custody decrees not entitled to guarantees under the full faith and credit clause may be given effect under the rule of comity. It instructed the lower court to explore whether the Mississippi decree deserved comity in view of the fact that the mother did not participate in the Mississippi proceedings after remand by the Mississippi Supreme Court. In view of the fact that the divorce decree "has not been modified or set aside," the court held that the grandparents must "show entitlement to the child's custody, rather than this burden resting on the mother . . ."³⁵⁹ In *Tom v. State*³⁶⁰ a mother was granted temporary custody by a North Carolina court

354. *Rhoades v. Bohn*, 114 So.2d 493 (Fla. 1st Dist. 1959).

355. *Bohn v. Rhoades*, 121 So.2d 777 (Fla. 1960).

356. 146 Fla. 732, 1 So.2d 734 (1941).

357. 103 So.2d 225 (Fla. 3d Dist. 1958). Murray, *Family Law*, 16 U. MIAMI L. REV. 177, 190 (1961).

358. *Neal v. State ex rel. Neal*, 135 So.2d 891 (Fla. 1st Dist. 1961), noted in 16 U. MIAMI L. REV. 753 (1962).

359. *Id.* at 896.

360. 153 So.2d 334 (Fla. 2d Dist. 1963).

which prohibited removal of children from North Carolina without court permission. When the mother moved with the children to Florida, a Florida circuit court ordered her to deliver the children to the North Carolina judge. On appeal the ruling was reversed and the circuit court directed to take evidence as to the best interest of the children, regardless of the mother's noncompliance with the foreign court order. The decision relied on *DiGiorgio v. DiGiorgio*³⁶¹ and *State ex rel. Fox v. Webster*.³⁶² In the latter case the mother also disobeyed a foreign court's order not to remove the children from the jurisdiction. After the mother brought them to Florida, the father instituted habeas corpus proceedings, demanding custody for himself. On appeal the court continued custody in the mother, adding that a foreign custody decree is "required to give way to a Florida decree based on the best interests and welfare of the minor," because such foreign decrees are not "considered final but may be modified from time to time should the circumstances and changed conditions indicate that the best interests and welfare of the minor require a change of custody,"³⁶³ a decision termed by the dissenting judge a "studied defiance of the courts of two states."³⁶⁴

It may be added that a Mexican divorce³⁶⁵ decree incorporating a parents' agreement on custody was held to lack support for a domestic decree, because the decree did not "disclose any proof of the elements of the decree that would entitle it to judicial comity." Nevertheless, the court declined to disturb the parental custody arrangement in favor of the mother, considering the lower court's argument, namely the need on the part of the minor for a father's supervision as an "insufficient ground for disturbing the custody agreed upon by the parties before the father remarried."³⁶⁶

361. 153 Fla. 24, 13 So.2d 596 (1943).

362. 151 So.2d 14 (Fla. 3d Dist. 1963).

363. *Id.* at 17.

364. *Ibid.* After a property settlement between spouses approved by a California court giving to mother the custody of children under the promise not to remove them from California, father defaulted on payment of the agreed upon support. Because of this, the mother brought the children to Florida whereupon the California court entered a decree awarding custody to the father who then initiated habeas corpus proceedings in Florida during which he seized the children and returned them to California. The Florida court in *O'Neal v. O'Neal*, 158 So.2d 586 (Fla. 3d Dist. 1963), held the California custody decree not to be binding "except as to the facts before the court at the time of judgment." *Id.* at 587. Since circumstances found here were "vastly different" from what they were "at the time the California court by its 'minute order' . . . changed its former order" and granted custody to the father, the Florida court had power to award custody to the mother, particularly in view of the fact that both under the California and Florida law custody decrees may be modified for "(1) a change of circumstances arising after the original decree, and (2) a showing that there were material facts not presented or considered at the former hearing." *Id.* at 588. It is noteworthy that in both cases children were outside of the jurisdiction of the courts.

365. Comment, *Effect of Mexican Divorces in the United States*, 9 *MIAMI L.Q.* 186 (1955); Stern, *Mexican Marriages and Divorces*, 2 *CAL. FAMILY LAW* 1571 (1963).

366. *Schwartz v. Schwartz*, 143 So.2d 901, 903 (Fla. 2d Dist. 1962).

