Case Notes

Conflict of Laws—Under Most Significant Relationships Rule, Iowa, Unlike Minnesota, Retroactively Applies New Minnesota Rule Establishing Wife's Recovery for Loss of Consortium.—*Berghammer v. Smith* (Iowa 1971)

An action was brought by a wife for loss of her husband's consortium[1] as a result of injuries sustained by him in Iowa when the truck he was driving was involved in a head-on collision with a truck owned by the defendant, an Illinois company. At the time of the accident, Iowa, the forum state, allowed a wife's recovery for loss of consortium; but Minnesota, domicile of the plaintiff and her husband, did not confer such a remedy. Subsequently, Minnesota changed its old common law rule, but application of the decision was prospective only. On the defendant's motion to adjudicate law points, the trial court ruled that the wife's right to recover was to be determined by Iowa law. On appeal to the Iowa supreme court, *Held*, affirmed judgment on the verdict, three justices dissenting. Using the Iowa approach of applying the law of the state with the most significant relationships to the issue, Minnesota law governed. However, in advancing both Minnesota and Iowa policy, Iowa, unlike Minnesota, was not bound to prospectively apply the new Minnesota rule establishing a wife's right to recover for loss of consortium. *Berghammer v. Smith*, 185 N.W.2d 226 (Iowa 1971).

The traditional rule in conflict of laws has long been[2] that the law of the place of the wrong, the *lex loci delecti*, governs the substantive rights[3] of the parties to a multistate tort action.[4] Under this "vested rights" or "territorial" doctrine, the existence and extent of tort liability arises from the state of the

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[1] The wife's cause of action for loss of consortium was joined for trial with the husband's own cause of action against the same defendant, as required by Minnesota law. Thill v. Modern Erecting Co., 284 Minn. 508, 170 N.W.2d 865 (1969). Iowa does not require the joinder of husband and wife as party plaintiffs. Acuff v. Schmit, 248 Iowa 272, 78 N.W.2d 480 (1956); *see* Iowa R. Civ. P. 10, which provides: "A married woman may sue . . . without joining her husband."

[2] As late as 1963 the Iowa supreme court was invited to be the first American jurisdiction to adopt the "most significant contacts with the matter in dispute" rationale. Fessenden v. Smith, 255 Iowa 1170, 124 N.W.2d 554 (1963).

[3] Distinguish from "procedural" or "remedial" matters which are generally determined by the law of the forum. *See* note 10, *infra*.

[4] Cardamon v. Iowa Lutheran Hospital, 256 Iowa 506, 128 N.W.2d 226 (1964); Fessenden v. Smith, 255 Iowa 1170, 124 N.W.2d 554 (1963); Kingery v. Donnell, 222 Iowa 241, 268 N.W. 617 (1936); Redfern v. Redfern, 212 Iowa 454, 236 N.W. 399 (1931); Hamilton v. Chicago, B. & Q. Ry. Co., 145 Iowa 431, 124 N.W. 363 (1910); Dorr Cattle Co. v. Des Moines Nat'l Bank, 127 Iowa 153, 98 N.W. 918, 102 N.W. 836 (1905); Brewster v. Chicago & N.W. Ry. Co., 114 Iowa 144, 86 N.W. 221 (1901); Hyde Adm'r v. Wabash, St. L. & P. Ry. Co., 61 Iowa 441, 16 N.W. 351 (1883). This was the rule of the Restatement of Conflict of Laws §§ 378, 384 (1934).

tort;[5] the rationale apparently being that since tort claims are transitory, it is only fair that a defendant be judged according to the standards in effect where he acted, rather than where he is sued.[6] Despite the obvious advantages of certainty, ease of application, and predictability,[7] there has been widespread criticism of the general rule.[8]

