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COMMENT

MONTANA CONFLICTS OF LAW: AN OVERVIEW

By Robert Bryant

The realm of the conflict of laws is a dismal swamp, filled with quaking quagmires, and inhabited by learned but eccentric professors, who theorize about mysterious matters in a strange and incomprehensible jargon. The ordinary court, or lawyer, is quite lost when engulfed and entangled in it.¹

I. INTRODUCTION

A conflict of laws results from any case whose facts occurred in more than one state or nation, such that in deciding the case it is necessary to make a choice between the relevant laws of the different states or nations.² Also included are cases in which the facts occurred in one state and the action is brought in another, so that the forum must decide between its own law and the law of the place where the events occurred before it can know how to proceed with the trial.³

The rules of conflict of laws are largely decisional and are as open to reexamination as any other common law rules.⁴ These rules are not exclusively judge-made however; constitutions, statutes, and treaties are also an important factor in conflict of laws cases.⁵

Each state is free to adopt its own rules of conflict of laws in the same manner as it may adopt other rules of law.⁶ Montana has rules governing conflict of laws which are the sum of decisions by the Montana supreme court and statutes enacted by the Montana legislature.

The purpose of this comment is to collect and discuss the rules of conflict of laws in Montana as applied to selected areas. The discussion that follows is necessarily limited to those areas that have ascertainable rules for conflict of laws.

II. VALIDITY OF MARRIAGE CONTRACTED OUTSIDE MONTANA

The Montana supreme court has often said that “[t]he pre-

1. W. Prosser, Cook lectures at the University of Michigan, *quoted in Comment, Workmen's Compensation and the Conflict of Laws*, 11 BAYLOR L. REV. 202, 202 n. 1 (1959).

2. R. LEFLAR, AMERICAN CONFLICTS LAW 3 (3d ed. 1977).

3. *Id.*

4. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 5 (1971).

5. *Id.* Comment b.

sumption in favor of matrimony is one of the strongest known to law."⁷ This presumption had been reinforced by a repealed Montana statute which validated "[a]ll marriages contracted without the state, which would be valid by the laws of the country in which the same were contracted"⁸ Likewise, Section 48-313 of the recently adopted Uniform Marriage and Divorce Act⁹ is a similar provision validating marriages contracted outside Montana that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted (or by the domicile of the parties).

In an appeal challenging the appointment of the purported wife as the intestate's administrator, the Montana supreme court said that "[i]f . . . these parties were married in Washington, the courts of this state will recognize the relationship even though it be such a marriage, as that, if contracted in this state, it would not be valid under our laws."¹⁰ The court held that the marriage was invalid under Montana statutes, but valid in Washington and accordingly recognized the purported wife as the intestate's surviving widow.¹¹

An unseemly departure from the above rule was the case of *In re Takahashi's Estate*¹² in which the twenty-six year marriage of a Japanese alien and a white woman was held to be "wholly nonexistent" regardless of its validity in the state where contracted.¹³ In reaching its decision the Montana supreme court relied upon Montana statutes which provided that every marriage between a Japanese and white person shall be utterly null and void.¹⁴

7. See, e.g., *In re Estate of Slavens*, 162 Mont. 123, 125, 509 P.2d 293, 295 (1973); *In re Estate of Swanson*, 160 Mont. 271, 277, 502 P.2d 33, 37 (1972); *Welch v. All Persons*, 78 Mont. 370, 384, 254 P. 179, 182 (1927).

8. REVISED CODES OF MONTANA, § 48-113 (1947) [hereinafter cited as R.C.M. 1947], repealed, ch. 232, § 12 Laws of Montana (1963). See also *Welch v. All Persons*, 78 Mont. 370, 387, 254 P. 179, 183 (1927); *Cross v. Cross*, 110 Mont. 300, 303, 102 P.2d 829, 830 (1940).

9. R.C.M. 1947, § 48-313 (Supp. 1977).

10. *In re Huston's Estate*, 48 Mont. 524, 531, 139 P. 458, 459 (1914).

11. *Id.* at 535, 139 P. at 461.

12. 113 Mont. 490, 129 P.2d 217 (1942).