Adoption. Jurisdiction to decree adoption is based on the residence of the adopting party (sections 72.08 and 72.34, as amended in 1963), service to be performed according to section 72.13, as amended in 1963.

The question of what effect is to be given a foreign decree of adoption³⁶⁷ was at issue in *Tsilidis v. Pedakis*.³⁶⁸ In an action against the estate of his adoptor who died single without descendants but leaving a will executed before adoption, the plaintiff-adoptee claimed as pretermitted heir³⁶⁹ in his capacity as "lineal descendant of his adopting parents," a status pertaining to persons "adopted under the laws of Florida or any other state or country."³⁷⁰ Disregarding not only the fact that the jurisdictional validity of a Greek court to decree adoption was stipulated by the parties, but also the fact that the plaintiff claimed under the *lex fori* and not under Greek law, the court took the position that parties cannot by stipulating the validity of a foreign adoption decree invest it "with such dignity as to preclude the local forum from applying its laws in determining whether the incidents of the foreign decree are repugnant to or against the [public] policy of the local forum."³⁷¹ Mistaking the procedural stipulation as to the validity of the Greek adoption decree for the substantive legal effects to be given to the foreign adoption under Florida law, the court simply brushed aside by restrictive interpretation the statutory provision of its own law giving foreign adoption decrees effect equal to domestic ones. Instead of applying the simple rule of section 731.30, it turned to the notion of "incidents of adoption," and relying on a Florida case decided prior to the enactment of present section 731.30, it considered such "incidents" as revealed in the differences between requirements for adoption under Greek law³⁷² as compared with Florida law. One of these differences is that the Greek Civil Code permits adoption by single persons. The court, without giving reasons how such adoption would affect public order in Florida, elevated to a principle of public policy the requirement of Florida law that allows only married persons to adopt and denied to give effect to plaintiff's adoption performed properly in Greece, under Greek law.

367. Baade, *Interstate and Foreign Adoption In North Carolina*, 40 N.C.L. REV. 691 (1962); De Nova, *Adoption in Comparative Private International Law*, 104 RECUEIL DES COURS 71 (1962). EHRENZWEIG, *AMERICAN-GREEK PRIVATE INTERNATIONAL LAW* 74 (1957).

368. 132 So.2d 9 (Fla. 1st Dist. 1961).

369. FLA. STAT. § 731.11 (1963).

370. FLA. STAT. § 731.30 (1963).

371. *Tsilidis v. Pedakis*, *supra* note 368, at 13.

372. According to the Greek Civil Code (1942), the only requirements for adoption on the part of the adoptor are that he be 50 years of age and without legitimate descendants (§ 1568); that these requirements apply (§ 23, ¶ 1), that jurisdiction be vested in a Greek court (§ 1576) and that both parties to the adoption be Greek nationals. It may be added that in 1963 FLA. STAT. § 72.34 was amended so as to allow adoption by single persons. *In re Frizzell's Estate*, 156 So.2d 558 (Fla. 2d Dist. 1963) held that a child adopted after execution of adoptor's will is a pretermitted child and entitled to take a child's share under the statute.

In an interstate situation the lower court, although denying a petition for adoption, awarded custody to the prospective adoptors.³⁷³ The appellate court, however, took into consideration an Oregon divorce decree granting custody to the father, who remained unaware of adoption proceedings in Florida, due to the fact that the mother took the child to Alabama and finally to Florida in violation of a court order. Giving this foreign decree "great weight and respect under the doctrine of comity"³⁷⁴ and also preference to father's rights to the child as against the child's wishes to live with non-related prospective adoptors, the court reversed in favor of the father.

Illegitimacy. The case of *Moya v. Pena*,³⁷⁵ involving jurisdictional aspects, already has been discussed.

Decedents Estates

In 1959 Florida enacted the so-called Iron-Curtain Rule³⁷⁶ by adding to section 731.28 a new paragraph (2):

When the county judge determines that any alien legatee, devisee, heir, beneficiary or distributee not residing within the territorial limits of the United States or any territory or possession thereof would not have the benefit or use or control of property due him and that special circumstances make it desirable that delivery to him be deferred, the county judge may order that such property be converted into available funds and paid into the state treasury, after such attorney's fees of the attorney for such legatee, devisee, heir, beneficiary or distributee, as the court shall set, have been paid therefrom, and said funds held in the state treasury subject to such further orders as the said court may enter.

