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Conflict of Laws—Ontario Guest Statute Held Applicable Where Ontario Plaintiff Sued New York Defendant

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RECENT CASES

CONFLICT OF LAWS—ONTARIO GUEST STATUTE HELD APPLICABLE WHERE ONTARIO PLAINTIFF SUED NEW YORK DEFENDANT FOR LOSS OCCASIONED BY ONTARIO ACCIDENT.

On May 7, 1969, Arthur Kuehner, the defendant's intestate and a resident of Buffalo, New York, drove his automobile from that city to Fort Erie in the Province of Ontario, Canada. There he picked up Amie Neumeier, the plaintiff's intestate, an Ontario resident. Their plan was to travel to nearby Long Beach, Ontario, for the purpose of repairing summer cottages which were owned by defendant's intestate. However, at a railroad crossing in the Town of Sherkston, Ontario, en route to Long Beach, the auto was struck by a train of the defendant Canadian National Railway Company. Both plaintiff's and defendant's intestates were instantly killed. Plaintiff's intestate, the deceased passenger's wife (an Ontario resident) subsequently commenced a wrongful death action in New York against both the deceased driver's estate and the railway company. As an affirmative defense, the defendant estate pleaded the Ontario guest statute, which would deny recovery absent a finding of *gross* negligence.[1] The defendant railway also interposed defenses in reliance upon this statute. The plaintiff contended that the Ontario statute was not applicable, and moved, pursuant to New York procedure,[2] to dismiss the affirmative defenses. The supreme court, at special term, found that the Ontario guest statute was applicable and denied the plaintiff's motions.[3] Thereafter, the plaintiff appealed to the appellate division which, in a closely divided decision, reversed the supreme court's ruling.[4] New York law was held applicable, and the defenses based upon the Ontario guest statute were dismissed. On appeal, the New York Court of Appeals, with one

1. The Highway Traffic Amendment Act, ONT. REV. STAT. ch. 64, § 20(2) (1966), *amending* ONT. REV. STAT. ch. 172, § 105(2) (1960), which provides:

> Notwithstanding subsection 1, the owner or driver of a motor vehicle, other than a vehicle operated in the business of carrying business for compensation, is not liable for any loss or damage resulting from bodily injury to, or the death of any person being carried in, or upon, or entering, or getting on to or alighting from the motor vehicle, except where such loss or damage was caused or contributed to by the gross negligence of the driver of the motor vehicle.

2. N.Y. CIV. PRAC. LAW § 3211(b) (McKinney 1963).
3. Neumeier v. Kuehner, 63 Misc. 2d 766, 313 N.Y.S.2d 468 (Sup. Ct. 1970).
4. Neumeier v. Kuehner, 37 App. Div. 2d 70, 322 N.Y.S.2d 867 (4th Dep't 1971).

judge in dissent, *held*: judgment of the appellate division reversed; the Ontario guest statute, rule of the jurisdiction of plaintiff's intestate's residency and that of the site of the accident, was properly pleaded as an affirmative defense to plaintiff's wrongful death action. *Neumeier v. Kuehner*, 31 N.Y.2d 121, 286 N.E.2d 454, 335 N.Y.S.2d 64 (1972).

One hundred and forty-five years ago, Samuel Livermore observed:

> If I do not mistake the matter, it is particularly important in this country to have established some fixed and correct principles for the determination of the questions, which may be expected to arise from the various opposing laws of the several states . . . . [T]here should be some settled principles and . . . these should be uniformly observed. No such uniformity exists at present; and unless I am greatly deceived we have no cases decided by our various courts, in which we find so much error and confusion, as in those which involve the conflicting laws of different states.[5]

Unhappily, the accuracy of Livermore's observation has been too little diminished by the passing of the years. Although the choice-of-law area has commanded considerable judicial and scholarly attention,[6] an approach has yet to be accepted into practice which is capable of resolving choice-of-law problems with the degree of uniformity, predictability, expeditiousness and fairness of result that both bench and bar would find desirable.