13. *Id.* at 500, 129 P.2d at 222.

14. R.C.M. 1935, § 5702 provided: "Every marriage hereafter contracted or solemnized between a white person and a Japanese person shall be utterly null and void."

R.C.M. 1935, § 5703 provided:

Every such marriage mentioned in either of the foregoing sections (5700-5702), which may be hereafter contracted or solemnized without the state of Montana by any person who has, prior to the time of contracting or solemnizing said marriage, been a resident of the state of Montana, shall be null and void within the state of Montana.

Similar provisions invalidated marriages between whites and Negroes, R.C.M. 1935, § 5700, and between whites and Chinese, R.C.M. 1935, § 5701.

All of the above provisions were repealed in 1953. Ch. 4, § 1 Laws of Montana (1953).

The court held that the general rule that a marriage valid where made will be held valid everywhere did not apply where the marriage is contrary to the policy of Montana law:

It is the policy of our law that there shall be no marriage between white persons and Japanese. To make that policy effective, such marriage within the State is forbidden; and, our own residents are not permitted to circumvent the law by marriage outside the state.¹⁵

The court rejected the rule of comity as not requiring that a state sanction within its borders that which is repugnant to its own law.¹⁶ The court distinguished its earlier decisions upholding the validity of foreign marriages saying: "In none of those cases, however, was the marriage in question obnoxious to the laws in this state."¹⁷

Following the repeal of the anti-miscegenation statutes underlying *In re Takahashi*, the Montana supreme court can be expected to return to the general rule that the validity of a marriage is determined by the law of the place where contracted.

III. VALIDITY OF DIVORCE AND SUBSEQUENT REMARRIAGE

The general rule is that a spouse who brings a suit for and secures a void divorce in a state where neither spouse is domiciled cannot collaterally attack the foreign judgment.¹⁸ The Montana supreme court, in the case of *In re Anderson's Estate*,¹⁹ extended this principle to include the heirs of a spouse whose marriage was made possible by a jurisdictionally unsound divorce. The decedent had induced a married woman to obtain a Nevada divorce decree so that they could be married in Montana. His children of a prior marriage were prevented from attacking the validity of the marriage on the basis of estoppel, public policy considerations, and the principle of comity.²⁰

The court began its analysis by recognizing that under the *Restatement of Conflict of Laws* the doctrine of estoppel precludes collateral attack on the validity of a divorce decree by a party securing the divorce.²¹ The court observed that "[t]he rule has been

Since the repeal of these provisions the United States Supreme Court has held that statutory schemes of this nature violate the equal protection and due process clauses of the Fourteenth Amendment. *Loving v. Virginia*, 388 U.S. 1 (1967).

15. *In re Takahashi*, 113 Mont. 490, 495, 129 P.2d 217, 220 (1942).

16. *Id.* at 496, 129 P.2d at 220.

17. *Id.* at 496, 129 P.2d at 221.

18. LEFLAR, *supra* note 2, at 460.

19. 121 Mont. 515, 194 P.2d 621 (1948).

20. *Id.* at 526, 194 P.2d at 626.

21. *Id.* at 520-521, 194 P.2d at 624. RESTATEMENT OF CONFLICT OF LAWS § 112 (1934)

extended to apply to the spouse of the divorcee who was active in securing the divorce, or one who treated it as void and changed his or her marital status in reliance thereon."²² The court then extended the rule even further by its apparent adoption of the principle that an heir is bound by an estoppel binding the ancestor.²³ Thus, estoppel was one basis blocking the heir's collateral attack.

The court's reliance upon the equitable principle of estoppel is supported by § 74 of the *Restatement (Second) of Conflict of Laws*²⁴ which precludes a person from attacking a foreign divorce decree if it would be inequitable for him to do so.