After realizing the shortcomings of the traditional "place of wrong" rule, the courts utilized several manipulative devices[9] to avoid application of the rule and to effectuate just results in individual cases, sometimes by characterizing the issue involved as "procedural",[10] or as something other than tort,[11] or occasionally by invoking local public policy as a defense.[12] While recognizing a need for change, these decisions served only to conceal and confuse the real reasoning of the courts in resolving conflict of laws. In a few of the early cases involving interspousal immunity, several courts, without alluding to the substantive-procedural distinction or a public policy rationale, took significant

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[5] *See* Justice Holmes' opinion in Slater v. Mexican Nat'l R.R. Co., 194 U.S. 120 (1904); Loucks v. Standard Oil Co. of New York, 224 N.Y. 99, 120 N.E. 198 (1918); Zelinger v. State Sand and Gravel Co., 38 Wis. 2d 98, 156 N.W.2d 466 (1968); 3 BEALE, A TREATISE ON THE CONFLICTS OF LAWS 1968 (1935). While often referring to the term "comity", the Iowa decisions have followed the "vested rights" theory. *See* Cardamon v. Iowa Lutheran Hospital, 256 Iowa 506, 128 N.W.2d 226 (1964); Jacobsen v. Saner, 247 Iowa 191, 72 N.W.2d 900 (1955); Kingery v. Donnell, 222 Iowa 241, 268 N.W. 617 (1936); Redfern v. Redfern, 212 Iowa 454, 236 N.W. 399 (1931); Dorr Cattle Co. v. Des Moines Nat'l Bank, 127 Iowa 153, 98 N.W. 918, 102 N.W. 836 (1905).

[6] *See* note 5, *supra*.

[7] Babcock v. Jackson, 12 N.Y.2d 473, 475, 191 N.E.2d 279, 281 (1963); Cheatham & Reese, *Choice of the Applicable Law*, 52 COLUM. L. REV. 959, 976 (1952).

[8] Because the situs of an unintentional tort is purely fortuitous and often bears no relationship to the policies and interests of other jurisdictions, the most basic criticism of the *lex loci delecti* doctrine is its mechanical nature. *See generally* Cheatham, *Some Developments in Conflict of Laws*, 17 VANDERBILT L. REV. 193 (1963); Weintraub, *A Method for Solving Conflict Problems—Torts*, 48 CORNELL L.Q. 215 (1963); Traynor, *Is This Conflict Really Necessary?*, 37 TEX. L. REV. 657 (1954); Morris, *The Proper Law of Tort*, 64 HARV. L. REV. 881 (1951); Cavers, *A Critique of the Choice-of-Law Problem*, 47 HARV. L. REV. 173 (1933).

[9] *See* Leflar, AMERICAN CONFLICTS LAW (1968); Morse, *Characterization, Shadow or Substance*, 49 COLUM. L. REV. 1027 (1959); Cook, *Characterization in Conflict of Laws*, 51 YALE L. J. 191 (1941); Lorenzen, *The Qualification, Classification, and Characterization Problem in Conflict of Laws*, 50 YALE L. J. 743 (1941).

[10] *See* Flogel v. Flogel, 257 Iowa 547, 133 N.W.2d 907 (1965); Fabricius v. Horgen, 257 Iowa 268, 132 N.W.2d 410 (1965); Cardamon v. Iowa Lutheran Hospital, 256 Iowa 506, 128 N.W.2d 226 (1964); Kingery v. Donnell, 222 Iowa 241, 268 N.W. 617 (1936); Redfern v. Redfern, 212 Iowa 454, 236 N.W. 399 (1931); Rastede v. Chicago, St. P.M. & O. R.R. Co., 203 Iowa 430, 212 N.W. 751 (1927); Schmitt v. Postal Tel. Co., 164 Iowa 654, 146 N.W. 467 (1914); Dorr Cattle Co. v. Des Moines Nat'l Bank, 127 Iowa 153, 98 N.W. 918, 102 N.W. 836 (1905); Johnson v. Chicago & N.W. Ry. Co., 91 Iowa 248, 59 N.W. 66 (1894). For a good example of the use and application of the procedural characterization see Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526 (1961).