The doctrine of lex loci delicti—the application of the law of the place of the tort's commission—was enunciated by the first Restatement of Conflicts as the appropriate rule for resolving choice-of-law problems arising in multi-state tort actions.[7] Lex loci's greatest strength is the near-absolute predictability of result which its application affords. Yet inherent in such strength resides lex loci's overwhelming weakness —an inflexibility which can lead to anomalous and oftentimes harsh results. The advent of mass automobile ownership and widespread commercial air travel greatly increased the likelihood that the situs of the occurrence underlying a tort claim would be of a fortuitous nature, thereby exacerbating lex loci's analytical shortcomings. Thus,

5. D. CAVERS, THE CHOICE-OF-LAW PROCESS 290 (1966) [hereinafter cited as CAVERS], quoting S. LIVERMORE, DISSERTATIONS ON THE QUESTIONS WHICH ARISE FROM THE CONTRARIETY OF THE POSITIVE LAWS OF DIFFERENT STATES AND NATIONS (1828).

6. *See, e.g.*, CAVERS, *supra* note 5, wherein the author presents a lively survey of the philosophies of numerous choice-of-law scholars, his own among them.

7. RESTATEMENT OF CONFLICT OF LAWS §§ 378-81, 391 (1934).

there was ample necessity for the "invention" of a new doctrine that would replace lex loci's markedly outdated approach.

The New York Court of Appeals' repudiation of the lex loci delicti rule in *Babcock v. Jackson*[8] marked a change of direction which was widely hailed as an advance in choice-of-law jurisprudence.[9] The court in *Babcock* was unwilling merely to substitute the Second Restatement rule of decision which invokes lex loci as a starting point, though sanctioning divergence under specified conditions.[10] In its "grouping of contacts," "center-of-gravity" and "significant relationship" language, the *Babcock* majority paid formalistic homage to the Second Restatement, yet essentially relied upon an interest analysis to conclude that the law of New York was to be applied where both driver and passenger were New York domiciliaries. As Ontario was the site of the auto accident which gave rise to the suit, recovery upon the lex loci doctrine would have been predicated upon the application of that province's recovery-preclusive guest statute.

Following *Babcock* came a line of New York cases which alternatively relied upon either a grouping of contacts or an interest analysis theory—with a notable absence of consistency. The apparent predilection of these decisions was to allow recovery by injured New York plaintiffs.[11] The decision in *Tooker v. Lopez*[12] appeared to have resolved the dilemma involved in selecting the most appropriate choice-of-law approach by firmly committing the court to an interest analysis approach. In *Tooker,* a New York plaintiff was seeking recovery from a New York defendant on the basis of negligence alleged in connection with an auto accident that had occurred in Michigan. Defendant submitted that Michigan's guest statute, which sets gross negligence as the standard for recovery,[13] was applicable, thereby precluding plaintiff's recovery. The court looked to New York's compul-

8. 12 N.Y.2d 473, 191 N.E.2d 279, 240 N.Y.S.2d 743 (1963).

9. *See Comments on Babcock v. Jackson, A Recent Development in Conflict of Laws,* 63 COLUM. L. REV. 1212 (1963), in which the comments of six conflict-of-law scholars are collected.

10. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 9, 145-46, 175 (1969).

11. *See,* cited in chronological order, Kell v. Henderson, 26 App. Div. 2d 595, 270 N.Y.S.2d 552 (3d Dep't 1966); Macey v. Rozbicki, 18 N.Y.2d 289, 221 N.E.2d 380, 274 N.Y.S.2d 591 (1966); Miller v. Miller, 22 N.Y.2d 12, 237 N.E.2d 877, 290 N.Y.S.2d 734 (1968). *But see* Dym v. Gordon, 16 N.Y.2d 120, 209 N.E.2d 792, 262 N.Y.S.2d 463 (1965), where the court refused to apply New York law in the case of a Colorado accident in which both driver and guest were New York residents.

12. 24 N.Y.2d 569, 249 N.E.2d 394, 301 N.Y.S.2d 519 (1969).