The court then discussed whether the public policy of Montana would be offended by recognizing as valid the divorce and subsequent marriage. As grounds for divorce were almost the same in Montana as in Nevada, "[n]o public policy of the State of Montana [was] violated by recognizing a Nevada divorce granted on the same grounds as the same divorce could have been granted in Montana."²⁵ On the other hand, the court said that "[t]he public interest of this state would be most concerned in validating the marital relationship that was entered into in this jurisdiction."²⁶ Accordingly, public policy of Montana is to enforce the sanctity of a marriage entered into in Montana so that marital status of Montana citizens has "the highest degree of certainty and stability possible."²⁷

In addition, the court found that a compelling reason to bar collateral attack on the Nevada decree was "the decent regard and

The validity of a divorce decree cannot be questioned in a proceeding concerning any right or other interest arising out of the marital relations, either by a spouse who has obtained such decree of divorce from a court which had no jurisdiction, or by a spouse who has obtained such decree of divorce from a court which had no jurisdiction, or by a spouse who takes advantage of such decree by remarrying.

22. 121 Mont. at 521, 194 P.2d at 624 (citations omitted).

23. *Id.* at 526, 194 P.2d at 626.

24. *Id.* at 520-521, 194 P. 32, 624. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 74 (1971) provides: "A person may be precluded from attacking the validity of a foreign decree if, under the circumstances, it would be inequitable for him to do so." Comment b of § 74 provides in part:

The cases are divided on the question whether third persons may be estopped from attacking a divorce decree. Such an estoppel has at times been imposed upon one who persuades a woman to seek a divorce in order that he may marry her, particularly if he finances the divorce and provides a lawyer. Likewise, a person may be estopped from attacking a divorce if his claim is derived from a person who would have been estopped. *So a child of a first marriage whose father has procured an invalid divorce may be held estopped from attacking the validity of the divorce in order to prevent a second wife from sharing in the father's estate.* Estoppel against a particular person will be effective against those in privity with him, as, for example, his agents, legatees and personal representatives. (emphasis added).

25. 121 Mont. at 523, 194 P.2d at 625.

26. *Id.* at 524, 194 P.2d at 625.

respect" owed to the judgments of the courts of other states.²⁸

In Montana persons outside of the marriage as well as the parties to the marriage are prevented from attacking a foreign divorce decree if it would be inequitable for them to do so.

IV. ILLEGITIMACY, PROBATE AND GIFTS CAUSA MORTIS

In several probate cases the Montana supreme court has had to decide whether the law of Montana or of a foreign jurisdiction applies when deciding the legitimacy of children.²⁹

In *In re Wray's Estate*³⁰ a daughter born illegitimately in Nebraska was held to be a legitimate heir of the decedent by reason of the subsequent marriage of the decedent and the child's mother in Wyoming. The court ruled that upon the marriage of the father and mother the law of the domicile of the father determined legitimacy, and therefore applied Wyoming law.³¹ Lacking proof of Wyoming law, the court relied upon a Montana statute³² which provided that a child born before wedlock becomes legitimate by the subsequent marriage of the parents.³³

In the later case of *In re Wehr's Estate*,³⁴ the court applied the law of the father's domicile, Montana, to determine the heirship of a formally acknowledged illegitimate child residing in Germany. During the father's lifetime he frequently referred to the child as his son, corresponded with him by mail and sent money to him for his support and maintenance. The Montana supreme court applied the law of Montana and held that the son was an heir of the father.³⁵ The court stated the rule as:

We think the better reasoned cases take the view that the question of status for the purpose of inheritance depends upon the laws of the domicile of the intestate as to property there situated. Were the rule otherwise, then, when legitimation is claimed because of the subsequent marriage of the parents, the place of marriage would also become material. This cannot be so.³⁶

28. *Id.* at 524, 194 P.2d at 625.

29. *In re Estate of Dauenhauer*, 167 Mont. 83, 535 P.2d 1005 (1975); *In re Wehr's Estate*, 96 Mont. 245, 29 P.2d 836 (1934); *In re Wray's Estate*, 93 Mont. 525, 19 P.2d 1051 (1951).

30. 93 Mont. 525, 19 P.2d 1051 (1933).

31. *Id.* at 540, 19 P.2d at 1056.

32. REVISED CODES OF MONTANA, § 5852 (1921) (current version at R.C.M. 1947, § 61-123).

33. *In re Wray's Estate*, 93 Mont. 525, 540, 19 P.2d 1051, 1056 (1951). The court said: "[I]n the absence of proof . . . we presume the statutes of that state are the same as our own."