[11] *See* Levy v. Daniels' U-Drive Auto Renting Co., 108 Conn. 333, 143 A. 163 (1938); Flogel v. Flogel, 257 Iowa 547, 133 N.W.2d 907 (1965); Hyde Adm'r v. Wabash, St. L. & P. Ry. Co., 61 Iowa 441, 16 N.W. 351 (1883); Haumschild v. Continental Casualty Co., 7 Wis. 2d 130, 95 N.W.2d 814 (1959).

[12] *See* Fuerste v. Bemis, 156 N.W.2d 831 (Iowa 1968); Flogel v. Flogel, 257 Iowa 547, 133 N.W.2d 907 (1965); Fessenden v. Smith, 255 Iowa 1170, 124 N.W.2d 554 (1963); Kingery v. Donnell, 222 Iowa 241, 268 N.W. 917 (1936); Koplik v. C.P. Trucking Corp., 27 N.J. 1, 141 A.2d 34 (1958); Kilberg v. Northeast Airlines, Inc., 9 N.Y.2d 34, 172 N.E.2d 526 (1961); Haynie v. Hanson, 16 Wis. 2d 299, 114 N.W.2d 443 (1962); Haumschild v. Continental Casualty Co., 7 Wis. 2d 130, 95 N.W.2d 814 (1950).

steps in departing from the *lex loci delecti* doctrine, although not expressly rejecting the general rule.[13] For example, where an Iowa wife sought to recover for injuries allegedly sustained by reason of the negligent operation of a motor vehicle by her husband, the Iowa supreme court in ***Flogel v. Flogel***,[14] arbitrarily avoided a conflict between Iowa and Wisconsin law by holding that the question of interspousal immunity was one of family law, saying that the law to be applied in this situation is that of the domicile and forum. However, the court did cite with approval to the principle that the *lex loci* should not be permitted to interfere with "a status and policy which the state of residence is primarily interested in maintaining."[15]

In recent years, a large majority of jurisdictions have abandoned a "wooden application"[16] of the strict, "place of wrong" rule.[17] Generally, modern courts have attempted to apply a rule requiring an analysis of the objective factors involved to determine the most appropriate law to the particular issue involved. Nevertheless, the search for the appropriate approach to this conflict of laws process has been the subject of much controversy among legal writers and the courts. The *Restatement* has adopted the "most significant relationships" rule.[18] The leading case establishing this position is ***Babcock v.***

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[13] *See* Flogel v. Flogel, 257 Iowa 547, 133 N.W.2d 907 (1965); Kircher v. Kircher, 288 Mich. 669, 286 N.W. 120 (1939); Kyle v. Kyle, 210 Minn. 204, 297 N.W. 744 (1941); Thompson v. Thompson, 105 N.H. 86, 193 A.2d 439 (1963); Koplik v. C.P. Trucking Corp., 27 N.J. 1, 141 A.2d 34 (1958); Emery v. Emery, 45 Cal. 2d 421, 289 P.2d 218 (1955); Mertz v. Mertz, 271 N.Y. 466, 3 N.E.2d 597 (1936); Poling v. Poling, 116 W. Va. 187, 179 S.E. 604 (1935); Haumschild v. Continental Casualty Co., 7 Wis. 2d 130, 95 N.W.2d 814 (1950).

[14] 257 Iowa 547, 133 N.W.2d 907 (1965).

[15] *Id.* at 550, 133 N.W.2d at 909.

[16] Fabricius v. Horgen, 257 Iowa 268, 276, 132 N.W.2d 410, 415 (1965).

