



1966

## Conflict of Laws and Joint Bank Accounts - An Autopsy of a Case

Joseph C. Kelly

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>



Part of the [Conflict of Laws Commons](#), [Contracts Commons](#), [Estates and Trusts Commons](#), [Jurisdiction Commons](#), and the [Property Law and Real Estate Commons](#)

---

### Recommended Citation

Joseph C. Kelly, *Conflict of Laws and Joint Bank Accounts - An Autopsy of a Case*, 11 Vill. L. Rev. 840 (1966).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol11/iss4/14>

This Comment is brought to you for free and open access by the Journals at Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

## CONFLICT OF LAWS AND JOINT BANK ACCOUNTS — AN AUTOPSY OF A CASE

### I. INTRODUCTION

The disparity between community and non-community property systems with their differing methods of protecting familial economic interests has produced a plethora of conflict of laws problems with regard to marital property. These problems have multiplied with the ever increasing mobility of spouses and property between nations employing these two divergent systems. The difficulties that this fluidity can cause was demonstrated in *Wyatt v. Fulrath*,<sup>1</sup> a recent New York decision involving Spanish domiciliaries who had deposited assets in New York banks and executed joint and survivorship bank account agreements which were recognized by the laws of New York but purportedly prohibited by the laws of Spain. When a dispute arising over the disposition of the funds reached the New York Court of Appeals, it had to choose not only between the law of New York, a common law state, and the law of Spain, a community property state, but also between a Spanish duchess and her disgruntled heirs. It is the purpose of this comment to examine the rationale of the court's decision, and to expose the relevant policy considerations which the court might have employed in arriving at a solution to the novel issue presented.

### II. *Wyatt v. Fulrath*

During a prolonged period of political instability, a Spanish duke and his wife, both Spanish domiciliaries, placed cash and securities in bank accounts in London and New York. The New York accounts were established for the most part in the names of both spouses, while the London accounts were established in the names of the duke, the duchess, and their daughter. The parties made the deposits in the New York banks subject to a right of withdrawal by either party, and both expressly either agreed in writing that the New York law of survivorship would apply or signed a written form of survivorship account under New York law which would have the effect of passing the property to the survivor in the event either should die.<sup>2</sup> With the duke's approval, the duchess subsequently exercised her right of withdrawal and transferred some of the assets in the joint accounts to her separate account; upon the duke's later demise, she also transmitted some of the assets in London to her sole name in New York. Shortly thereafter, the duchess passed away and left a will giving one-half of the two million dollar estate in the New York

---

1. *Wyatt v. Fulrath*, 16 N.Y.2d 169, 211 N.E.2d 637, 264 N.Y.S.2d 233 (1965).

2. N.Y. BANKING LAW § 134.

banks to three loyal friends and the other half to her two living children.<sup>3</sup> The two children and the grandchild, who were the sole and equal beneficiaries under the duke's will and Spanish law,<sup>4</sup> were dissatisfied with this disposition. As a consequence, they had an administrator institute an action in New York against the wife's executor to establish title to one-half of the cash and securities held in the accounts, claiming it as the husband's share of the spouses' community property. Their claim of ownership rested on the peculiarities of the Spanish Civil Code,<sup>5</sup> which they cited as the controlling law. According to them, Spanish law provides that all property owned by a husband and wife, with certain exceptions, constitutes community property, and on the death of either spouse, one-half goes to the survivor and at least two-thirds of the remainder passes to the heirs of the deceased spouse. Furthermore, they contended that no gift, agreement, or transaction of any type, including the method employed, could substantially alter this statutory scheme and that consequently one-half of the property belonged to the husband. The wife's executor, on the other hand, maintained that the law of New York, which recognizes the right of spouses to alter their property rights through the medium of joint and survivorship bank accounts, was applicable.<sup>6</sup> Such being the case, the property transferred from the joint custodial accounts to the sole account of the duchess, as well as the balance remaining in the joint and survivorship bank accounts at the duke's death, were the property of the duchess.

A closely divided court affirmed the lower court's award of the assets to the duchess' executor and held that the public policy of the state required that New York law govern as to the funds transferred to state banks during the lifetime of the duke, since the duke and duchess had deposited their property in New York banks and had specifically "requested New York law to apply to their respective rights."<sup>7</sup> With respect to the property transferred to New York banks by the duchess after her husband's death, the court remanded with instructions to determine how a London court would decide the question, suggesting that the form of instruction or agreement pursuant to which the property was placed in the accounts would be particularly relevant.