34. 96 Mont. 245, 29 P.2d 836 (1934).

35. *Id.* at 251, 29 P.2d at 838.

36. *Id.* at 253, 29 P.2d at 839.

In the recent case of *In re Estate of Dauenhauer*³⁷ the court rejected the rule of *In re Wehr's Estate* and held that the legitimacy of the decedent's purported children would be governed by the local law of the state having the most significant relationship to the child and the parent.³⁸ The liaison between the decedent and the mother occurred in California, the children were born there and were California domiciliaries. The court reasoned that the children could not become legitimate merely because the "decedent later traveled to Montana and died here. . . ."³⁹

For authority the court cited various sections of the *Restatement of Conflict of Laws* and *Restatement (Second) of Conflict of Laws*.⁴⁰ Section 287(1) of the *Restatement (Second)* expresses the "most significant relationship" test that the court applied: "Whether a child is legitimate is determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the child and the parent under the principles stated in § 6."⁴¹

The result of *In re Dauenhauer* is that the court has accepted the most significant relationship test from the *Restatement (Second) of Conflict of Laws*, while rejecting earlier Montana case law. The court's departure from case law and its acceptance of the principles from the restatements suggest that the court will continue to rely upon the restatements when called upon to make choice of laws decisions involving legitimacy of heirs.

The Montana supreme court has declared that "the universal rule is that the distribution of a decedent's estate is governed by the law of the place of his actual domicile at the time of death."⁴² Later cases⁴³ did not repeat this "universal rule," but instead applied

37. 167 Mont. 83, 535 P.2d 1005 (1975).

38. *Id.* at 86, 535 P.2d at 1006.

39. *Id.*

40. The court cited RESTATEMENT OF CONFLICT OF LAWS §§ 137-141 (1934) and RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 6, 287, 288 (1971).

41. RESTATEMENT (SECOND) OF CONFLICT OF LAWS, § 6 (1971) provides:

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

42. *State v. Walker*, 70 Mont. 484, 495, 226 P. 894, 896-97 (1924).

43. *In re Giff's Estate*, 125 Mont. 35, 103, 232 P.2d 328, 332 (1951); *In re Hauge's Estate*,

R.C.M. 1947, § 91-319, repealed in 1974, which distinguished between real and personal property:

Except as otherwise provided, the validity and interpretation of wills are governed, when relating to real property within this state, by the law of this state; when relating to personal property, by the law of testator's domicile.⁴⁴

The court relied on this statute in *In re Hauge's Estate*⁴⁵ in applying Montana law and subsequently sustaining a Montana testator's gift of personal property. The court again relied upon the statute in *In re Gift's Estate*⁴⁶ to sustain an Illinois testator's gift of Montana land.

In 1975 the Montana legislature enacted the Uniform Probate Code (U.P.C.)⁴⁷ and repealed the above provision.⁴⁸ Section 91A-2-602 of the U.P.C. provides the testator with a choice of law provision that was unknown under the old law:

The meaning and legal effect of a disposition in a will shall be determined by the local law of a particular state selected by the testator in his instrument unless the application of that law is contrary to the public policy of the state otherwise applicable to the disposition.⁴⁹

This section provides the testator with wide latitude by permitting a personal choice of law.⁵⁰

Another provision of the U.P.C. continues the policy of pre-U.P.C. law by allowing probate in Montana of wills executed in compliance with the law at the time and place of execution.⁵¹ The

92 Mont. 36, 42, 421, 9 P.2d 1065, 1067 (1932).

44. R.C.M. 1947, § 91-319, repealed ch. 365, § 3 Laws of Montana (1974) (effective July 1, 1975).

45. 92 Mont. 36, 42, 9 P.2d 1065, 1067 (1932).

46. 125 Mont. 95, 102, 232 P.2d 328, 331 (1951).