[17] *See, e.g.*, Richards v. United States, 369 U.S. 1 (1962); Williams v. Rawlings Truck Lines, Inc., 357 F.2d 581 (D.C. Cir. 1965); Watts v. Pioneer Corn Co., Inc., 342 F.2d 617 (7th Cir. 1965); Armstrong v. Armstrong, 441 P.2d 699 (Alaska 1968); Schwartz v. Schwartz, 103 Ariz. 562, 447 P.2d 254 (1968); Reich v. Purcell, 67 Cal. 2d 551, 432 P.2d 727 (1967); Fuerste v. Bemis, 156 N.W.2d 831 (Iowa 1968); Wessling v. Paris, 417 S.W.2d 259 (Ky. 1967); Schneider v. Nichols, 280 Minn. 139, 158 N.W.2d 254 (1968); Mitchell v. Craft, 211 So. 2d 509 (Miss. 1968); Clark v. Clark, 107 N.H. 351, 222 A.2d 205 (1966); Melk v. Sarahson, 49 N.J. 226, 229 A.2d 625 (1967); Babcock v. Jackson, 12 N.Y.2d 473, 191 N.E.2d 279 (1963); Casey v. Manson Constr. and Engr. Co., 247 Ore. 274, 428 P.2d 898 (1967); Griffith v. United Airlines, Inc., 416 Pa. 1, 203 A.2d 796 (1964); Woodward v. Stewart, 243 A.2d 917 (R.I. 1968).

[18] RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145 (1969) is as follows:

> The General Principle
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> (1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, as to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.
>
> (2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:
>
> (a) the place where the injury occurred,
>
> (b) the place where the conduct causing the injury occurred,
>
> (c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and
>
> (d) the place where the relationship, if any between the parties is centered.
>
> These contacts are to be evaluated according to their relative importance with respect to the particular issue.

Section 6 referred to above contains the following general choice-of-law principles:

> (1) A court, subject to constitutional restrictions, will follow a statutory

Jackson,[19] in which the New York court permitted a guest to maintain an action against the driver of the car in which he was riding for injuries sustained in Ontario, Canada, which had a guest statute barring the plaintiff's right of recovery. The court stressed that since all the parties were New York residents; the car was garaged, licensed, and insured there; and the guest-driver relationship began and was to end there, New York had the dominant contact and the superior claim for application of its law" and that Ontario's only relationship was the "purely adventitious circumstance that the accident occurred there."[20] While undoubtedly flexible, this approach is extremely unpredictable in application[21] as illustrated by the fact that the same court reached exactly the opposite conclusion where the only factual difference was that the guest and the driver were students temporarily residing in Colorado, the state where the accident occurred and where the guest relationship arose.[22] Having recognized this principle in several cases,[23] the Iowa supreme court "unequivocally" adopted the rule of most significant relationships in *Fuerste v. Bemis*.[24] There, an action was brought in Iowa by the Iowa administrator of a deceased Iowan against an Iowa resident, who was the driver of an automobile in which the deceased was a guest at the time of the accident in Wisconsin, which has no guest statute and recognizes comparative negligence. In holding that Iowa law governed these issues, the Iowa court also gave judicial sanction to another choice of law approach when it pointed out that, although this was a "spurious conflict",[25] the argument "that one of the choice influencing considerations is the sounder rule of law . . . would have some validity in a true conflicts case in which other considerations were in near equipoise."[26] The five basic choice influencing con-

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directive of its own state court on choice of law.
(2) When there is no such directive, the factors relevant to the choice of applicable law include
(a) the needs of the interstate and international systems,
(b) the relevant policies of the forum,
(c) the relevant policies of the other interested states and the relative interests of those states in the determination of the particular issue,
(d) the protection of justified expectations,
(e) the basic policies underlying the particular field of law,
(f) certainty, predictability and uniformity of result, and
(g) ease in the determination and application of the law to be applied.

19 12 N.Y.2d 473, 191 N.E.2d 279 (1963).

20 *Id.* at 478, 191 N.E.2d at 284.