In a vigorous dissent, Chief Judge Desmond contended that the court's failure to apply the law of Spain, the matrimonial domicile, was contrary to all established conflict of laws principles, including the principles of international comity. Using contacts as a touchstone, he pointed out that the duke and duchess were Spanish domiciliaries and nationals, neither of whom had ever visited New York state, and that New York's only

---

3. Brief for Appellee, p. 25, *Wyatt v. Fulrath*, 16 N.Y.2d 169, 211 N.E.2d 637, 264 N.Y.S.2d 233 (1965).

4. Reply Brief of Appellant, p. 6, *Wyatt v. Fulrath*, 16 N.Y.2d 169, 211 N.E.2d 637, 264 N.Y.S.2d 233 (1965).

5. See FISHER, *CIVIL CODE OF SPAIN* 9, 1315, 1334, 1394, 1407 (4th ed. 1930).

6. N.Y. BANKING LAW § 134.

7. *Wyatt v. Fulrath*, *supra* at 173, 211 N.E.2d at 639, 264 N.Y.S.2d at 236.

contact with the case was the fact that the parties had deposited the property in the New York banks for emergency safekeeping. He concluded by noting that the supposed intent of the parties to substitute New York law for Spanish law was evidenced by no more than the routine signing of joint-account forms which were supplied by the New York depositaries.

### III. SPURIOUS CONFLICT

When the operative facts of a case occur in two or more jurisdictions and a litigant urges the application of a law other than that of the forum, the court must initially determine the divergency, if any, between the law of the foreign jurisdiction and the *lex fori*. This threshold investigation will enable the forum in many instances to avoid a superfluous and potentially corrosive decision of a spurious conflict. On the basis of one authority,<sup>8</sup> it does seem plausible to conclude that the New York courts improperly executed this task in *Wyatt*, and as a result, incorrectly decided that the disposition of the case should turn upon which law was applied.

The *Wyatt* court based its interpretation of Spanish law on the testimony of a well-qualified expert who represented the three heirs.<sup>9</sup> According to the expert's testimony, the law of Spain prohibits spouses from altering their property rights post-nuptially by gift on agreement. This conclusion is weakened considerably by Professor DeFuniak's assertion in his treatise on community property that the proscription against gifts extends only to the spouses' separate estates, and that renunciation of communal rights is permitted, provided that legitimate rights of inheritance are not prejudiced by a surrender of already acquired interests.<sup>10</sup> Even a narrow construction of the term "prejudice" would not render untenable the opinion that a gift from husband to wife would not prejudice heirs who have already been benefited by the addition of over a million dollars to their coffers.<sup>11</sup> Such a construction would isolate the result from choice of law and obviate the need for choosing between the law of Spain and the law of New York.

Even assuming there was not a misinterpretation of Spanish law, the possibility of error points to familiarity with forum law as a persuasive reason for application of the *lex fori*, especially when an understanding of foreign law is further impeded by a language barrier. Eminent authority<sup>12</sup> has recognized this intimacy as an impelling consideration for selection of the local law. But if a desire not to delve into the nuances of

---

8. 1 DEFUNIAK, PRINCIPLES OF COMMUNITY PROPERTY (1943).

9. Brief for Appellee, pp. 3-4, *Wyatt v. Fulrath*, 16 N.Y.2d 169, 211 N.E.2d 637, 264 N.Y.S.2d 233 (1965).

10. 1 DeFuniak, *supra* note 8, at 7.

11. Reply Brief for Appellant, pp. 3-6, *Wyatt v. Fulrath*, 16 N.Y.2d 169, 211 N.E.2d 637, 264 N.Y.S.2d 233 (1965).

12. Cheatham and Reese, *Choice of the Applicable Law*, 52 COLUM. L. REV. 959 (1952).

Spanish law influenced the court's choice of law in *Wyatt*, an articulation or intimation of that course of reasoning does not appear in the opinion, and in its absence, one can assume that in all probability this consideration did not enter into the decision.

#### IV. PRECEDENT

In arriving at a satisfactory solution, the New York courts could have looked to two lines of decisions for guidance, both of which pointed to the application of forum law. There were a substantial number of cases<sup>13</sup> holding that the validity of joint custody account agreements was to be determined by the law of the situs. None of these cases, however, involved a situation where the law of the domicile prohibited a post-nuptial transfer of community property into separate properties. Conversely, a second line of authority,<sup>14</sup> while embracing the latter situation, did not involve joint custodial agreements. The court, therefore, had to make a singular decision and, in so doing, weigh carefully the value of utilizing prior authorities, which like so many precedents in conflict of laws might not give expression to the dominant social policies affecting the case at bar.

The Court of Appeals, without even a passing reference to the decisions involving joint custodial agreements, turned to the cases dealing with post-nuptial transfers of community property, and one case in particular from their own jurisdiction, in arriving at a decision. In *Hutchinson v. Ross*,<sup>15</sup> a husband and wife, domiciliaries of Quebec, executed an ante-nuptial agreement providing for the establishment of a trust of personalty. Upon inheriting a large fortune, the husband decided to set up a larger trust for his wife and children, and his wife ostensibly renounced her interest in the earlier ante-nuptial agreement. A New York trust company agreed to act as trustee and accepted the delivery of securities. The law of Quebec provided that, after the marriage, an ante-nuptial agreement may not be altered in any way, and that neither spouse may transfer to the other any substantial part of his or her fortune. The husband subsequently brought suit to have the trust set aside. The court agreed that under the community property laws of Quebec the trust was invalid, but held that the laws of New York, and not the laws of Quebec, were controlling. Judge Lehman bottomed his decision on the implied intent of the parties and the public policy of New York, which was vocalized in a statute post-dating the trust agreement and providing for the application of New York law to trust estates when the parties so declared. In his dissent in the instant case, Judge Desmond questioned the relevance of the *Hutchinson* rationale, asserting that the conflict of laws policies and principles applicable to a bailee are at variance with those applicable to a trustee. While the court's decision might properly be viewed as expressing a desire to protect trustees, it can more realisti-

---

13. *E.g.*, *Colclazier v. Colclazier*, 89 So. 2d 261 (Fla. 1956).