47. Ch. 365, § 1 Laws of Montana (1974) (effective July 1, 1975) (codified at R.C.M. 1947, tit. 91A).

48. R.C.M. 1947, § 91-319, repealed by Laws of Montana (1974), ch. 365, § 3 (effective July 1, 1975).

49. R.C.M. 1947, § 91A-2-602.

50. Rusoff, *A Comparison of Article II, Parts 5 through 9 of the Uniform Probate Code and the Revised Codes of Montana: Principally the Execution, Revocation, and Construction of Wills*, 35 MONT. L. REV. 1, 8 (1974).

This provision allows a testator to name a state the law of which will govern the meaning and effect of his will, unless that law is contrary to the public policy of Montana. This provision may be useful either if the law of Montana would produce a result a testator does not like or if the law of Montana is unknown, for lack of a clear statute or judicial precedent. It may be useful also if a testator owns land in a state other than his domicile and wants the same law to apply to all of his property.

Id.

51. R.C.M. 1947, § 91A-2-506. See Rusoff, *supra* note 50, at 4.

code also has a provision that requires Montana courts to accept as determinative any final order of a court of another state determining testacy, the validity of a will, or construction of a will, where interested persons had notice and opportunity for contest.⁵² Lastly, the U.P.C. has a chapter that provides for foreign personal representatives and ancillary administration.⁵³

The U.P.C. lacks a provision governing choice of law for gifts *causa mortis*. Montana statutes creating gifts *causa mortis*⁵⁴ also lack such a provision. In 1911, however, the Montana supreme court said that "[t]he validity of a gift *causa mortis* is determined by the law of the place where it is made, without reference to the domicile of the donor."⁵⁵

V. STATUTES OF LIMITATION

The Montana supreme court has said that "[i]n general actions are governed by the statutes of limitations of the forum."⁵⁶ This is also the general rule of the first and second *Restatement of Conflict of Laws*.⁵⁷ Thus, it is generally immaterial whether the action is or is not barred by the statutes of limitation of the foreign jurisdiction.⁵⁸ An exception to this rule is where the statutes of the forum make applicable the statutes of limitation of the foreign jurisdiction.⁵⁹

The laws of Montana have had such an exception dating from when Montana was a territory. Section 55 of the Code of Civil Procedure of the Montana Territory provided:

When the cause of action shall have arisen in any other state or territory of the United States, or in any foreign country, and by the laws thereof, an action cannot be maintained against a person by reason of the lapse of time, no action thereon shall be commenced against him in this territory.⁶⁰

52. R.C.M. 1947, § 91A-3-408.

53. R.C.M. 1947, §§ 91A-4-101 to 401.

54. R.C.M. 1947, §§ 67-1709 to 1713.

55. *O'Neil v. First National Bank*, 43 Mont. 505, 516-17, 117 P. 889, 892 (1911).

56. *Hogevoll v. Hogevoll*, 117 Mont. 528, 533, 162 P.2d 218, 221 (1945).

57. *RESTATEMENT OF CONFLICT OF LAWS* §§ 603, 604 (1934). *RESTATEMENT (SECOND) OF CONFLICT OF LAWS* § 142 (1971) provides:

(1) An action will not be maintained if it is barred by the statute of limitations of the forum, including a provision borrowing the statute of limitations of another state.

(2) An action will be maintained if it is not barred by the statute of limitations of the forum, even though it would be barred by the statute of limitations of another state, except as stated in § 143.

58. *Hogevoll v. Hogevoll*, 117 Mont. 528, 533, 162 P.2d 218, 221 (1945).

59. *Id.*

60. *MONTANA REVISED STATUTES*, § 55 (1887).

