Conflicts of Law

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CONFLICT OF LAWS

I. THE UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT

A. Introduction

Oklahoma's version of the Uniform Enforcement of Foreign Judgments Act was the subject of three decisions during the survey period. Enacted in 1968, the Act provides a new and uncomplicated procedure in Oklahoma courts for enforcing the judgments of sister states.

Prior to its enactment, the only available method of enforcing extrastate judgments in Oklahoma, as in most other states, was to prosecute a new lawsuit. Under this common law procedure, the judgment of a sister state was treated essentially as a contract debt, enforceable in the same manner as any other cause of action. The judgment creditor was accordingly compelled to secure proper service and prove the judgment in a second full trial.

This costly and cumbersome method of judgment enforcement was finally abandoned in the federal courts when Congress enacted a provision for registration of federal court judgments in all districts throughout the nation. Because the full-faith-and-credit clause empowers Congress to prescribe by general law "the effect" of sister state judgments, there is little question that Congress had the power to promulgate a similar

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2. See, e.g., Needles v. Frost, 2 Okla. 19, 35 P. 574 (1894).
   A judgment in an action for the recovery of money or property now or hereafter entered in any district court which has become final by appeal or expiration of time for appeal may be registered in any other district by filing therein a certified copy of such judgment. A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner.
   A certified copy of the satisfaction of any judgment in whole or in part may be registered in like manner in any district in which the judgment is a lien.
7. U.S. Const. art. IV, § 1.
registration procedure for the states; but Congress declined to do so and it has steadfastly resisted efforts to enact legislation of that nature. The registration law did, however, set an example for the states and many began to urge similar state legislative reform of judgment enforcement procedures. An increased interest in state legislative initiative, spurred by the dim prospect of Congressional relief and the increasing demands upon state courts, prompted the Commissioners on Uniform State Laws to promulgate the first Uniform Enforcement of Foreign Judgments Act in 1948.

Although a few states adopted the 1948 Act, it was largely ignored; Oklahoma and the vast majority of states continued to adhere to the common law method of enforcement. Perhaps the Act failed to win the endorsement of the states because it was, at best, only a "halfway solution" to the problem of extrastate judgment enforcement. Rather than adopting a registration procedure modeled after the federal act, the Commissioners chose a summary judgment procedure in which a new lawsuit was still required; and the law of the state of enforcement governed all procedural matters, including statutes of limitations. The federal procedure was faster, easier and less costly.

The failure of the 1948 Act and the recognition that due process imposed no barrier to more radical reform moved the


10. The Commissioners had been working on such a uniform act prior to the time Congress finally adopted a registration procedure in 1948. Id. at 403.

11. For a list of states that have adopted the act, see 13 Uniform Laws Annotated 171.

12. Leflar, supra note 3, § 79 at 182.


15. See Producers Grain Corp. v. Carroll, 546 P.2d 285 (Okla. Ct. App. 1976);
Leflar, supra note 3, § 79.

16. The Commissioners were apparently under the impression, when they promulgated the 1948 version of the Uniform Enforcement of Foreign Judgments Act, that a state registration procedure similar to that enacted by Congress could not survive constitutional attack on due process grounds. Most commentators agree that the Commissioners were being too cautious—it is necessary that due process be satisfied only
Commissioners to promulgate a revised, and far superior, Uniform Enforcement of Foreign Judgments Act in 1964. Patterned after the federal procedure, the revised Act provides a simple registration procedure; a new lawsuit to enforce the judgment is no longer necessary.

B. Oklahoma's Version of the Act

With the exception of a few minor modifications, Oklahoma adopted the revised Act in toto. Any judgment, decree or order of a court of the United States or any state or territory which is entitled to full faith and credit in Oklahoma is eligible for registration. The registration procedure involves filing, in the office of a county court clerk, (1) an affidavit stating the name and last-known address of the debtor and the creditor, and (2) a properly authenticated copy of the judgment. The completion of registration elevates the extrastate judgment to the status of an Oklahoma judgment.

The clerk shall treat the foreign judgment in the same manner as a judgment of the District Court of any county of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating or staying as a judgment of a District Court of this state and may be enforced or satisfied in like manner.

However, a judgment, once registered may not immediately be enforced. The Act provides that execution or other process for enforcement of the judgment may not issue sooner than one time, not a succession of times. The judgment debtor has no right under the due process clause to require that a new suit be brought on a valid judgment of a sister state. See LEFLAR, supra note 3, § 79; Note, Constitutionality of a Uniform Reciprocal Registration of Judgment Statute, 36 N.Y.U.L. REV. 488 (1961); Note, Full Faith and Credit - Procedures for Enforcement of Foreign Money Payments, 17 VAND. L. REV. 652 (1964). The Prefatory Note to the 1964 Revised Uniform Enforcement of Foreign Judgments Act states clearly that the Commissioners no longer adhere to their former view. See 13 UNIFORM LAWS ANNOTATED 171.

17. See Commissioner's Comments, 13 UNIFORM LAWS ANNOTATED 171. See also LEFLAR, supra note 3, § 79.
21. Id. § 722.
22. Id. § 721.
23. Id.
than twenty days after the date of registration. This section of the Act was undoubtedly designed to accord the debtor an opportunity to learn of the proceedings and to take measure if appropriate, to set aside the judgment.