21 *See generally* La Brum, *The Fruits of Babcock and Seider: Injustice, Uncertainty, and Forum Shopping*, 54 A.B.A.J. 747 (1968); Ehrenzweig, *The Second Conflicts Restatement; A Last Appeal for Its Withdrawal*, 113 U. PA. L. REV. 1230 (1965); Sparks, *Babcock v. Jackson—A Practicing Attorney's Reflections Upon the Opinion and Its Implications*, 31 INSURANCE COUNSEL J. 428 (1964); Ehrenzweig, *The Most Significant Relationship in Conflicts of Law of Torts*, 28 LAW & CONTEMP. PROB. 700 (1963).

22 Dym v. Gordon, 16 N.Y.2d 120, 209 N.E.2d 792 (1965); *But see* Kell v. Henderson, 26 App. Div. 2d 595, 270 N.Y.S.2d 252 (1966).

23 Fabricius v. Horgen, 257 Iowa 268, 132 N.W.2d 410 (1965); Flogel v. Flogel, 257 Iowa 547, 133 N.W.2d 907 (1965).

24 156 N.W.2d 831 (Iowa 1968).

25 *See generally* Ehrenzweig, *False Conflicts and the Better Rule: Threat and Promise in Multi-State Tort Law*, 53 VA. L. REV. 847 (1967); Weintraub, *A Method for Solving Conflict Problems—Torts*, 48 CORNELL L. Q. 215 (1963); B. Currie, *Notes on Methods and Objectives in the Conflict of Laws*, DUKE L.J. 171 (1959); Traynor, *Is This Conflict Really Necessary?*, 37 TEX. L. REV. 657 (1959).

26 Fuerste v. Bemis, 156 N.W.2d 831, 834 (Iowa 1968).

siderations have been identified, summarized, and listed as follows:

1. Predictability of results;
2. Maintenance of interstate and international order;
3. Simplification of the judicial task;
4. Advancement of the forum's governmental interests; and,
5. Application of the better rule of law.[27]

Like the most significant relationships approach, the process of applying these relevant choice of law considerations to the particular case focuses on selecting the *law* (not jurisdiction) which will best achieve justice between the parties to the litigation and will further the governmental interests and policies of the states involved. Accordingly, it has been suggested that the forum state should, in the absence of surprise, always refer to the sounder rule of law;[28] other writers advocate that since the starting point in choice of law problems is the law of the forum, the *lex fori* should be applied as a matter of course when the forum state has any legitimate governmental interest in the litigation.[29]

The principle Iowa decision is important for two reasons. First, to determine a wife's right to recover for loss of her husband's consortium, the Iowa supreme court applied the law of the state with the most significant relationship, the marital domicile, rather than the law of the place of the wrong. Second, in deciding what law applied *temporally*,[30] the forum state, in advancing policy, retroactively applied a foreign-state rule which the other state would have applied prospectively.

Regarding the problem of which state's law applied, the general rule as to the loss of consortium[31] is still the *lex loci delicti* doctrine,[32] notwithstanding analogous decisions involving interspousal immunity[33] and some direct authority

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[27] *See generally* LEFLAR, AMERICAN CONFLICTS LAW (1968); Leflar, *Choice-Influencing Consideration in Conflicts Law,* 41 N.Y.U. L. REV. 267 (1966). A few jurisdictions have followed this approach to the letter. Clark v. Clark, 107 N.H. 351, 222 A.2d 205 (1966); Heath v. Zellmer, 35 Wis. 2d 578, 151 N.W.2d 664 (1967).

[28] *See* Ehrenzweig, *False Conflicts and the Better Rule: Threat and Promise in Multi-State Tort Law,* 53 VA. L. REV. 847 (1967).

[29] *See* B. Currie, *Notes on Methods and Objectives in the Conflict of Laws,* DUKE L.J. 171 (1959); Ehrenzweig, *The Lex Fori—Basic Rule in the Conflict of Laws,* 58 MICH. L. REV. 637 (1960).

[30] A conflict may arise when there is a question of whether earlier or later laws of a state apply. RESTATEMENT OF CONFLICT OF LAWS, Explanatory Notes § 1, comment *c* at 2-3 (1934).

