true renvoi situation,[34] since an express stipulation, in the final analysis, presents a problem of determining the intent of the parties rather than a question of application of a judicial policy. The court's failure to discuss either this problem or that of the meaning of a stipulation of the law to be applied indicates a regrettable insensitivity to critical conflict of laws issues.

CONFLICT OF LAWS PROBLEMS IN MULTI-STATE LIBEL

A Columbia University professor brought a libel action against the publishers of *Life* magazine in the District Court for the Eastern District of Pennsylvania, alleging that the defendant had printed an article associating him with certain people indicted "for fascist activities." *Life* magazine is circulated throughout the United States and in most other civilized countries. Several suits instituted by the plaintiff in other jurisdictions had been unsuccessful, apparently because of the local statutes of limitation. The district court in the present case held that the single cause of action which existed was barred by the Pennsylvania statute of limitations. Upon appeal to the Third Circuit Court of Appeals, the decision was affirmed in part and reversed in part.[1]

Pennsylvania law provides that when a cause of action is barred by the statute of limitations of the "state or country in which it arose, such bar shall be a complete defense to an action thereon . . . ." in Pennsylvania.[2] In deciding when and where the cause of action "arose," the circuit court determined that Pennsylvania regards the printing and distribution of all copies of each issue of a periodical having nation-wide circulation as but a single "publication"[3] and as giving rise to but one cause of action for libel.[4] The court concluded that this "single" cause of action "arose" in Illinois, where the publication of the alleged

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the law of a foreign state, the reference has generally been taken to be the internal law of that foreign state and not to its conflict of laws rules." Goodrich, Conflict of Laws 12 (2d ed., 1938).

[34] The true renvoi situation only arises when the law of another state or country is directly referred to by the choice of law rules of the forum. Where the parties stipulate a law, it is always possible, of course, that they actually mean the whole law, including the conflict of laws rules.

[1] Hartmann v. Time, Inc., 166 F. 2d 127 (C.C.A. 3d, 1948), cert. den. 68 S. Ct. 1495 (1948). The defense of res judicata was also raised. This question was remanded to determine whether or not plaintiff's unsuccessful suit in Massachusetts was actually decided on the merits.

[2] Pa. Stat. Ann. (Purdon, Supp., 1947) tit. 12, s. 39.

[3] "Publication" as used in libel cases is a term of art referring to the communication of defamatory matter to one other than the person defamed. See Rest., Torts § 577 (1938).

[4] The court relied on Bausewine v. Norristown, 351 Pa. 634, 641, 41 A. 2d 736, 740 (1945); Sarkees v. Warner-West Corp., 349 Pa. 365, 37 A. 2d 544 (1944); Summit Hotel Co. v. National Broadcasting Co., 336 Pa. 182, 196, 8 A. 2d 302, 309 (1939). The leading cases supporting this doctrine are Age-Herald Pub. Co. v. Huddleston, 207 Ala. 40, 92 So. 193 (1922); Wolfson v. Syracuse Newspapers, 254 App. Div. 211, 4 N.Y.S. 2d 640 (1938); Forman v. Mississippi Publishers Corp., 195 Miss. 90, 14 So. 2d 344 (1943); see also 148 A.L.R. 469 (1944); 37 A.L.R. 898 (1925).

libel to some third person presumably first took place.[5] It therefore held that the "Illinois" cause of action "engrossed" the injury done in all the states following the "single publication" rule[6] and was barred by the Illinois statute of limitations.[7] Any suit in Pennsylvania on the "Illinois" cause of action was therefore barred.

The court added, however, that many states still adhere to the traditional notion that "each time a libelous article is brought to the attention of a third person, a new publication has occurred; that each publication is a separate and actionable tort," and that Pennsylvania courts would "refer the respective foreign publications to the appropriate foreign laws."[8] On this basis the court held that later miscellaneous replacement copies of the same issue each constituted a new cause of action in those states which did not follow the "single publication" rule.[9] Causes of action which were not barred by the statutes of limitation in such states were held not barred by Pennsylvania law, so that each could be sued upon in Pennsylvania.