In order to ensure that the debtor is notified of the proceeding, the clerk must mail written notification to the debtor at the address given in the creditor’s affidavit. In addition, the Act authorizes the creditor to mail his own written notification to the debtor and it furnishes a powerful incentive for so doing: if the creditor mails the requisite notice to the debtor and files proof of that fact with the clerk, the failure of the clerk to mail notification will not render the proceeding defective. The notification must list the name and address of the creditor and the creditor’s in-state counsel, if any.

Because the creditor need only wait twenty days to take local enforcement measures, the debtor must act quickly once the extrastate judgment has been registered. The Act allows the debtor only two limited courses of action: (1) he can seek a stay of enforcement or (2) he can move to set aside the registration.

Stay of enforcement must be granted where the debtor demonstrates either that the registered judgment is on appeal in the state where rendered or that an appeal is forthcoming. The debtor can otherwise obtain a stay order only if he can satisfy the requirements for staying a judgment registered in Oklahoma.

In order to set aside the registration of the extrastate judgment, the debtor must take one of the few available avenues for vacating a judgment in Oklahoma.

Memorial Lawn Cemeteries Association, Inc. v. Carr illustrates one successful attempt to strike a judgment registered under the Act. The extrastate judgment was obtained in an action in Kansas, under the state’s parental responsibility act, against the parents of Lisa Carr. Lisa, a sixteen-year old

24. Id. § 722(c).
25. Id. § 722(b).
26. Id.
27. Id.
28. Id. § 723(a).
29. Id. § 723(b).
30. Id. § 721.
minor, allegedly entered upon the grounds of plaintiff’s cemetery in Kansas and participated in the malicious destruction of property.\textsuperscript{33}

Mr. and Mrs. Carr, who resided in Oklahoma, were personally served with process in Oklahoma but declined to enter an appearance in the Kansas action. A default judgment was consequently entered against them and an authenticated copy of the judgment was ultimately registered in McClain County, Oklahoma. Upon receiving notice of the registration, Mr. and Mrs. Carr moved to strike the judgment for want of personal jurisdiction. The trial judge ruled in their favor and the Supreme Court of Oklahoma affirmed. The supreme court held that the judgment was a nullity and thus not entitled to registration under the Uniform Enforcement of Foreign Judgments Act because the plaintiff had not shown that Mr. and Mrs. Carr had committed a tortious act within the Kansas border, as required by the applicable provision of that state’s “long-arm” statute.\textsuperscript{34}

The Kansas “long-arm” statute contained the typical provision that its courts could exercise jurisdiction over non-residents who "\textit{in person or through an agent or instrumentality}" committed "a tortious act within this state."\textsuperscript{35} The issue before the Oklahoma court was whether Mr. and Mrs. Carr could somehow be viewed as having committed a tortious act within the state of Kansas.

The plaintiff conceded that Mr. and Mrs. Carr had in no way participated in Lisa’s tortious acts and, in addition, that Lisa was not acting as their agent when she damaged the plaintiff’s property. Indeed, the only link connecting Mr. and Mrs. Carr with the Kansas tort was their status as parents of the minor tortfeasor. In a motion to set aside the registration, Mr. and Mrs. Carr accordingly argued that the Kansas court had no basis for exercising personal jurisdiction over them — they had not personally committed a tort within the Kansas borders and Lisa had not acted as their agent in the commission of the tortious acts.\textsuperscript{36}

The plaintiff argued that the Kansas parental responsibility act, under which his suit was brought, operated neverthe-

\textsuperscript{33} 540 P.2d at 1157.
\textsuperscript{35} Id. § 60-308(3)(6).
\textsuperscript{36} 540 P.2d at 1158.
less to give the Kansas court a right to exercise in personam jurisdiction over Lisa's parents. Apparently the plaintiff's rationale was that the parental responsibility act made Lisa an "agent" of her parents by operation of law.

The Kansas parental responsibility statute provides a limited exception to the common-law rule\(^\text{37}\) that a parent may not be held responsible for the torts of his child: if an emancipated child "maliciously or willfully" damages another's property, the parent will be held liable for the damages, not to exceed a maximum of $1,000.\(^\text{38}\) The Kansas act is quite similar to the parental responsibility statutes of Oklahoma\(^\text{39}\) and many other jurisdictions.\(^\text{40}\) The injured party under such statutes

\(^{37}\) See generally W. Prosser, Law of Torts § 123 (4th ed. 1971); Freer, Parental Liability for Torts of Children, 53 Ky. L.J. 254 (1964). The common law recognizes two exceptions to the parents' freedom from legal responsibility: (1) if the child was acting as his parent's agent; and (2) if the parent was himself negligent and his negligence was found to be the cause of the child's harmful act. See, e.g., Rawley v. Commonwealth Cotton Oil Co., 88 Okla. 29, 211 P. 74 (1922). The common law rule is given statutory recognition in Oklahoma. Okla. Stat. Ann. tit. 10, § 20 (1971). The statute simply states: "Neither parent or child is answerable, as such, for the act of the other."