The court relied upon this provision in *Chevrier v. Robert*⁶¹ where the cause of action arose in Canada. The court held that the action was governed only by the Montana and Canadian statutes of limitation.⁶²

The successor to the above provision is R.C.M. 1947, § 93-2717.⁶³ In general, this provision continues the policy of its predecessor that an action barred by the foreign jurisdiction's statutes of limitation is also barred in Montana. An exception is provided in the case of real property, where the court has said that the Montana statute of limitations governs all actions involving title to or possession of real property within the state.⁶⁴

In *Bahn v. Fritz's Estate*,⁶⁵ an action to recover on an account, the court rejected the plaintiff's contention that an action from Illinois was governed exclusively by the Illinois statute of limitations. The court reasoned that the effect of § 93-2717 was to provide the defendant with an additional limitation. Accordingly, the defendant could assert the Montana statute of limitations along with the Illinois limitation.⁶⁶

In another case, *Swift & Co. v. Weston*,⁶⁷ the court refused to enforce a judgment from Nebraska that was barred by that state's statute of limitations: "It is fundamental that a foreign judgment cannot be given greater force or effect than is accorded it in the state where rendered."⁶⁸

Accordingly, where a foreign claim is not barred by R.C.M. 1947, § 93-2717, or the statutes of limitation of either Montana or the state where the cause of action arose, the claim may then be brought in the courts of Montana.

61. 6 Mont. 319, 12 P. 702 (1887).

62. *Id.* at 321, 12 P. at 704. The defendant had emigrated from Canada to Nevada, and then he became a resident of Montana. He unsuccessfully argued that the action should be barred by the Nevada statute of limitations.

63. R.C.M. 1947, § 93-2717 provides:

Where a cause of action, which does not involve the title to or possession of real property within the state, accrues against a person who is not then a resident of the state, an action cannot be brought thereon in a court of the state against him or his personal representative, after the expiration of the time limited by the laws of his residence for bringing a like action except by a resident of the state, and in one of the following cases:

1. Where the cause of action originally accrued in favor of a resident of the state.
2. Where, before the expiration of the time so limited, the person, in whose favor it originally accrued, was or became a resident of the state; or the cause of action was assigned to, and thereafter continuously owned by, a resident of the state.

64. *Hogevoll v. Hogevoll*, 117 Mont. 528, 534, 162 P.2d 218, 221 (1945).

65. 92 Mont. 84, 10 P.2d 1061 (1932).

66. *Id.* at 93-94, 10 P.2d at 1064.

67. 88 Mont. 40, 289 P. 1035 (1930).

68. *Id.* at 46, 289 P. at 1036.

VI. TITLE TO LAND

Generally, "[t]he title to land is, in theory at least, always controlled by the law of the situs of the land."⁶⁹ This general principle has been adopted in Montana by R.C.M. 1947, § 67-501: "Real property within this state is governed by the law of this state, except where the title is in the United States." The Montana supreme court has not considered this general principle, however, its applicability to mortgages has been contested.

In *Hogevoll v. Hogevoll*⁷⁰ the defendant argued that California statutes of limitation governed an action to foreclose a mortgage on Montana land. The transactions occurred in California where the parties resided. The court concluded that because a foreclosure of a mortgage involves title to or possession of the property the action was governed by the statutes of limitation of Montana and not by those of California.⁷¹

In a later case,⁷² an action to quiet title of Montana land, the court rejected the defendants' contention that the cause of action did not arise in Montana: "It is sufficient to say of this point that all actions to foreclose mortgages on Montana land arise in and must be brought in Montana."⁷³

In the future the courts of Montana can be expected to hold that the laws of Montana govern real property and interests within the state. This follows the general principle of the common law that "the laws of the place, where such [real] property is situated, exclusively govern in respect to the rights of the parties, the modes of transfer, and the solemnities, which should accompany them."⁷⁴

VII. CONTRACTS

The Uniform Commercial Code has been adopted by forty-nine states,⁷⁵ including Montana.⁷⁶ The enactment of the Code by the American states has reduced the number of conflict cases in this field,⁷⁷ however there are still a substantial number of commercial property cases in which the need to choose the governing law arises.⁷⁸ The Code provides in general that "when a transaction bears

69. LEFLAR, *supra* note 2, at 341.

70. 117 Mont. 528, 533, 162 P.2d 218, 220 (1945).

71. *Id.* at 534, 162 P.2d at 221.

72. *Montana Land Co. v. Bestul*, 126 Mont. 426, 253 P.2d 325 (1953).

73. *Id.* at 430, 253 P.2d at 327.

74. STORY, CONFLICT OF LAWS, § 424, at 708 (3d ed. 1846) (cited in R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 296 (1971)).