[31] "Consortium" has been defined by the Iowa supreme court as the "conjugal fellowship of husband and wife; and the right of each to the company, affection, and aid of the other in every conjugal relation". Berghammer v. Smith, 185 N.W.2d 226, 231 (Iowa 1971); Lampe v. Lagomarcino-Grupe Co., 251 Iowa 204, 206, 100 N.W.2d 1, 2 (1959); Acuff v. Schmit, 248 Iowa 272, 274, 78 N.W.2d 480, 482 (1956); McGlothlen v. Mills, 221 Iowa 204, 265 N.W. 117 (1936); Price v. Price, 91 Iowa 693, 60 N.W. 202 (1894); 41 C.J.S. *Husband and Wife* § 11 (1944); 42 C.J.S. *Husband and Wife* § 662 (1944).

[32] Owen v. Illinois Baking Corp., 260 F. Supp. 820 (W.D. Mich. 1966); McVickers v. Chesapeake and Ohio Ry. Co., 194 F. Supp. 848 (E.D. Mich. 1961); Sestito v. Knop, 297 F.2d 33 (7th Cir. 1961); Jordan v. States Marine Corp., 257 F.2d 232 (9th Cir. 1958); Hartford Mut. Ins. Co. v. Bruchey, 248 Md. 669, 238 A.2d 115 (1968); Conway v. Ogier, 115 Ohio App. 251, 184 N.E.2d 681 (1961).

[33] *See* note 13, *supra*. *See also* Armstrong v. Armstrong, 441 P.2d 699 (Alaska

to the contrary.[34] This is unquestionably due to the fact that most states, including Iowa, have never been confronted with the precise question. Here, the Iowa supreme court followed the modern principle announced in *Fuerste v. Bemis*—the most significant relationships rule—and determined Minnesota, the state of marital domicile,[35] to be that state, even though Iowa was both the forum state and the state of the tort. The court stated:

> We hold Minnesota has the most significant—indeed, perhaps the only—relationship with plaintiff and the issue of her right to maintain an action for loss of consortium. We reach this conclusion because only Minnesota is concerned with the marital status of plaintiff and the interspousal rights and duties arising therefrom.
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> Iowa has no state interest to protect. No party is an Iowa resident. Iowa's legitimate concern to protect its citizens who may have rendered services to one involved in an accident here is not a factor, since a claim for loss of consortium would not give rise to such services. (citing cases)
>
> Nor may it be said our policy recognized a wife's claim for loss of consortium was intended primarily to do more than extend such right to Iowa wives.
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> Iowa's sole worry, in fact, is for the enforcement of its law of the road and the safety of its highways. The consortium claim does not touch that issue.[36]

Despite the indications that *Berghammer* involved a "spurious" or "false conflict", the court, after deciding to refer to applicable Minnesota law, emphasized the "basic premise"[37] of the most significant relationships doctrine and looked again to states' interests and policies applying the Minnesota rule adopted in *Thill v. Modern Erecting Company*,[38] establishing a wife's right to maintain an action for her loss of consortium, although at the time of the accident, Minnesota itself would have applied its old common law rule denying such recovery.[39] The court stated *inter alia*:

> If we apply Minnesota law as it was prior to *Thill v. Modern*

1968); Schwartz v. Schwartz, 103 Ariz. 562, 447 P.2d 254 (1968); Wartell v. Formusa, 34 Ill. 2d 57, 213 N.E.2d 544 (1966); Balts v. Balts, 273 Minn. 419, 142 N.W.2d 66 (1966); Johnson v. Johnson, 107 N.H. 30, 216 A.2d 781 (1966); Miller v. Miller, 22 N.Y.2d 12, 237 N.E.2d 877, *motion to amend remittitur denied*, 22 N.Y.2d 722, 239 N.E.2d 204 (1968); McSwain v. McSwain, 420 Pa. 86, 215 A.2d 677 (1966).