13. MICH. STAT. ANN. § 9.2101 (1960).

sory auto liability insurance law[14] to find that whereas New York had an interest in providing compensation to injured New York plaintiffs, Michigan, whose guest statute was viewed as existing solely for the protection of its drivers and insurance carriers against fraudulent or collusive suits, had "absolutely no interest in the application of its law."[15] The court reasoned that "the insurer [was] a New York carrier and the [New York resident] defendant [was] sued in the courts of this State."[16] In concluding that there was thus no reason to apply Michigan law and thereby deny the New York plaintiff's recovery, the majority affirmed the reasoning of *Babcock* and appeared to align itself squarely with the adherents of interest analysis. However, it should be noted that the presence of a New York plaintiff has been a factor common to all cases in which New York law had been applied to the detriment of a New York defendant. Since the plaintiff in *Tooker* was also a New York domiciliary, the court was not called upon to decide the more difficult choice-of-law question that arises when the foreign jurisdiction is both the plaintiff's residence as well as the site of the accident. The potential for such a choice-of-law question did exist, however, within the *Tooker* factual context. A Michigan resident had also been an injured passenger in the accident underlying the *Tooker* suit. Although the plaintiff had elected not to bring an action in New York, Judge Keating, writing for the majority, strongly intimated what might have been the result had she done so: "Applying the choice of law rule which we have adopted [interest analysis], it is not an 'implicit consequence' that the [non-New York resident] . . . should be denied recovery. Under the reasoning adopted here, it is not at all clear the [Michigan guest statute] would govern."[17]

Thus was the stage set for a non-resident of New York, earlier created merely for the purposes of Judge Keating's hypothetical in *Tooker,* to come in fact to a New York court, seeking compensation for injuries suffered in an accident in his home jurisdiction, whose guest statute, if applied, would presumably preclude recovery.

In the instant case, the court was confronted with that very same law-fact pattern Judge Keating had envisioned in his *Tooker* hypothetical. By imposing an interest analysis approach analogous to that in *Tooker,* the court in *Neumeier* might easily have arrived at a result

14. N.Y. VEH. & TRAF. LAW § 311(4) (McKinney 1970).
15. 24 N.Y.2d at 575, 249 N.E.2d at 397, 301 N.Y.S.2d at 524.
16. *Id.*
17. *Id.* at 580, 249 N.E.2d at 400, 301 N.Y.S.2d at 528.

contrary to that of the instant case. For example, the court could have found that New York has a substantial interest in affording protection to guests injured through the negligence of New York drivers, as evidenced by its automobile insurance law which requires liability coverage regardless of the site of operation.[18] The court might further have found, conversely, that Ontario, as the domicile of the plaintiff *but of neither the insurance company nor of the defendant,* had "absolutely no interest in the application of its laws."[19]

Despite the availability of the aforementioned approach, the *Neumeier* majority asserted that the appellate division, in refusing to apply the Ontario guest statute, had misread the court's opinion in *Tooker.*[20] In distinguishing the case before it, the majority looked to the plaintiff's Ontario residency, stating that although "[i]t is clear . . . New York has a deep interest in protecting its own residents, injured in a foreign state, against unfair or anachronistic statutes of that state, it has no legitimate interest in ignoring the public policy of a foreign jurisdiction . . . and in protecting the plaintiff-guest domiciled and injured there . . . ."[21] Similarly, the court viewed New York's compulsory insurance requirement as insufficient evidence of a state interest in allowing a nonresident plaintiff to recover from a New York defendant when the laws of the plaintiff's domicile would preclude recovery.[22] The majority concluded that "[t]he compulsory insurance requirement is designed to *cover* a car-owner's liability, not *create* it . . . ."[23]

Though to this point in its analysis, the majority, while obviously on its way to a rejection of the plaintiff's argument, appeared to be moving within the context of a conventional interest analysis, this was not to be the case. Acknowledging the lack of consistency that characterized its decisions in multi-state accident suits, the court attributed this shortcoming to the difficulty of "discover[ing] the purposes or policies underlying the relevant local law rules of the respective jurisdictions involved."[24] The court proceeded to add that "[i]t is even more difficult, assuming that these purposes or policies are found to conflict,

18. N.Y. VEH. & TRAF. LAW § 311(4) (McKinney 1970).
19. 24 N.Y.2d at 575, 249 N.E.2d at 397, 301 N.Y.S.2d at 524.
20. Neumeier v. Kuehner, 31 N.Y.2d 121, 286 N.E.2d 454, 335 N.Y.S.2d 64 (1972) [hereinafter cited as instant case].
21. *Id.* at 125-26, 286 N.E.2d at 456, 335 N.Y.S.2d at 68.
22. *Id.* at 126, 286 N.E.2d at 456, 335 N.Y.S.2d at 68.
23. *Id.*
24. *Id.* at 127, 286 N.E.2d at 457, 335 N.Y.S.2d at 69.

to determine on some principled basis which should be given effect at the expense of the others."[25] With this language, the majority challenged the ability of a court to discern with precision the subjective policy interests of those jurisdictions involved in a multi-state lawsuit —an assumption indispensable to the justification of an interest analysis approach.