Any city, county, township, board of education of any city, common-school district, community high-school district, rural high-school district or other taxing district, and any commission, board, department, office, institution or agency of the state of Kansas or any person, partnership, corporation or association, or any religious organization whether incorporated or unincorporated, shall be entitled to recover damages in an appropriate action at law in a court of competent jurisdiction from the parents of any minor under age of eighteen (18) years, living with the parents, who shall maliciously or willfully damage or destroy property, real, personal or mixed, belonging to such city, county, township, board of education of a city, common-school district, community high-school district, rural high-school district or other taxing district, and any commission, board, department, office, institution or agency of the state of Kansas, or person, partnership, corporation or association or religious organization: Provided, however, That such recovery shall be limited to the actual damages in an amount not to exceed one thousand dollars ($1,000), in addition to taxable court costs, unless the court or jury finds that the malicious or willful act of such minor causing such damage or destruction is the result of parental neglect, in which event the one thousand dollars ($1,000) limitation does not apply.

\(^{39}\) Okla. Stat. Ann. tit. 23, § 10 (1971). This act provides:
The state or any county, city, town, municipal corporation or school district, or any person, corporation or organization, shall be entitled to recover damages in an amount not to exceed One Thousand Five Hundred Dollars ($1,500) in a court of competent jurisdiction from the parents of any minor under the age of eighteen (18) years, living with the parents at the time of the act, who shall maliciously or willfully destroy property, real, personal or mixed, belonging to the state or such county, town, municipal corporation, school district, person, corporation or organization.

\(^{40}\) A recent article devoted to the subject of parental responsibility acts notes
need not prove parental fault in order to recover; if the child commits an intentional tort resulting in property damage the parent is made vicariously liable on the sole basis of the parent-child relationship.

The Oklahoma Supreme Court did not accept the plaintiff's contention. The reference in the Kansas long-arm statute to a person's "agent," the court reasoned, meant an agent in the traditional sense of the term—one who acts in another's behalf in accordance with a consensual, fiduciary relation between the two—and no such relation was created by the parental responsibility act. The court noted that the effect of the act was merely to impose a form of liability without fault upon the parent, and this was something entirely different from the vicarious liability of a principal for the acts of his agent.

that at least 46 states now have such statutes. Note, The Iowa Parental Responsibility Act, 55 IOWA L. REV. 1037 (1970). The majority of these statutes permit recovery from the minor tortfeasor's parents only in cases involving property damage caused by intentional torts or malicious wrongs and limit recovery to a set statutory amount. Id. at 1041.


43. See RESTATEMENT (SECOND) OF AGENCY § 1 (1957).

44. 540 P.2d at 1158. Although the court's decision is based upon an interpretation of Kansas statutes, a similar result seems certain under the appropriate Oklahoma statutes. Under the Uniform Interstate and International Procedure Act [OKLA. STAT. ANN. tit. 12, § 1701.01 (1971)], the tort must also be committed by the parent in person or by an agent. Thus, OKLA. STAT. ANN. tit. 12, § 1701.03 (1971) provides:

(a) A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action or claim for relief arising from the person's:

(3) causing tortious injury in this state by an act or omission in this state;
(4) causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business or engages in any other persistent course of conduct, or derives substantial revenue from goods, used or consumed or services rendered, in this state;

A property owner in this state who has suffered damage at the hands of a non-resident minor will thus be unable to rely upon the long-arm statute to bring the parents before an Oklahoma court — suit will have to be brought in the jurisdiction of the parent's residence. The difficulty with prosecuting such an action against the parents in a sister state, however, is that the $1,500.00 ceiling upon recovery under the Oklahoma parental responsibility act is so low that few injured victims would find it worth the expense and effort.
C. Statute of Limitations Applicable to Enforcement Proceedings

Although the revised Uniform Enforcement of Foreign Judgments Act relieves the creditor of the burden of bringing a common-law enforcement action, it does not preclude his employing that method of enforcement if he so desires. The Act thus provides that the "right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this Act remains unimpaired."45

Of course, few creditors are likely to avail themselves of this right. But the fact that a creditor is afforded two alternative means of enforcing an extrastate judgment raises an interesting question: does the statute of limitations applicable to actions on extrastate judgments govern registration proceedings under the Act? The Act is silent on this question. An appealing argument could be made for the proposition that the statute of limitations applicable to judgment enforcement actions ought to be considered equally applicable to registration proceedings under the Act, in order to ensure that the time within which enforcement proceedings may be instituted is the same under both methods of enforcement.

The only other conceivable time limitation upon enforcement proceedings under the Act would be that provided by a dormant judgment statute.46 But the limitation provided by dormant judgment statutes is typically longer than the limitation provided for civil actions upon extrastate judgments. Thus, if the dormant judgment statute is the proper limitation upon enforcement under the Act, the creditor will be in a position to determine the limitation period applicable to him simply by selecting the mode of enforcement. Permitting the creditor to make such a choice is arguably undesirable because it enables him to circumvent the time limitation, imposed by the Oklahoma legislature, upon actions to enforce sister-state judgments.

The Court of Appeals addressed this question in Producers Grain Corp. v. Carroll.47 A creditor registered an extrastate judgment with an Oklahoma court clerk more than three years after it had become enforceable. Because the Oklahoma statute

of limitations\textsuperscript{48} applicable to actions on sister-state judgments is three years, the creditor could not have utilized the common-law procedure to sue on the judgment. The dormant judgment statute\textsuperscript{49} in Oklahoma, however, gives the judgment creditor five years to issue execution and if that statute constitutes the sole limitation upon the registration procedure, the creditor's registration was clearly timely.