[34] Schneider v. Schimmels, 256 Cal. App. 2d 366, 64 Cal. Rptr. 273 (1967); Casey v. Manson Constr. and Engr. Co., 247 Ore. 274, 428 P.2d 898 (1967).

[35] " 'Domicil[e]' is the place with which a person has a settled connection for certain legal purposes, either because his home is there or because that place is assigned him by the law." In Re Guardianship of Lehr, 249 Iowa 625, 87 N.W.2d 909, 912 (1958); *see* In Re Jones Estate, 192 Iowa 78, 182 N.W. 227 (1921).

[36] Berghammer v. Smith, 185 N.W.2d 226, 231-232 (Iowa 1971).

[37] "The most basic premise of the most significant relationships theory is that the court of the forum should apply the *policy* of the state with the most interest in the litigants and the outcome of the litigation." (court's emphasis) Berghammer v. Smith, 185 N.W.2d 226, 232 (Iowa 1971); Fuerste v. Bemis, 156 N.W.2d 831, 834 (Iowa 1968).

[38] 284 Minn. 508, 170 N.W.2d 865 (1969).

[39] *Id.* at 513, 170 N.W.2d at 870. "Today's decision is prospective and is applicable only with regard to personal injuries sustained from and after this date, [Sept. 19, 1969] except that it shall additionally apply to the instant case." *Berghammer* arose out of an accident which occurred on September 27, 1966.

> *Erecting Co.*, we give life to a policy which that state has not repudiated. Even though Minnesota has made the new rule prospective, we are not bound to do likewise. We should decide, rather, whether that action would further some valid interest of that state under the particular circumstances of this case.
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> * * *
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> By enforcing the now discarded Minnesota rule, we would ignore our own state policy without advancing Minnesota's.[40]

Many overruling decisions, such as *Thill*, have made a new rule prospective only, but have operated to govern the rights of the parties to the overruling case itself.[41] Thus, a court referring to the applicable law of another state is generally bound by the interpretation of the foreign court and would probably apply a new foreign rule accordingly.[42] However, decisional law as to prospectivity and retrospectivity, unlike statutory law, involves judicial policy, not power, and differing results may be reached depending on the particular facts and rule affected.[43]

Given the conceptual foundation of the most significant relationship rule,[44] why should the forum court be bound by foreign law which consists merely of one decision, and where the foreign law is contrary to the law and policy of the forum?[45] Conceding that Minnesota had a superior interest in the wife's claim for loss of consortium, a majority of the Iowa supreme court doubted that even the Minnesota court would apply *Thill* prospectively to the factual situation in *Berghammer*. The limitation placed on the new Minnesota rule was for the purpose of allowing persons, who might have justifiably relied on prior decisions denying a wife's right to recover for loss of consortium, to obtain adequate insurance coverage.[46] Since Illinois recognized a wife's right to maintain such an action,[47] the court reasoned that the defendant,

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40 Berghammer v. Smith, 185 N.W.2d 226, 232-233 (Iowa 1971).

41 *See, e.g.*, Duhame v. State Tax Comm'n., 65 Ariz. 268, 179 P.2d 252 (1947); Molitor v. Kaneland Community Unit Dist. No. 302, 18 Ill. 2d 11, 163 N.E.2d 89, *cert. denied*, 362 U.S. 968 (1959); Parker v. Port Huron Hospital, 361 Mich. 1, 105 N.W.2d 1 (1960); Barker v. St. Louis County, 340 Mo. 986, 104 S.W.2d 371 (1937); Kojis v. Doctors Hospital, 12 Wis. 2d 367, 107 N.W.2d 292 (1961).

42 Brewster v. Chicago & N.W. Ry. Co., 114 Iowa 144, 86 N.W. 221 (1901); 20 Am. Jur. 2d, *Courts* § 206 (1965); 16 Am. Jur. 2d, *Conflict of Laws* § 76 (1964).