If interest analysis was thus to be disparaged, how would the court dispose of the choice-of-law question at bar? Chief Judge Fuld proposed to fill the ideological void created by his attack upon the efficacy of interest analysis with the implementation of the tripartite choice-of-law principles which he formulated in his concurring opinion in *Tooker*.[26]

Identifying the third principle as governing the choice-of-law question in the case at bar, the majority found that application of New York rather than Ontario law would be "sanctioning forum shopping" and thereby "impairing the smooth working of the multi-state system [and] producing great uncertainty for litigants."[27] Moreover, allowance of recovery to the nonresident plaintiff was not viewed as furthering the "substantive law purposes" of New York.[28] Thus, in the majority's view, the facts of the instant case had failed to satisfy the conditions which the third principle posed as necessary to justify the displacement of the law of the state of the accident. Relying upon this analysis, the court reversed the appellate division, and reinstated the order of spe-

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25. *Id.*

26. 24 N.Y.2d at 585, 249 N.E.2d at 404, 301 N.Y.S.2d at 532-33, reading as follows:

> 1. When the guest-passenger and the host-driver are domiciled in the same state, and the car is there registered, the law of that state should control and determine the standard of care which the host owes to his guest.
>
> 2. When the driver's conduct occurred in the state of his domicile and that state does not cast him in liability for that conduct, he should not be held liable by reason of the fact that liability would be imposed upon him under the tort law of the state of the victim's domicile. Conversely, when the guest was injured in the state of his own domicile and its law permits recovery, the driver who has come into that state should not—in the absence of special circumstances—be permitted to interpose the law of his state as a defense.
>
> 3. In other situations, when the passenger and the driver are domiciled in different states, the rule is necessarily less categorical. Normally, the applicable rule of decision will be that of the state where the accident occurred but not if it can be shown that displacing that normally applicable rule will advance the relevant substantive law purposes without impairing the smooth working of the multi-state system or producing great uncertainty for litigants.

27. Instant case at 129, 286 N.E.2d at 458, 335 N.Y.S.2d at 70.

28. *Id.*

cial term, allowing those affirmative defenses interposed in reliance upon the Ontario guest statute to stand.

In a concurring opinion, Judge Breitel appeared unconvinced of the value of either an interest analysis or of the choice-of-law principles proffered by Chief Judge Fuld. His opinion expressed a general dissatisfaction with the interest analysis approach and stated that, despite the decision in *Babcock*, "*lex loci delictus*[29] is the normal rule . . . to be rejected only when it is evident that the situs of the accident is the least of the several factors or influences to which the accident may be attributed . . . ."[30] Thus, Judge Breitel aligned himself closely with the approach adopted by the Second Restatement[31] and chose to apply the recovery-preclusive Ontario law "simply on the proposition that plaintiff has failed by her allegations to establish that the relationship to this State was sufficient to displace the normal rule that the *lex loci delictus* should be applied . . . ."[32]

Judge Bergan, the lone dissenter, disputed the majority's claim that its resort to a choice-of-law rule which favors New York plaintiffs over those of a foreign jurisdiction was not a "consequence of invidious discrimination."[33] The dissent implied that the New York approach might have created a personal law which favored New York domiciliaries, and asserted that "[n]either because of 'interest' nor 'contact' nor any other defensible ground is it proper to say in a court of law that the rights of one man whose suit is accepted shall be adjudged differently on the merits on the basis of where he happens to live."[34] Opining that the court's decision in *Tooker* dictated a corresponding application of New York law in the instant case, Judge Bergan decried the opinion of the majority, which he viewed as "deciding . . . that although it will prevent a New York car owner from asserting the defense of a protective foreign statute when a New York resident in whose rights it has an 'interest' sues; it has no such 'interest' when it accepts the suit . . . of a nonresident."[35] Such a distinction, declared Judge Bergan, is "inadmissible."[36]

29. Judge Breitel employs the phrase, *lex loci delictus,* and the term appears so written in the opinions of this and other courts. However, the entire phrase from the Latin being lex loci delicti commissi, it is more appropriately abbreviated as lex loci delicti. BLACK'S LAW DICTIONARY 1056 (rev. 4th ed. 1968).