14. See MARSH, *MARITAL PROPERTY IN THE CONFLICT OF LAWS* (1952).

15. 262 N.Y. 381, 187 N.E. 65, 266 N.Y.S. 1 (1933).

cally be regarded as evincing a solicitude for New York financial institutions and for a wife and children who would have been deprived of the benefits of a trust estate had Quebec law been controlling.

#### V. REALISM — MODUS OPERANDI

The desire to do justice in the individual case and to effectuate the policies embodied in local laws exert a strong influence in the resolution of a conflict's problem.<sup>16</sup> When local policies vigorously dictate the application of the *lex fori* and such application will accomplish an equitable end, the likelihood of an enlightened court selecting a law other than the local law is negligible. This conclusion would appear to be countenanced not only by *Hutchinson v. Ross*, but also by the *Wyatt* decision.

The public policy of New York seems to be directed at encouraging non-residents to do business with local banks and, if they desire, to have state law govern their rights, regardless of the law of their domicile. This policy is manifested in constitutional<sup>17</sup> and statutory provisions exempting securities owned by non-residents from taxation and recognizing their right to select New York law as controlling with regard to an inter-vivos trust of personal property<sup>18</sup> or a will disposing of in-state assets.<sup>19</sup> Furthermore, a decision stimulating local investment, even if such stimulation would cause a slight rupture in another country's marital scheme, would not be an anomaly in a state which enjoys the reputation as being the financial capital of the world.

It was implied in appellants' briefs<sup>20</sup> that the duchess had failed to receive her just share of the duke's property at the settlement of his estate in Spain. These hints of impropriety become convincing when one notes that the duchess professedly renounced the life estate given her by the duke in favor of her heirs. Rough justice would suggest that the three loyal friends of the widow should not be deprived of their bounties by affluent heirs when there is some evidence that the heirs had perhaps already received more than they deserved. As these equitable considerations coincided with the public policy of the state, the court needed only to find a legal basis to justify a realistic result calling for the application of New York law.

#### VI. INTENT

In a non-commercial setting it seems desirable to hold that the law of the domicile should govern the interests of a husband and wife and their heirs and devisees.<sup>21</sup> However, when a forum state has a genuine conflict

16. Cheatham and Reese, *supra* note 12.

17. N.Y. CONST. art. XVI, § 3 (1938).

18. N.Y. PERSONAL PROPERTY LAW § 12a.

19. N.Y. DECEDENT ESTATE LAW § 47.

20. See Reply Brief for Appellant, pp. 2-6, *Wyatt v. Fulrath*, 16 N.Y.2d 169, 211 N.E.2d 637, 264 N.Y.S.2d 233 (1965).

21. See Weintraub, *The Contracts Proposals of the Second Restatements of Conflict of Laws — A Critique*, 46 IOWA L. REV. 713 (1961).

of policy with another state which has a substantial connection with the transaction, intent can be placed on the judicial scales to tip the balance in favor of the law of the forum. This was the approach taken by the Court of Appeals in *Wyatt*. The difficulty presented by it lies in the fact that, in the great majority of cases, the parties' intent cannot easily be ascertained.

It is difficult to believe, even in view of Chief Judge Desmond's suggestion to the contrary, that the duke and duchess did not know, or did not understand, the legal implications of their acts. The duke was sophisticated in the ways of finance, had prudently directed the investment of his property through the course of his life,<sup>22</sup> and could have in all likelihood instructed the bank to adopt an alternative plan if he so desired. Furthermore, letters passing between the duke and the banks clearly indicate that the duke understood that the property would go to the duchess on his death, and, that he did not object to this pattern of disposition.<sup>23</sup> When the effectuation of the intention of the parties will not seriously violate the laws of a foreign state, it does not seem improper for a court to give expression to the parties' desire.

## VII. CONCLUSION

On the international plane, more than on the interstate level, judicial sagacity and discretion must be employed in the resolution of conflict of laws problems. The full faith and credit clause and the privileges and immunities clauses are non-operative in this area; and the due process and equal protection clauses, if operative,<sup>24</sup> have a very limited and undeveloped utility. The New York court in the instant case cannot be castigated for arriving at a decision that accords with the public policy of the state and intentions of the parties, and, at the same time, attempts to accommodate the human aspect as equitably as possible.

*Joseph C. Kelly*

---

22. See Brief for Appellee, p. 15, *Wyatt v. Fulrath*, 16 N.Y.2d 169, 211 N.E.2d 637, 264 N.Y.S.2d 233 (1965).

23. *Id.* at 8-12.

24. *Home Ins. Co. v. Dick*, 281 U.S. 397 (1930).