No judicial interpretation of this statute has been reported. Nevertheless, it may be pointed out that in a recent decision the supreme court of Pennsylvania³⁷⁷ ruled a similar local statute to be custodial rather than confiscatory and therefore not in violation of applicable treaty law.

Proceedings for assignment of dower³⁷⁸ gave rise to two questions: one of characterization, already discussed, and the other as to the controlling law. In *In re Binkow's Estate*, once the court found that assets

373. In the Matter of Adoption by Vermeulen, 114 So.2d 192 (Fla. 1st Dist. 1959).

374. *Id.* at 195.

375. 148 So.2d 735 (Fla. 3d Dist. 1963), discussed with note 55 *supra*. See also Ester, *Illegitimate Children and Conflict of Laws*, 36 IND. L.J. 163 (1961); Ehrenzweig, *The "Bastard" in the Conflict of Laws: A National Disgrace*, 29 U. CHI. L. REV. 498 (1962).

376. Heyman, *The Nonresident Alien's Rights to Succession Under the Iron Curtain Rule*, 52 NW. U.L. REV. 221 (1957).

377. In the Matter of Estate of Belemecich, 411 Pa. 506, 192 A.2d 740 (1963), summarily rev'd by Supreme Court, N.Y. Times, Jan. 7, 1964, p. 21. Cf. Kolovrat v. Oregon, 366 U.S. 187 (1961); In the Matter of Estate of Kuzmic, 206 N.Y.S.2d 297 (Surr. Ct. 1960).

378. *In re Binkow's Estate*, 120 So.2d 15 (Fla. 1st Dist. 1960).

were considered movable property, it applied the law of the last domicile of the intestate, *i.e.*, Florida, which gives the widow dower in movable property. This was done in spite of the fact that the law of the situs of the property at the time of death (*i.e.*, Michigan and Maryland) denied it. Ruling that "the right of a widow to a share of movables of a decedent in preference to legatees is determined by the law of the state in which the decedent died domiciled," the court reversed an order denying the widow's request.

Among other reported cases regarding administration³⁷⁹ only a few may be mentioned: these cases involved the questions of appointment of an administrator in Florida to an estate of a Michigan domiciliary on strength of his action here arising out of a car accident;³⁸⁰ and of service on a nonresident executor under section 723.47(2).³⁸¹

Trusts

In *Hanson v. Denckla*,³⁸² the Supreme Court also dealt with jurisdictional and choice-of-law rules concerning trusts. The Court conceded the Florida rule that the validity of a trust is determined by the state of its creation. It even went so far as to include in this rule the concept that the appointment amounted to a republication of the original trust instrument in Florida, but only for choice-of-law purposes. As a basis for judicial jurisdiction the Court considered this an "insubstantial connection with the trust agreement for purposes of determining the question of personal jurisdiction over a nonresident defendant." The Court also declined to accept the domicile of the settlor and most of the appointees and beneficiaries in Florida as justifying the taking of jurisdiction over the nonresident trustees. Though Florida admittedly had the power to adjudicate rights and liabilities of those parties, it lacked jurisdiction over the trustee, who is, according to Florida law, an indispensable party in proceedings affecting the validity of a trust.³⁸³

379. Stimson, *Conflict of Laws and the Administration of Decedent's Personal Property*, 56 VA. L. REV. 1345 (1960).

380. *In re Klipple's Estate*, 101 So.2d 924 (Fla. 3d Dist. 1958) (appointment refused).

381. *Gettinger v. Blanton*, 133 So.2d 77 (Fla. 3d Dist. 1961); *In re Bazinet's Estate*, 17 Fla. Supp. 81 (1960) (conflicting rulings on decedent's domicile). On estate planning aspects: Scoles, *Conflict of Laws in Estate Planning*, 9 U. FLA. L. REV. 398 (1956); Heyman, *Estate Planning and Conflict of Laws*, 27 U. CINC. L. REV. 234 (1958); Ester & Scoles, *Estate Planning and Conflict of Laws*, 24 OHIO ST. L.J. 270 (1963).

382. 357 U.S. 235 (1956).

383. EHRENZWEIG 642; LEFLAR 403. Scott, *Trusts and the Conflict of Laws*, 39(7) TRUST BULLETIN 28 (March 1960).