In support of his motion to set aside registration the debtor urged that the three-year statute of limitations was applicable to enforcement proceedings under the revised Act\textsuperscript{50} and that the creditor had consequently forfeited any right to enforcement.\textsuperscript{51} The trial court agreed and struck the registration. The court of appeals reversed, reasoning that the three-year statute of limitations applied exclusively to civil actions on a sister-state judgment and that the Act, at least as adopted in Oklahoma, does not involve the bringing of an action on the judgment.\textsuperscript{52} The court noted that, under the summary judgment procedure of the 1948 Act, the three-year statute of limitations would have constituted the relevant limitation upon enforcement because the creditor was required both to institute a new lawsuit and to comply with the procedural law of the state of enforcement.\textsuperscript{53} But Oklahoma adopted the 1964 revised version of the Act, and all that is necessary under that procedure is the registration of the extrastate judgment.

The court of appeals realized that its holding permitted the creditor to choose which of two limitation statutes would be applicable to him: the five-year statute on dormant judgments or the three-year statute for civil actions on extrastate judgments.\textsuperscript{54} The opinion indicates that if this result is undesirable, it can easily be remedied by legislative enactment.\textsuperscript{55}

\textsuperscript{51} 546 P.2d at 286.
The Act does not involve the institution of an action to enforce the judgment; it requires, to give the foreign judgment immediate legally enforceable consequences, only that it be filed in accordance with its provisions.
\textsuperscript{53} Uniform Enforcement of Foreign Judgments Act § 2 (1948 version).
\textsuperscript{54} 546 P.2d at 288.
\textsuperscript{55} Id.
D. Uniform Foreign Money Judgments Recognition Act Compared

In addition to adopting the revised Uniform Enforcement of Foreign Judgments Act, Oklahoma has adopted the Uniform Foreign Money Judgments Recognition Act.\(^{56}\) The presence of two uniform acts dealing with the enforcement of adjudicated rights appears to have caused some initial confusion. The Oklahoma Supreme Court briefly addressed the problem in *Willhite v. Willhite.*\(^{57}\) The court correctly observed that the two uniform acts deal with entirely different subjects. Whereas the Uniform Enforcement of Foreign Judgments Act deals only with the judgments of “a court of the United States” and the judgments of sister states,\(^{58}\) the Uniform Foreign Money Judgments Recognition Act deals exclusively with the judgments of foreign countries.\(^{59}\) The former act was designed to ease the burden imposed by the full-faith-and-credit clause and the latter was designed to expedite the policy of recognizing the money judgments of foreign countries in all but the most extraordinary situations.\(^{60}\)

II. Oklahoma’s Borrowing Statute

A. History

Statutes of limitations deprive litigants of the opportunity to assert an otherwise valid claim. They are “intended to prescribe a definite limit of time within which the remedies included within their provisions must be prosecuted.”\(^{61}\) The bur-

\(^{57}\) 546 P.2d 612 (Okl. 1976).
\(^{59}\) Id. § 710 (1971). This section provides:
As used in this act, (1) “foreign state” means any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands; (2) “foreign judgment” means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family manners.
\(^{60}\) See LEFLAR, supra note 3, § 74.
All civilized States, in the interest of an efficient administration of justice, have felt compelled to fix time limits beyond which access to their courts would be denied to aggrieved parties.
den, therefore, is upon the plaintiff; if he desires compensation, he must sue within the applicable time limit.

The primary consideration underlying such legislation is undoubtedly one of fairness to the defendant. There comes a time when he ought to be secure in his reasonable expectation that the slate has been wiped clean of ancient obligations, and he ought not to be called on to resist a claim when “evidence has been lost, memories have faded, and witnesses have disappeared.”

When the events constituting a cause of action occur in more than one state, it becomes necessary to make the choice of which state’s statute of limitations to apply. Limitation laws are generally considered procedural, affecting the remedy only and not the substantive right. The forum, the state in which the action is brought, will generally apply its own limitation because it is a procedural rule. “In short, under this rule, the lex fori determines the time within which a cause of action shall be enforced.”

Through the operation of the lex fori rule, the actionability of lawsuits is made to depend upon the laws of the place where the cause of action is brought. Forum-shopping results; the plaintiff will seek a jurisdiction with a longer limitation rule to prosecute his claim when it would be barred under the statute of limitations of the state where the cause of action arose. To

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64. Leflar, student ed., *supra* note 63, at 303-04; Ailes, *supra* note 61, at 486; Vernon, *Statutes of Limitations in the Conflict of Laws: Borrowing Statutes*, 32 Rocky Mt. L. Rev. 287, 288 (1960); Comment, *Conflicts of Laws: Statutes of Limitation*, 29 Okla. L. Rev. 385 (1976) [hereinafter cited as Conflicts]; Comment, *Foreign Statute of Limitations: Borrowed only to Shorten the Period of Limitations of the Forum*, 1962 U. Ill. L.F. 452 [hereinafter cited as Foreign Statute of Limitations]. Before Oklahoma enacted its borrowing statute, the lex fori rule was followed. “As a general rule, since statutes of limitations affect the remedy only, an action on a contract is governed by the statutes of limitation of the forum, and not by the lex loci contractus, nor by the lex domicilii.” Shaw v. Dickinson, 65 Okla. 186, 187, 164 P. 1150, 1150-51 (1917). See also Western Natural Gas Co. v. Cities Service Gas Co., 507 P.2d 1236 (Okla. 1972), appeal dismissed, cert. denied, 409 U.S. 1052 (1972); Clark v. Keith, 103 Okla. 20, 229 P. 613 (1924); Gaier & Stroh Millinery Co. v. Hilliker, 52 Okla. 74, 152 P. 410 (1915); Doughty v. Funk, 15 Okla. 643, 84 P. 484 (1905).