30. Instant case at 131, 286 N.E.2d at 459, 335 N.Y.S.2d at 72.

31. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 9, 145-46, 175 (1969).

32. Instant case at 131-32, 286 N.E.2d at 460, 335 N.Y.S.2d at 73.

33. *Id.* at 126, 286 N.E.2d at 456, 335 N.Y.S.2d at 68.

34. *Id.* at 132-33, 286 N.E.2d at 460, 335 N.Y.S.2d at 74.

35. *Id.* at 133, 286 N.E.2d at 461, 335 N.Y.S.2d at 75.

36. *Id.*

It is submitted that the majority's decision marks progress in New York jurisprudence to the extent that it departs from an interest analysis approach as the favored choice-of-law rule. Chief Judge Fuld's opinion notes the difficulty involved in discovering and then contrasting the multiple state interests and policies potentially embodied within the various laws relevant to the particular case.[37] A court attempting to proceed within an interest analysis schema will often be constrained to indulge in conclusory speculation as to the existence and the nature of state interests. Moreover, when such judicial spadework "turns up" interests that are perceived as conflicting, it has been suggested by Professor Cavers that interest analysis "compels an attribution (often of dubious authenicity) of primacy to one purpose or another."[38] Such subjectivity is unlikely to produce the sound jurisprudential basis that the just disposition of choice-of-law problems demands. In applying interest analysis in order to resolve the choice-of-law question in *Tooker,* the court was forced to rely upon a single student-written law review article as its basis for determining the nature of Ontario's interest in the application of its guest statute.[39] The authoritativeness of a court's ultimate findings is jeopardized by its reliance upon "authority" of such character and quality, and this episode represents a grave indictment of the methodology which interest analysis entails.

Whereas the court's determination to disavow interest analysis may well be applauded, such repudiation does not in the same stroke justify the court's rejection of the *result* which the application of an interest analysis might have produced in the instant case. Similarly, the absence of a consistent choice-of-law approach in the line of cases preceding *Tooker* does not justify a summary rejection of the precedential relevance that they bear for *Neumeier.* The cases *do* represent New York choice-of-law justice in a variety of law-fact permutations. It is submitted that although no one of these cases clearly dictates a particular result in the instant case, their cumulative weight suggests that the *Neumeier* majority may have rendered less than adequate justice in its refusal to allow the Canadian plaintiff the protection of New York law. *Babcock* established the possibility that a New York defendant may be subjected to liability under New York law despite

37. *Id.* at 127, 286 N.E.2d at 457, 335 N.Y.S.2d at 69.

38. CAVERS, *supra* note 5, at 108.

39. 24 N.Y.2d at 572, 249 N.E.2d at 396, 301 N.Y.S.2d at 521, *citing Survey of Canadian Legislation,* 1 U. TORONTO L. J. 358, 366 (1936).

the occurrence of his negligence in a foreign jurisdiction whose recovery-restrictive statute would shield him from liability. *Macey v. Rozbicki*[40] and *Tooker* confirmed this point of New York case law. *Miller v. Miller*[41] demonstrated that such liability could be extended even to the case of a non-New York driver whose negligence occurred in connection with an accident in his own state, whose laws would limit recovery, and under whose laws the car which he was operating was insured. In *Kell v. Henderson*,[42] New York law, permitting plaintiff's recovery, was applied to an accident that occurred in New York, involving a plaintiff and a defendant who were both residents of Ontario. The court cannot thus claim to distinguish *Neumeier* from its precursors either on the basis of plaintiff's Ontario residency or of the accident's Ontario situs. By the same token, the court should not be permitted its argument that the plaintiff could not, with a "straight face," reasonably *expect* the application of New York law "in support of an Ontario guest picked up in Ontario and who enjoyed no similar protection under Ontario law."[43] Certainly the plaintiff's expectation of protection is arguably as strong as that of the plaintiff's in *Kell*. Moreover, the court in *Tooker* explicitly disapproved such an "expectations" approach, stating that "[t]he argument that the choice of law in tort cases should be governed by the fictional expectation of the parties has been rejected unequivocally . . . ."[44] Indeed, Professor Cavers suggests that "[r]eliance on this factor seems especially dubious with respect to tort questions . . . .[I]t is difficult often to escape the suspicion that a finding of the parties' expectations is simply a vehicle to express the court's conclusion that the choice of law it approves is a fair one."[45]

The *Neumeier* result, though not easily harmonized with the mood of its forerunners, might yet have been justifiable had it served a larger purpose of choice-of-law jurisprudence. The court's decision in *Babcock* to reject the lex loci doctrine, while acclaimed by choice-

40. 18 N.Y.2d 289, 221 N.E.2d 380, 274 N.Y.S.2d 591 (1966).

