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### § 3-1 Pleading

Generally, a pleader is obliged to disclose in pleadings the law relied on. This is true whether a cause of action depends on statutory law, common law, domestic law, or foreign law. If this is not done, the pleader is exposed to the hazards of forum law which controls the effect of foreign law.<sup>1</sup> For example, when the pleadings are silent, a Georgia forum could presume that foreign law is the common law,<sup>2</sup> either English common law or the common law as construed by Georgia courts.<sup>3</sup> By statute, "the common law" is defined as the English common law, "the common laws of England [including both "the common law and statutes of England"<sup>4</sup>] as they existed on May 14, 1776."<sup>5</sup> Thereafter, the common law includes the gloss of Georgia judicial construction.

A court could also determine that the state was not one of the original thirteen states of the United States — such as Florida — and thus could not be presumed to follow the

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common law; in such a case, the court would revert to forum law.<sup>6</sup> In order to avoid such legal happenstances, the pleader must ascertain and plead the law relied on.

1. *Pink v. A.A.A. Highway Express, Inc.*, 191 Ga. 502, 514, 13 S. E. 2d 337 (1941), *aff'd*, 314 U. S. 201, 62 S. Ct. 241, 86 L. Ed. 152 (1941).

2. *Pattillo v. Alexander*, 96 Ga. 60, 22 S. E. 646 (1895) (presuming the common-law rules of contract to be in effect in Tennessee — the place of contracting and performance).

3. *Trustees of Jesse Parker Williams Hosp. v. Nisbet*, 189 Ga. 807, 811-12, 7 S. E. 2d 737 (1940); *Brown Stove Works, Inc. v. Kimsey*, 119 Ga. App. 453, 167 S. E. 2d 693 (1969); *Record Truck Line, Inc. v. Harrison*, 109 Ga. App. 653, 137 S. E. 2d 65 (1964).

4. *Record Truck Line, Inc. v. Harrison*, 109 Ga. App. 653, 658, 137 S. E. 2d 65 (1964). See *Trustees of Jesse Parker Williams Hosp. v. Nisbet*, 189 Ga. 807, 815, 7 S. E. 2d 737 (1940).

5. O.C.G.A. § 1-1-10(c)(1) (GCA § 102-210) (approved February 25, 1784).

6. *Alropa Corp. v. Pomerance*, 190 Ga. 1, 8 S. E. 2d 62 (1940).

### § 3-2 Presumptions about foreign law and common law

Application of the traditional choice-of-law rule to matters which take place outside of Georgia requires that some account be taken of foreign law. As Professor Rees has observed:

Georgia's choice of law system is unusual in that the application of another jurisdiction's laws is limited to statutes and decisions construing those statutes. When no statute is involved, the common law of Georgia controls; the other jurisdiction's decisions construing its own common law will be ignored. Furthermore, if the other jurisdiction was not one of the original thirteen colonies (or derived from territory formerly administered by one of those colonies), both the common law and statutes of Georgia will be applied.<sup>1</sup>