The confused result reached by the Court of Appeals was due to a curious application of the Pennsylvania choice of law rule,[10] which provides that "the law of the place or places, if any, where the cause or causes of action accrued governs in the creation of substantive rights."[11] Since the terms in a choice of law rule are necessarily defined by reference to the internal law of the forum,[12] the court employed Pennsylvania law to conclude that there could be but one cause of action. Under Pennsylvania law, the law which is applicable to an alleged multi-state libel is evidently the law of the "place of first impact," and inasmuch as the allegedly libelous material was first communicated to the public in Illinois, the law of that state was applied.[13] Had the court stopped here, the

[5] *Life* magazine is edited in New York City but is printed in Chicago and Philadelphia. Distribution to subscribers begins from Chicago and copies of each issue first appear on the news-stands in that city.

[6] Hartmann v. Time, Inc., 166 F. 2d 127, 134–35 (C.C.A. 3d, 1948), cert. den. 68 S. Ct. 1495 (1948).

[7] "Actions for slander or libel shall be commenced within one year next after the cause of action accrued." Ill. Rev. Stat. (1947) c. 83, § 14.

[8] Hartmann v. Time, Inc., 166 F. 2d 127, 134–35 (C.C.A. 3d, 1948), cert. den. 68 S. Ct. 1495 (1948).

[9] For a formal statement of what may be termed the "multiple publication" rule see Rest., Torts § 578, Comment b (1938).

[10] A federal court must look to the conflict of laws rule of the state in which the suit was brought. Klaxon v. Stentor, 313 U.S. 487 (1941); Erie v. Tompkins, 304 U.S. 64 (1938).

[11] Hartmann v. Time, Inc., 166 F. 2d 127, 133 (C.C.A. 3d, 1948), cert. den. 68 S. Ct. 1495 (1948).

[12] Falconbridge, Conflict of Laws 91 (1947). " . . . it would seem to be clear that the connecting factor specified in a conflict rule of the forum must be defined by the lex fori." But see Hancock, Torts in the Conflict of Laws 189–91 (1942).

[13] The court assumed that Illinois law applied to the "single" cause of action, without expressly stating that it was looking to the law of the place of first impact.

result would have been logically coherent. However, the court was impressed by the fact that states not adhering to the "single publication" rule would permit causes of action where their statutes of limitation had not run.[14] To say, as the court did, that the plaintiff could sue in Pennsylvania on causes of action "arising" in those states completely contradicted the major premise that Pennsylvania law characterizes a multi-state libel as giving rise to only one cause of action.

Although the court seemingly erred[15] in looking in part to foreign law in order to interpret the terms in the Pennsylvania choice of law rule, it nevertheless is one of the few courts to face squarely the intricate choice of law problem in libel cases having multi-state contacts.[16] Thus, the case presents an opportunity to examine the criteria which a court may utilize in formulating its choice of law rule.

Traditional notions of the proper basis upon which to determine the place of wrong in tort cases having multi-state contacts seem to have evolved from the typical personal injury situations.[17] In those cases the harm inflicted is usually sufficiently limited in space and time to simplify the choice of law problem.[18] But such unity of harm is not characteristic of a libel having multi-state contacts. In a sense an "impact" on the person libeled results each and every time the defamatory article is communicated to a third person. Where the circulation involves many states, the "place of harm" test leads, by logical implication, to the conclusion that at least one cause of action "arose" in each jurisdiction in which the libelous article has been circulated and read; moreover, the plaintiff may be able to sue the publisher in each jurisdiction as many times as the defamatory material was communicated to third persons there.[19]

[14] In such states, since each publication constitutes a new tort, the local statutes of limitation would seem to afford no practical protection to the defendant against stale claims. See 94 U. of Pa. L. Rev. 335 (1946), noting Hartmann v. Time, Inc., 64 F. Supp. 671 (Pa., 1946).

[15] Perhaps the court was really not sure that Pennsylvania followed the "single publication" rule. The Pennsylvania cases cited in note 4 supra did not involve choice of law problems, nor is it clear that they enunciated the idea that a widely circulated libel is but one cause of action. Moreover, the relatively new idea that there is one integrated publication instead of many publications constituting many torts has been principally used for purposes of applying local venue and limitations statutes. No case cited by the court used this concept in a choice of law situation to limit the number of different "foreign" causes of action the plaintiff might have. These considerations may have led the court to its odd result, for it really had no square precedent for applying the "single publication" notion to a choice of law problem.

[16] Hancock, Torts in the Conflict of Laws 252 (1942).