66. Leflar, student ed., *supra* note 63, at 307; *Foreign Statute of Limitations*,
prevent forum-shopping and provide uniformity in results, the
majority of states have enacted "borrowing" or "comity" stat-
utes.\textsuperscript{67}

Generally, these statutes either bar the action if it is barred
by the statute of the place where the defendant, or both of
the parties, resided, or if it is barred by the statute of the
place where the cause of action arose. In one sense, such
statutes do not change the rule that it is the statute of limita-
tions at the forum which governs; rather, they afford an in-
stance of some other law being given a certain effect under
the law of the forum. They "borrow" the limitations rule of
the other state and make it law in the forum for purposes of
the particular litigation.\textsuperscript{68}

Prior to 1970, in a conflicts-of-law problem demanding a
choice between the law of the state where the action accrued
or the forum's statute of limitations, Oklahoma's borrowing
statute required the application of the shorter of the two limitation
periods.\textsuperscript{69} Thus, Oklahoma's statute, and the majority of

\textsuperscript{67} \textit{Leflar}, student ed., \textit{supra} note 63, at 307; accord, \textit{Wurfel, Statutes of Limita-
tions in the Conflict of Laws}, 52 N.C.L. Rev. 489, 519 (1974) [hereinafter cited as \textit{Wurfel}]. Two exceptions to the lex fori rule are generally recognized: one is the legisla-
tive exception of a borrowing statute and the other is where the foreign statute of limita-
tions is characterized as substantive. To be considered as substantive, the foreign
limitation rule would have to be contained in the same statute which created a
cause of action unknown to common law. There is no right to sue upon the cause of
action beyond that time which the statute created. See generally \textit{Leflar}, student ed.,
\textit{supra} note 63, at 305; 51 Am. Jur. 2d Limitation of Actions § 67 (1970); \textit{Developments},
\textit{supra} note 62, at 1281; \textit{Conflicts}, \textit{supra} note 64, at 386; \textit{Foreign Statutes of Limitations},
\textit{supra} note 64, at 453. In addition, both these exceptions are recognized by the
\textit{Restatement} (Second). \textit{See Restatement (Second) of Conflict of Laws} §§ 142(1), 143
(1971).

\textsuperscript{68} \textit{Leflar}, student ed., \textit{supra} note 63, at 307. Concerning the application of
borrowing statutes, see generally \textit{Ester}, \textit{supra} note 61, at 44-67.

\textsuperscript{69} The period of limitation applicable to a claim accruing outside of
this state shall be that prescribed either by the law of the place where the
claim accrued or by the law of this state, whichever first bars the claim.
(Emphasis added.)

(1971).} In 1957, a uniform act was promulgated with practically the same provision as
the Oklahoma borrowing statute:

\textit{The period of limitation applicable to a claim accruing outside of this state
shall be either that prescribed by the law of the place where the claim
accrued or by the law of this state, whichever first bars the claim. (Emphasis
added.)}

\textbf{Uniform Statute of Limitations on Foreign Claims Act § 2 (1957).}
similar statutes in other jurisdictions, was only applicable if
the cause of action accrued in, or had its basic contacts in, a
foreign jurisdiction.\textsuperscript{70}

In yet another respect, the original Oklahoma enactment
followed the great weight of authority. Borrowing statutes ex-
press the general philosophy behind all statutes of limitations;
\textit{i.e.}, to force the plaintiff to sue rather than to prolong the
threat of litigation. Thus, borrowing statutes were generally
applied only to shorten the forum’s statute of limitations. A
limitation rule of another state was “borrowed” and adopted
as the forum’s rule for the purpose of the particular litigation
only if it barred the claim prior to the forum’s statute.\textsuperscript{71} If a
cause of action was created outside Oklahoma and barred
where created, it would likewise be barred in Oklahoma even
if Oklahoma's period of limitations had not expired. The “bor-
rowing” prevented forum-shopping; plaintiffs could not bring
causes of action to Oklahoma simply to take advantage of its
longer period of limitations. Conversely, “if the period of time
prescribed by the forum statute has run, the action is barred
in the forum even though not barred by the statute of limita-
tions of the jurisdiction in which the cause arose.”\textsuperscript{72}

In 1970, however, Oklahoma amended its borrowing stat-
ute so that either the forum’s statute or the law where the claim
accrued will be applied, whichever \textit{last} bars the claim.\textsuperscript{73} By this
amendment, Oklahoma deviates from the generally followed
rule that a “statute admitting the bar of the law of any other
state or country does not so adopt the foreign law as to lengthen
the limitation period otherwise prescribed at the forum.”\textsuperscript{74} Indeed,
the Oklahoma Supreme Court has even admitted that the
operation of the new statute “is in effect the reverse of most
‘borrowing statutes’. \ldots ”\textsuperscript{75}