75. R. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 345 (1971).

76. Laws of Montana (1963) ch. 263, § 1-101 (codified at R.C.M. 1947, § 87A-1-101).

77. LEFLAR, *supra* note 2, at 317.

78. WEINTRAUB, *supra* note 75, at 348.

a reasonable relation to this state and also another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties.”⁷⁹ The Code then provides certain specific exceptions.⁸⁰ Thus, the Code provides for resolution of many questions requiring choice of laws.

Unless displaced by the particular provisions of the Code, pre-Code principles of law continue in existence.⁸¹ One such principle is provided by R.C.M. 1947, § 13-712: “A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.”

The case of *McDonald v. McNinch*⁸² is an example of the application of R.C.M. 1947, § 13-712 to circumstances outside of the Code. The court construed an ambiguous lease of agricultural land according to the usage of the place where it was to be performed. The court concluded that “uncertainty in the actual execution of the agreement was subject to solution by reference to the custom of the vicinity.”⁸³

The general rule is that the interpretation, validity and effect of insurance contracts are governed by the law of the place where made.⁸⁴ The Montana supreme court followed this rule in *Capital Finance Corporation v. Metropolitan Life Insurance Co.*,⁸⁵ and held that Montana law governed the assignment of an insurance contract made in Montana. The court based its decision on, *inter alia*,⁸⁶ R.C.M. 1947, § 13-712, discussed above, and the general rule that the validity of such an assignment is governed by the law of the place of assignment.⁸⁷

The Ninth Circuit Court of Appeals followed this principle in *State Farm Mutual Automobile Insurance Co. v. Murnion*,⁸⁸ a diversity of citizenship action between an Illinois insurer and Montana residents. The court reasoned that Montana law must apply be-

79. U.C.C. § 1-105(1) (1972 version) (codified at R.C.M. 1947, § 87A-1-105(1)).

80. U.C.C. § 1-105(2) (1972 version) (codified at R.C.M. 1947, § 87A-1-105(2)).

81. U.C.C. § 1-103 (1972 version) (codified at R.C.M. 1947, § 87A-1-103). Pre-Code conflicts decisions that now would be decided under the code involved a check. *Tesdahl v. Hiebert*, 148 Mont. 298, 419 P.2d 298 (1966); a sale of sheep, *Story v. Stanfield*, 275 F.401 (9th Cir. 1921); and a chattel mortgage, *Walker Motor Exchange v. Lindberg*, 86 Mont. 513, 284 P. 270 (1930).

82. 63 Mont. 308, 206 P. 1096 (1922).

83. *Id.* at 314, 206 P. at 1097.

84. *LEFLAR*, *supra* note 2, at 314.

85. 75 Mont. 460, 243 P. 1061 (1926).

86. The court also based its decision on public policy considerations. *Id.* at 464-65, 243 P. at 1062.

87. *Id.* at 465, 243 P. at 1062.

88. 439 F.2d 945 (9th Cir. 1971).

cause the policy was written in Montana to insure its residents and because the claim occurred in Montana.⁸⁹

Fraternal benefit insurance society cases are usually governed by the law of the state where the society was incorporated.⁹⁰ One commentator explained that "[i]n the fraternal society cases, an 'indivisible unity' among the 'members' has been deemed to create 'a resultant need for uniform construction of rights and duties in the common fund,' so that the law of the corporate society's home state (place of incorporation) must control."⁹¹ The Montana supreme court applied this principle in *Styles v. Byrne*,⁹² and accordingly relied upon Colorado law. In the later case of *Trammel v. Brotherhood of Locomotive Firemen and Enginemen*,⁹³ in the absence of a controlling decision by the courts of the state where the fraternal benefit society was organized, the court based its decision upon Montana law.⁹⁴

When deciding cases involving conflicts of law as applied to contracts the court has generally followed the law of the place where the contract was made, or where it was to be performed. An exception is the special treatment afforded to fraternal benefit societies.