[17] See Alabama G.S.R.R. v. Carrol, 97 Ala. 126, 11 So. 803 (1892).

[18] Where the physical impact occurs in more than one state, it has been held that the law of each state will be applied to the damage resulting there. Connecticut Valley Lumber Co. v. Maine Central R.R., 78 N.H. 553, 103 Atl. 263 (1918).

[19] O'Reilly v. Curtis Publishing Co., 31 F. Supp. 364 (Mass., 1940), seems to be the only libel case which has squarely held that a separate cause of action exists in each jurisdiction in which there was a publication. That there could be more than one cause of action within each state was apparently not argued.

The objections to any such result are manifest. The plaintiff can harass the defendant with a multitude of suits in different states even though the conduct of the defendant amounts to only one integrated act. This possibility obviously strengthens the bargaining position of those who bring libel actions solely for extortionate purposes. The alternative possibility of incorporating all the various causes of action in a single suit would necessarily involve instructing a jury in the subtle distinctions existing in the substantive law of libel in each of forty-eight or more systems of law—a preposterous result. Should suits actually be brought in each jurisdiction, a defendant would be faced with the unfair prospect of having general damages repeatedly assessed against him regardless of the amount of actual injury to the plaintiff in each particular jurisdiction.[20] If we superimpose upon these difficulties the problem of adapting a nation-wide publication to the variance and uncertainty of libel law from jurisdiction to jurisdiction, the resulting burden on freedom of expression becomes a strong argument against adopting the traditional "place of impact" test.

One conceivable variation of the "place of impact" rule is the doctrine of "place of first impact."[21] In the case of a libel the place of "first impact" is presumably the jurisdiction in which the first unprivileged publication to a third person takes place. Under this theory the first impact serves to "complete" the cause of action, and all later publications in the same and other jurisdictions are considered only in assessing damages. The merit of such a test is its simplicity of application and its implicit recognition that the whole transaction results in only one cause of action which the forum can deal with by referring to only one system of law. But a rule necessitating stop-watch calculations to ascertain the proper law is so divorced from the realities of the publishing business as to be of dubious value. Indeed, if such a rule were generally adopted, publishers might conveniently have the "first impact" take place in the jurisdiction having the most lenient law of libel.[22]

Another possible significant point of contact for determining the applicable law is the domicil of the defamed person.[23] Although the domicil has an important interest in determining the scope of protection to be given the reputations of its residents, the major limitation of this theory is the possibility that the effects of the alleged libel may never be felt in the domicil. Furthermore, such a test compels the publisher to formulate a standard of conduct which varies with the domicil of the person alleging the defamation. And the basis for the

[20] Newell, Slander and Libel § 721 (1924). "General damages . . . arise by inference of law and need not be proved by evidence."

[21] Compare Banks v. King Features Syndicate, Inc., 30 F. Supp. 352 (N.Y., 1939). The court, in a right of privacy suit having contacts with more than one state, applied the law of state where "the seal of privacy was first broken."

[22] It would be a relatively inexpensive matter to start distribution in the most favorable state.

[23] Szalatnay-Stacho v. Fink, [1947] K.B. 1. The case did not involve a widely circulated publication. A letter was passed between two Czech officials in England libelling a third Czech official in Egypt. The English court applied Czech law.

doctrine breaks down completely in its application to purported defamations of persons whose reputation is widespread[24]—the very persons to whom nationally circulated periodicals give most attention.

Perhaps a more flexible solution, and one recognizing important contacts in states outside the domicil, would be to adopt the law of the place where the plaintiff has suffered the most harm.[25] But here too the publisher is denied the possibility of adequate prediction as to the scope of permissible conduct. In addition, this test may involve nearly insoluble questions of fact.

Least unsatisfactory as a basis for liability is the law of the jurisdiction in which the publisher has his principal place of business.[26] This test is easily applicable[27] and provides a fixed standard of conduct for the publisher. General adoption of such a rule would eliminate the evils of shopping for a forum; the publisher could not be harassed and coerced by multiple suits. The interests of legitimate plaintiffs would not be prejudiced, since they could recover damages for injury to reputation, wherever inflicted, in a single cause of action in any convenient forum.[28] Publishers might, of course, abuse the rule by concentrating their principal places of business in states having lenient libel laws, but the possibility is at best a remote one.[29]

The admixture of two mutually exclusive doctrines in the instant case illustrates the hopeless confusion present in multiple contact libel cases. Yet universal adoption of any of the suggested tests except the general "place of harm" theory would improve the situation immeasurably. Thus, should all the states adhere to the "principal place of publication" doctrine, apparently the only test meriting general approval, the result would approach the ideal of federal legisla-

[24] The Choice of Law in Multistate Defamation and Invasion of Privacy: An Unsolved Problem, 60 Harv. L. Rev. 941, 948 (1947).