41. 22 N.Y.2d 12, 237 N.E.2d 877, 290 N.Y.S.2d 734 (1968).

42. 26 App. Div. 2d 595, 270 N.Y.S.2d 552 (3d Dep't 1966); *but see* Arbuthnot v. Allbright, 35 App. Div. 2d 315, 316 N.Y.S.2d 391 (1970) (Ontario rule applied in identical law-fact situation).

43. Instant case at 130, 286 N.E.2d at 458, 335 N.Y.S.2d at 71, *citing* Reese, *Chief Judge Fuld and Choice of Law*, 71 COLUM. L. REV. 548, 563 (1971).

44. 24 N.Y.2d at 577, 249 N.E.2d at 399, 301 N.Y.S.2d at 526, *relying on* Miller v. Miller, 22 N.Y.2d 12, 20, 237 N.E.2d 877, 881, 290 N.Y.S.2d 734, 741 (1968).

45. D. CAVERS, *supra* note 5, at 69.

of-law scholars,[46] was not without real costs. If lex loci suffered from an inability to deal with the peculiar demands of the individual case, which by the time of *Babcock* could no longer be countenanced, it is no less true of lex loci that the uniformity and predictability of result that it afforded were qualities prized by both bench and bar. Perhaps it is an indication of the great value that the profession places upon the certainty of legal rules that the lex loci doctrine, otherwise so lacking in qualities to recommend it, has so long survived.

The sacrifice of a certain measure of predictability, as achieved by the court in forsaking lex loci, can be readily justified if our rules become in turn the instruments of greater justice. However, to discard lex loci without replacing it with a rule of comparable outcome-prognostic power is both to ignore a material need of the profession and to threaten considerable injustice in the aggregate. Hence the *Babcock* court, in abandoning lex loci, assumed the concomitant responsibility of providing the bench and the bar with guidance sufficient to resolve choice-of-law problems with reasonable precision. The line of cases leading to *Neumeier* is remarkable largely in the tangle of contrasting choice-of-law approaches which it represents. Although "grouping of contacts," "center of gravity," and "interest analysis" language was alternatively employed, the cumulative result was an ad hoc approach to choice-of-law determination. Clearly, the jurisprudential vacuum created by lex loci's demise had not been satisfactorily filled at the time of the instant decision. Few could have thus complained of the harsh[47] *Neumeier* result had it served as the quid pro quo for the implementation of a new jurisprudential orientation—be it a "rules" or an "approach" doctrine[48]—of a quality and comprehensive-

46. *See supra* note 9.

47. The possibility that an Ontario court might not have chosen to apply the guest statute (text cited *supra* note 1) had the *Neumeier* case been brought there, accentuates the harshness of the instant result. Sensitive to the guest statute's severity, Ontario courts have often managed to circumvent its application. The courts have demonstrated a ready willingness to find that the relationship between driver and passenger was something other than that of guest-host, based either upon the finding of a master-servant relationship, as in Harrison v. Toronto Motor Car Ltd., [1945] 1 D.L.R. 286 (1944), or upon evidence of even nominal expense-sharing by the passenger, as in Lemieux v. Bedard, [1952] 4 D.L.R. 421 (1952). In the instant case, plaintiff's intestate was accompanying the driver for the purpose of doing house repairs on property owned by defendant's intestate. A Canadian court, interested in avoiding the guest statute when possible, might well have seized upon this fact to find something other than a mere guest-host relationship, and thereby justify the waiver of the guest statute and the granting of recovery.

48. For a critical examination of the contrasting merits of "rules" versus "approach" doctrines, see Reese, *Choice of Law: Rules or Approach*, 57 CORNELL L. REV. 315 (1972).

ness sufficient to provide for reasonably equitable and predictable results in future litigation.