43 Linkletter v. Walker, 381 U.S. 618 (1965); Great Northern R.R. Co. v. Sunburst Oil & Ref. Co., 287 U.S. 358 (1932). *See also*, Levy, *Realist Jurisprudence and Prospective Overruling*, 109 U. Pa. L. Rev. 1 (1960).

44 Modern approaches to conflict of laws are based on a "local law" rationale (i.e. the forum applies its own law in every case, but refers to appropriate foreign law where other states have legitimate interest or contacts). *See generally* Cavers, The Choice of Law Process (1965); Currie, Selected Essays on Conflict of Laws, (1963); Ehrenzweig, Conflict of Laws (1962); W.W. Cook, The Logical and Legal Basis of Conflict of Laws (1942); Cavers, *Two "Local Law" Theories*, 63 Harv. L. Rev. 822 (1949).

45 *See* Jacobsen v. Saner, 247 Iowa 191, 72 N.W.2d 900 (1955); Farmers & Merchants Nat'l Bank of Ft. Worth v. Anderson, 216 Iowa 988, 250 N.W. 214 (1933); Dorr Cattle Co. v. Des Moines Nat'l Bank, 127 Iowa 153, 98 N.W. 918, 102 N.W. 836 (1905); Johnson v. Chicago N.W. Ry. Co., 91 Iowa 248, 59 N.W. 66 (1894); Nat'l Bank of Mich. v. Green, 33 Iowa 140 (1871); Franklin v. Twogood, 25 Iowa 520 (1868).

46 *See* Balts v. Balts, 273 Minn. 419, 142 N.W.2d 66 (1966); Spanel v. Mounds View School District, 264 Minn. 279, 118 N.W.2d 795 (1962).

47 Dini v. Naiditch, 20 Ill. 2d 406, 170 N.E.2d 881 (1960).

an Illinois resident, could not claim injustice or surprise at the retroactive application of *Thill.* Certainly, interstate travel and commerce were not adversely affected.[48] Of course, it is open to speculation whether liability would have been imposed on a defendant from a state where a wife is not entitled to recover for loss of her husband's consortium.

Through liberal interpretation and use of the most significant relationships rule, a majority of the Iowa supreme court in *Berghammer v. Smith,* pierced the strict letter of the law announced in *Thill v. Modern Erecting Co.* and applied prevailing Minnesota *policy* in holding that Iowa may give retroactive effect to a rule which Minnesota applies prospectively. A more forthright approach would have simplified the judicial task of determining applicable law, both geographically and temporally, and achieved the same result. Iowa had significant relationships with the litigation, the parties, and the consortium issue. Not only did the accident occur in Iowa, but Iowa was also the "place of injury"[49] (not Minnesota—where the wife suffered loss of consortium). Concerned with the protection and adequate compensation of accident victims injured on our public highways, the Iowa courts have a duty to advance essential public policy, which should not be contravened unless the policies and considerations underlying other governmental interests demand.[50] Moreover, Iowa law, which allows a wife's unlimited right to recover for loss of consortium,[51] was preferable to the Minnesota law as of the time of the accident. While refusing to admit an open preference for either the *lex fori* or the sounder rule of law, these important considerations implicitly influenced the majority's reasoning in avoiding an anomalous result.

CHRISTOPHER J. PHILLIPS

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[48] *See* Clark v. Clark, 107 N.H. 351, 222 A.2d 205 (1966).

[49] *See* McVickers v. Chesapeake & Ohio Ry. Co., 194 F. Supp. 848 (D. Mich. 1961); Jordan v. States Marine Corp. of Delaware, 257 F.2d 232 (9th Cir. 1958); Cardamon v. Iowa Lutheran Hospital, 256 Iowa 506, 128 N.W.2d 226 (1964).

[50] *See* Flogel v. Flogel, 257 Iowa 547, 133 N.W.2d 907 (1965).

[51] Acuff v. Schmit, 248 Iowa 272, 78 N.W.2d 480 (1956).