IX. STATUTES IN GENERAL

As discussed above, the State of Montana has adopted laws and acts with provisions for selection of choice of laws in specific circumstances. There are other provisions also included within the laws of Montana. Examples are: the Uniform Reciprocal Enforcement of Support Act,⁹⁵ Uniform Child Custody Jurisdiction Act,⁹⁶ acknowledgments,⁹⁷ personal property⁹⁸ and reciprocity for property presumed abandoned or escheated under laws of another state.⁹⁹

Another statutory source of conflicts law may be found in a provision which provides for uniformity of application and construction of the uniform laws. Most of the thirty-plus¹⁰⁰ uniform laws

89. *Id.* at 946.

90. LEFLAR, *supra* note 2, at 112. See also RESTATEMENT (SECOND) CONFLICT OF LAWS, § 192, comment k (1971).

91. LEFLAR, *supra* note 2, at 112.

92. 89 Mont. 243, 296 P. 577 (1931).

93. 126 Mont. 400, 253 P.2d 329 (1953).

94. *Id.* at 404, 253 P.2d at 332.

95. R.C.M. 1947, § 93-2601-47.

96. R.C.M. 1947, §§ 61-409, 414, 415.

97. R.C.M. 1947, §§ 39-103, 103.1.

98. R.C.M. 1947, § 67-1101.

99. R.C.M. 1947, § 67-2210.

100. For a listing of those adopted by Montana see *Uniform Laws Annotated, Directory of Acts and Table of Adopting Jurisdictions* 34 (1977).

adopted by Montana contain this provision:¹⁰¹ "This Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it."¹⁰² The commissioner's note states that: "This is the standard Conference provision on uniformity and construction in aid thereof. This means that, once a provision has been judicially construed, courts of other states should follow that construction unless convinced by overwhelming demonstration that the pristine rendition unquestionably was in error."¹⁰³ No Montana decision has used this provision for authority to apply a foreign precedent. If this provision is given liberal application, greater uniformity and cer-

101. Uniformity of application and construction provisions:

R.C.M. 1947:	Uniform Law:
§ 5-1404.	Common Trust Fund Act.
§ 15-661.	Simplification of Fiduciary and Security and Transfers Act.
§ 15-2003.	Securities Act.
§ 29-112.	Fraudulent Conveyance Act.
§ 45-1505.	Federal Tax Lien Registration Act.
§ 48-303.	Marriage and Divorce Act.
§ 54-326.	Controlled Substances Act.
§ 59-1305.	Facsimile Signatures of Public Officials Act.
§ 61-216.	Adoption Act.
§ 61-327.	Parentage Act.
§ 63-104(4).	Partnership Act.
§ 63-909(2).	Limited Partnership Act (1916 Act).
§ 67-1810.	Gifts to Minors Act (1966 Act).
§ 67-1914.	Principle and Income Act (1931 Act).
§ 67-2229.	Disposition of Unclaimed Property Act (1966 Act).
§ 69-2322.	Anatomical Gift Act.
§ 86-808.	Management of Institutional Funds Act.
§ 86-909.	Trustees' Powers Act.
§ 87A-1-102(2)(c).	Commercial Code.
§ 91A-1-102(d).	Probate Code.
§ 93-8915.	Declaratory Judgment Act.
§ 93-801-3.	Business Records as Evidence Act.
§ 93-901-4.	Official Reports as Evidence Act.
§ 93-2601-81.	Revised Reciprocal Enforcement of Support Act.

102. *As quoted in* Uniform Marriage and Divorce Act § 103 (codified at R.C.M. 1947, § 48-303).

103. *As quoted in* Uniform Marriage and Divorce Act § 103.

tainty of result will be achieved because all of the courts of the jurisdictions adopting a uniform act will have a larger, common pool of precedent from which to draw.

X. CONCLUSION

The Montana supreme court uses two general methods to make choice of laws selections.

The first method is reference to a specific statutory directive. If an appropriate statute before the court directs it to a choice of law, the court will follow that statutory directive.

The second method is used when there is no statutory directive. The court weighs the factors relevant to the choice of law. These factors include: public policy, certainty of result, comity, underlying policies of a particular field of law, and protection of justified expectations. In reaching its decision the court will often rely upon the first and second *Restatement of Conflict of Laws*.