The instant decision iterated three choice-of-law "principles" with which it proposed both to avoid the shortcomings of interest analysis and to fill the jurisprudential void occasioned by the renunciation of lex loci.[49] It is submitted that the court's institution of these principles accomplished neither purpose effectively. The first two principles relate to law-fact patterns in which: (1) the driver and his guest are residents of the same state; or (2) the driver and the accident site are associated with the same jurisdiction. Both situations pose relatively easy choice-of-law problems.[50] The true mettle of the principles is tested by their ability to resolve the more difficult questions that arise, as in the instant case, when the driver and guest are domiciled in different jurisdictions. The third of Chief Judge Fuld's principles purports to deal with this situation, erecting a lex loci rule that will govern unless it can be demonstrated that "displacing that normally applicable rule [lex loci], will advance the relevant substantive law purposes without impairing the smooth working of the multi-state system or producing great uncertainty for litigants."[51] It is suggested that in its broad language, Chief Judge Fuld's third principle lacks the analytical power necessary to eschew interest analysis thoroughly and to provide a self-sufficient basis for the achievement of uniform and predictable results. In applying the principle, a court must first decide when and where the lex loci is to be displaced. In the process, it will be compelled, in order to determine the "substantive law purposes"[52] involved and the likely results of lex loci displacement, to engage in that very interest analysis which the court sought to avoid. Thus, in the instant case, the court professes to decide the choice-of-law question in simple reliance upon Chief Judge Fuld's principles. In reality, the court was forced to engage in interest analysis so that it might eventually determine that the lex loci, Ontario's guest statute, was not to be replaced by New York law. Evidences of such interest analysis are the court's determination that New York, its compulsory insurance law notwithstanding, has no interest in applying its own

49. For text of the principles, see *supra* note 26.

50. *But see* Bray v. Cox, 39 App. Div. 2d 299, 333 N.Y.S.2d 783 (4th Dep't 1972). The court applied New York law to a case involving Ontario parties and liability insurance, in apparent contradiction to the mandate of the third principle. *Bray* was decided one week before the instant case.

51. 24 N.Y.2d at 585, 249 N.E.2d at 404, 301 N.Y.S.2d at 533.

52. Instant case at 129, 286 N.E.2d at 458, 335 N.Y.S.2d at 70.

law in behalf of an Ontario plaintiff.[53] To the contrary, suggested the court, New York has an affirmative interest in discouraging forum shopping[54] and, ultimately, in protecting New York defendants. The instant decision, while providing guidance to future litigants in its confirmation of the court's proclivity for championing the interests of New York residents, whether plaintiff or defendant, does little to elevate New York choice-of-law jurisprudence from the mire of subjectivity and ad hoc issue determination in which it has struggled since the time of *Babcock v. Jackson.*

The scope of this note does not extend to a consideration of doctrinal alternatives to the jurisprudence of *Neumeier.* However, some familiarity with the nature of choice-of-law problems leads one to observe that the search for an acceptable choice-of-law approach is rendered exceedingly difficult by two inherently conflicting demands—uniformity of result in the aggregate, and fairness of result for the individual. The qualitative difficulty with which these disparate goals are reconciled is greatly magnified by the quantitative problems involved in attempting to deal with the sheer magnitude of the potentially conflicting laws of innumerable forums. The enormity of the task thus posed is a challenge to the legal scholar's belief in the ultimate problem-solving capabilities of a legal system. Any rule capable of affording a modicum of both predictability and justness of result would mark a most estimable contribution in an area of such complexity as to define the quality of our system's logic at its margin.

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53. *Id.* at 125-26, 286 N.E.2d at 456, 335 N.Y.S.2d at 68.

54. *Id.* at 129, 286 N.E.2d at 458, 335 N.Y.S.2d at 70-71. The instant case renders the utilization of New York jurisdiction less attractive for the nonresident. Another recent court of appeals decision, Silver v. Great Am. Ins. Co., 29 N.Y.2d 356, 378 N.E.2d 619, 328 N.Y.S.2d 398 (1972), makes New York jurisdiction more difficult for the nonresident to obtain. Viewed together, it might be suggested that the two cases represent an attempt to stem the tide of cases flowing into New York in the wake of the court's opinion in Seider v. Roth, 17 N.Y.2d 111, 216 N.E.2d 312, 269 N.Y.S.2d 99 (1966).