\begin{itemize}
\item \textsuperscript{70} \textit{See} Ester, \textit{supra} note 61, at 45-46.
\item \textsuperscript{71} Wurzel, \textit{supra} note 67, at 519-20; \textit{Developments, supra} note 62, at 1262-63;
\textit{Conflicts, supra} note 64, at 387.
\item \textsuperscript{72} Wurzel, \textit{supra} note 67, at 520. \textit{See also} \textit{Foreign Statute of Limitations, supra}
note 64, at 455.
\item \textsuperscript{73} The period of limitation applicable to a claim accruing outside of
this state shall be that prescribed either by the law of the place where the
claim accrued or by the law of this state, whichever \textit{last} bars the claim.
(Emphasis added).
\item \textsuperscript{74} Annot., 75 A.L.R. 203, 231 (1931). \textit{See also} Annot., 67 A.L.R.2d 216 (1959);
\item \textsuperscript{75} Reinhard \textit{v. Textron, Inc.}, 516 P.2d 1325, 1327 (Okla. 1973). \textit{See also} \textit{Conflicts,}
\end{itemize}
Again, one of the purposes behind borrowing statutes is to discourage forum-shopping.\textsuperscript{76} Because Oklahoma will apply the longer statute, a plaintiff may come to Oklahoma to sue under this forum's longer limitation period, even though the claim would be barred where the claim arose or where the plaintiff resides. In addition, applying a longer limitation rule contravenes the "underlying policy against prolonging the period of limitations . . . ."\textsuperscript{77}

However, suggestions have been made that the amendment will have the favorable impact of providing equitable and uniform results; a mere change of the forum not substantially affecting the ultimate result.\textsuperscript{78} For example, if the period of limitation in the foreign state where the claim accrues is longer than Oklahoma's, the forum (i.e., Oklahoma) will apply the foreign statute and allow the cause of action to proceed. The result reached would be the same had the plaintiff sued in the sister state, where the limitation period had not ended. Nor does this result encourage forum-shopping. The plaintiff can easily sue in the other jurisdiction; he is not suing in Oklahoma merely to take advantage of a longer statute of limitations.\textsuperscript{79}

\textbf{B. Where the Claim Accrues}

Both the original statute and the amended version require that the claim accrue in a sister state in order to borrow that state's limitation period.\textsuperscript{80} The problem is to determine where the cause of action accrues. The courts traditionally have made this determination "by using the traditional conflicts rule of

\textsuperscript{supra} note 64, at 387 & n.18.

\textsuperscript{76} See note 67, \textsuperscript{supra} and accompanying text.

\textsuperscript{77} George v. Douglas Aircraft Co., 332 F.2d 73, 78 (2d Cir. 1964). See also notes 61 & 62, \textsuperscript{supra} and accompanying text.


\textsuperscript{79} Uniformity of results might not always be achieved. Had the plaintiff sued originally in a foreign state with a borrowing statute and it was applied to borrow Oklahoma's shorter period, the claim would not have been allowed. Therefore, application of Oklahoma's statute would lead to a different result than that of the sister state. "Generally, the borrowing is of the other state's limitation period only, and not of the other state's borrowing statute also. The renvoi difficulties which the latter approach entails would be intolerable." LEFLAR, student ed., \textsuperscript{supra} note 63, at 307-08.

the place where the last act necessary to establish liability occurred, or by using some form of interest analysis.”

In Perkins v. Perkins,82 the Oklahoma Court of Appeals had to decide whether a claim had accrued in Kentucky or Oklahoma. Defendant, R. M. Perkins, executed a $6,000 note to Burrell Perkins, bearing four percent interest with a maturity date of August 18, 1964. Defendant was, at the time of execution and at the time of suit, a resident of Oklahoma.83 The note was executed at the Helena Bank in Alfalfa County, Oklahoma, and then mailed by the defendant to Burrell c/o Ernest Perkins, the defendant’s father, in Kentucky.84 Burrell Perkins, the payee, was a resident of Kentucky when the loan was made and continued his residency there until his death.85 After Burrell’s death, his administrators sued defendant to recover the amount due on the note.

The defendant pleaded Oklahoma’s five-year statute of limitations86 as a defense; more than five years had elapsed since the 1964 maturity date. The administrators contended that the claim accrued in Kentucky and that therefore, the Oklahoma borrowing statute called for the application of Kentucky’s fifteen-year statute of limitations.87 Clearly, because the cause of action was commenced within fifteen years of the

81. Conflicts, supra note 64, at 387. See generally Ester, supra note 61, at 45-67; Wurfel, supra note 67, at 522-33. On the interest analysis approach, see Mihollin, Interest Analysis and Conflicts Between Statutes of Limitations, 27 Hastings L.J. 1 (1975).
85. 541 P.2d at 381.
Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:
First, Within five (5) years: An action upon any contract, agreement or promise in writing.
[T]he following actions shall be commenced within fifteen years after the cause of action first accured:

(2) An action upon a recognizance, bond or written contract.

(4) . . . or upon a bond or obligation for the payment of money or property or for the performance of any undertaking.
note's maturity date, it would not be barred by the Kentucky statute.

The determinative issue facing the court was whether the claim accrued in Kentucky or Oklahoma. As an Oklahoma conflict-of-laws question, the determination where a debt cause of action arises presented a case of first impression. However, the Oklahoma Supreme Court had previously interpreted a similar question concerning venue; the venue statute has language much like the borrowing statute's wording. The court, in Guaranty State Bank of Tishomingo v. First National Bank of Ardmore, held for venue purposes "that a cause of action upon a note arises at the place where the note is made payable and the payment is not made." The court in Perkins adopted this rule to its conflicts-of-law problem:

This rule is sound as repayment is the ultimate aim of the contract; and the failure to pay is the breach on which the cause of action relies.