[25] No court appears to have used such a test in a libel case having multi-state contacts. A somewhat analogous conflicts test is used in multiple-contact contracts cases. See Jones v. Metropolitan Life Ins. Co., 158 N.Y. Misc. 466, 286 N.Y. Supp. 4 (1936).

[26] United States v. Smith, 173 Fed. 227 (D.C. Ind., 1909) (semble). One writer has suggested applying the law of the place of broadcasting to widespread radio defamations. Hancock, Torts in the Conflict of Laws 253 (1942).

[27] The location of the main editorial offices is most likely the best test for ascertaining the principal place of business. In many cases editing and printing taking place in the same jurisdiction.

[28] Damages would also have to be ascertained under the standards set by the internal law of the jurisdiction in which the defendant does business. To say that after a libel has been established under that law, damages must nevertheless be measured by the various standards in other states, would be to undermine the administrative utility of considering the facts as giving rise to but one cause of action.

Publishers may argue that under such a rule they may be liable for injury inflicted upon the plaintiff in states which themselves would not consider the printed matter as libelous under their internal law. The defendant may avoid this apparent unfairness by conforming to the libel law of the state in which he does business.

[29] Liability for libels is probably a calculated risk in the publishing business and considered as a normal cost. It is doubtful that the economic impact of such a cost would induce a change in the business site to avoid it.

tion. But no potent force is operative to produce such a result, since state differences in the statement or application of choice of law rules no longer create constitutional questions.[30] The absence of a judicially developed uniform test and the unlikelihood of uniform state or federal legislation[31] point to continued inadequate treatment of these choice of law problems—a result particularly unfortunate because of the growth of mass communication.

DEBT COLLECTION BY BOYCOTT AS A "LABOR DISPUTE"

The respondent, a delicatessen proprietor, found that the delivery of bread from Hinkle's Bakery at the noon hour was inconvenient and "required" Hinkle's truck driver to deliver at another hour. After Hinkle's Bakery informed the respondent that it would no longer supply her, she was able to arrange a satisfactory hour of delivery with another bakery. Three weeks later the business agent of the union representing Hinkle's drivers appeared at the delicatessen and demanded immediate payment of $150 purportedly due the driver. He also demanded that the respondent stop selling a non-union made item which she had been carrying, and stated that the union would prevent all shipments of bakery, milk, and dairy products to her store from any source if these demands were not satisfied. According to the respondent, she then discontinued sale of the non-union made item and made payment of the amount requested, by check, to the bakery. The check, which had been turned over to the union business agent by the bakery, was returned with a letter saying that it could not be accepted in settlement because "it was $12.22 short of the amount which is owed to our member." The next day the respondent was informed by her new supplier that no more deliveries could be made, since the union had threatened to pull out all of its drivers if any more products were sold or delivered to the respondent. After a more extensive boycott had been established, with pickets parading in front of the delicatessen store, a federal district court granted the respondent's petition for an injunction pendente lite restraining both boycotting and picketing by the union. Upon appeal of the single question of whether the case involved a labor dispute under the terms of the Norris-LaGuardia Act, the Court of Appeals for the District of Columbia affirmed the lower court's decision that no labor dispute existed.[1] On certiorari, the Supreme Court affirmed, three justices dissenting. *Bakery Sales Drivers Local Union No. 33 v. Wagshal.*[2]

The Supreme Court, in a brief opinion, examined the three incidents com-

[30] O'Meara, Constitutional Aspects of the Conflict of Laws: Recent Developments, 27 Minn. L. Rev. 500 (1943).

[31] The Choice of Law in Multistate Defamation and Invasion of Privacy: An Unsolved Problem, 60 Harv. L. Rev. 941, 951 (1947).

[1] Bakery Sales Drivers Local Union No. 33 v. Wagshal, 161 F. 2d 380 (App. D.C., 1947).

[2] 333 U.S. 437 (1948).