When an instrument is silent as to the place of payment, as was the note in Perkins, it is payable where the creditor resides. Burrell Perkins, the creditor, resided in Kentucky. Therefore, payment was to be made in Kentucky. Because the defendant did transmit one interest payment to Kentucky, the parties to the contract must have understood that Kentucky was where payment was to be made.

Because the note was payable in Kentucky, Kentucky was where the claim accrued. The borrowing statute was applied to borrow Kentucky's fifteen-year limitation period. Inasmuch as the cause of action was commenced in 1975 on a note with a

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88. 541 P.2d at 380.
    An action . . . may be brought in the county . . . where the cause of action or some part thereof arose . . . (Emphasis added).
90. 127 Okla. 292, 260 P. 508 (1926).
91. Id. at 294, 260 P. at 510, citing Tuloma Oil Co. v. Johantgen, 107 Okla. 92, 230 P. 264 (1924).
93. Clem Oil Co. v. Oliver, 106 Okla. 22, 232 P. 942 (1924). However, the general rule is contra. Absent a contrary contractual provision:
    [A] debtor who incurs an obligation in the state of his residence need not go outside the state to make payment to a non-resident creditor; rather, it is the creditor's duty to provide a place in the state where payment can be made.
94. 541 P.2d at 381.
1964 maturity date, the cause of action was not barred under Kentucky law. Therefore, plaintiff could recover.\footnote{95}

C. The Brickner Approach

To determine where the claim had accrued, the court in 
\textit{Perkins} took a “vested rights” approach; that state’s law would apply in which the last act necessary to establish liability occurred.\footnote{96} Under the vested rights theory, the law of the place where payment is to be made is applied in a cause of action based upon a note.\footnote{97} \textit{Perkins} indicates that Oklahoma will apply a vested rights analysis to determine where a contract’s claim arises.

Prior to 1974, Oklahoma also applied the vested rights doctrine in tort cases with contacts in more than one state.\footnote{98} The law of the place of the wrong, lex loci delicti, was controlling. In \textit{Brickner v. Gooden},\footnote{99} the Oklahoma Supreme Court rejected the doctrine of lex loci delicti and adopted in its place the test of the most significant relationship.

We hold, as a general principle, that the rights and liabilities of parties with respect to a particular issue in tort shall be determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties.\footnote{100}

\footnote{95} Note that under the original borrowing statute, the shorter statute would be applied, i.e., Oklahoma’s. The cause of action would have been barred because it was not commenced within the five year statute of limitations in Oklahoma. \textit{Okla. Stat. Ann.} tit. 12, § 95 (1971).

\footnote{96} See \textit{Leflar}, student ed., \textit{supra} note 63, at 205-06.

\footnote{97} \textit{11 Am. Jur. 2d Bills and Notes} § 97 (1963):

If the parties have not in terms provided what law shall be applied, the law of the state in which the contract is to be performed, or the state in which the instrument is payable, governs all matters connected with the performance of the contract, even though the law of the place where the contract was made governs other matters.


\footnote{99} 525 P.2d 632 (Okla. 1974). The rationale for rejecting the vested rights approach was expressed as:

Dissatisfaction with the mechanical application of the rule that the substantive rights of the parties to a tort action are automatically fixed by, and inexorably governed by, the law of the place where the wrong occurred... \textit{Id.} at 635. \textit{See also} Buckner v. Freightliner Corp., 403 F. Supp. 671, 675 n.11 (W.D. Okla. 1975).

\footnote{100} 525 P.2d at 637.
The court proceeded to list four factors to be considered in relation to the issues before the court. These factors are taken from section 145 of the Restatement (Second) of Conflict of Laws. However, under the Restatement (Second) approach, these "contacts" are to be analyzed in conjunction with the choice-influencing factors of section six to determine which state has the most significant relationship to the transaction and the parties. Brickner did not analyze the contact points in the context of the section six factors. Therefore, Brickner did not employ the Restatement (Second) approach in its entirety; the court only looks to the contact points listed in section 145 of the Restatement (Second). In deciding which state had the most significant relationship, the court concluded that, because Oklahoma had three contacts while Mexico had only one, Oklahoma had the most significant relationship. This process of counting the relevant contact points of each state, and applying the law of that state which has the greater number, is more a grouping-of-contacts approach than a "significant relationship" analysis.

If Perkins had involved a tort cause of action, the court would have had to analyze the contact points listed in Brickner to determine where the claim accrued. The same grouping-of-contacts approach should have been applied in Perkins where the action was grounded in contract (i.e., the note). It has been suggested that Oklahoma would adopt a "significant contacts" approach in contract cases because (1) the supreme court had adopted this approach in tort cases and (2) the legislature had

101. Id. The factors were:
(1) the place where the injury occurred,
(2) the place where the conduct causing the injury occurred,
(3) the domicile, residence, nationality, place of incorporation and place of business of the parties, and
(4) the place where the relationship, if any, between the parties occurred.


103. Id. §§ 6(2), 145(1).

104. 525 P.2d at 638.

Under [the center of gravity or the grouping of contacts] theory, the courts . . . lay emphasis . . . upon the law of the place 'which has the most significant contacts with the matter in dispute.'


By stressing the significant contacts, it enables the court . . . to reflect the relative interests of the several jurisdictions involved . . .

308 N.Y. at 161, 124 N.E.2d at 102.
enacted the Uniform Commercial Code.\textsuperscript{106} Section 1-105 of the Uniform Commercial Code calls for application of the law of the state which bears an "appropriate relation" to the transaction.\textsuperscript{107}

It would seem only just that since Oklahoma is applying the significant contacts approach in tort cases and to transactions that fall under the UCC, that it should use the same approach for contract problems.\textsuperscript{108}

Had the \textit{Perkins} court taken the \textit{Brickner} approach, however, it would in all probability have reached the same result; the statute of limitations of Kentucky would have been borrowed. The contacts to be taken into account in contract cases are:

(a) the place of contracting,
(b) the place of negotiation of the contract,
(c) the place of performance,
(d) the location of the subject matter of the contract, and
(e) the domicile, residence . . . of the parties.\textsuperscript{109}

In \textit{Perkins}, the place of contracting was Oklahoma; the note was made and executed in Oklahoma.\textsuperscript{110} However, except as to questions of validity, the place of contracting is an insignificant contact.\textsuperscript{111} Negotiation was by mail,\textsuperscript{112} but that contact is less important if the parties do not meet and negotiations are conducted from separate states by mail or telephone.\textsuperscript{113} The

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When a transaction bears a reasonable relation to this state and also to another state or nation . . . this Act applies to transactions bearing an appropriate relation to this state.
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111. \textbf{RESTATEMENT (SECOND) OF CONFLICT OF LAWS}, Explanatory Notes § 188, comment e at 579 (1971) [hereinafter cited as \textit{RESTATEMENT}].
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113. \textbf{RESTATEMENT}, \textit{supra} note 111, at 580.
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place of performance, \textit{i.e.}, where payment was to be made, was determined by the court to be Kentucky.\textsuperscript{114} "The state where performance is to occur under a contract has an obvious interest in the nature of the performance and in the party who is to perform."\textsuperscript{115} The location of the subject matter has no relevance when the transaction involves the payment of money.\textsuperscript{116} The defendant was domiciled in Oklahoma while Burrell Perkins resided in Kentucky.\textsuperscript{117} The significance of the domicile contact depends largely "upon the extent to which they are grouped with other contacts."\textsuperscript{118}

Other than domicile, the only relevant contact point in \textit{Perkins} was the place of performance, \textit{i.e.}, Kentucky. Kentucky, therefore, had two contact points, the place of performance and the domicile of Burrell Perkins, the payee. On the other hand, Oklahoma had only one contact point, defendant's domicile, which is less significant because it is unaccompanied by other contacts. Therefore, even if the \textit{Perkins} court had adopted the \textit{Brickner} approach, it would have concluded that the state with the most significant relationship was Kentucky.\textsuperscript{119} The claim, then, would be deemed to have accrued in Kentucky, the Oklahoma borrowing statute would borrow the Kentucky fifteen-year limitation period and plaintiff's claim would have been allowed.

Although the result under the above analysis is the same as that reached by the court of appeals in \textit{Perkins}, the most significant relationship approach would have been more desirable. \textit{Brickner} had already adopted the contact points of the Restatement (Second) in tort cases,\textsuperscript{120} and the \textit{Brickner} court's

\textsuperscript{114} 511 P.2d at 381.
\textsuperscript{115} \textit{Restatement, supra} note 111, at 580.
\textsuperscript{116} \textit{Restatement, supra} note 111, at 580-81:
When the contract deals with a specific physical thing . . . or affords protection against a localized risk, . . . the location of the thing or of the risk is significant.
\textsuperscript{117} \textit{Brief for Appellant} at 1, \textit{supra} note 110; 541 P.2d at 381.
\textsuperscript{118} \textit{Restatement, supra} note 111, at 581.
\textsuperscript{119} This approach does not include analyzing the relevant contact points in reference to section 6 of the Restatement (Second) as was the intent of the codal redactors. \textit{Brickner} did not adopt the entire Restatement (Second) approach; rather, just the contact points contained within the respective sections were adopted. \textit{See Restatement (Second) of Conflict of Laws} §§ 188(2), 6(2) (1971). On the application of the Restatement (Second), \textit{see generally Symposium on the Restatement (Second) of Conflicts of Laws, 72 Colum. L. Rev.} 219 (1972); \textit{Sedler, The Contracts Provisions of the Restatement (Second): An Analysis and a Critique, 72 Colum. L. Rev.} 279 (1972).
\textsuperscript{120} 525 P.2d at 637.
rationale for that adoption was,

Ease of determining applicable law and uniformity of rules of decisions, however, must be subordinated to the objective of proper choice of law in conflict cases, i.e., to determine the law that most appropriately applies to the issues involved.\textsuperscript{111}

For the same reasons, the \textit{Perkins} court should have utilized the most significant relationship analysis to determine where a claim has accrued for the purposes of choosing, under the Oklahoma borrowing statute, which statute of limitations to apply.\textsuperscript{122}

\textbf{Vicki E. Lawrence}

\textbf{Stephen D. Milbrath}


\textsuperscript{122} See "\textit{Significant Contacts Approach,}" supra note 106, at 823.