

CH. 2 - TRADITIONAL APPROACHES

Substantive subject matter issues involving
“conflicts” include:

- 1) Torts
- 2) Contracts
- 3) Domicile
- 4) Marriage
- 5) Property
- 6) Corporations (business associations)

Additional Fundamental Issues

Ch. 1

Renvoi – p. 122 – which law decides how to approach these issues

Substance vs. procedure – conflicts only applicable to substance?

Statutes of limitations – relevance?

Public policy – overriding other concerns?

Penal laws – not enforceable in another jurisdiction?

Torts

p.15

Types of torts to be differentiated:

- 1) Non-intentional torts**
- 2) Intentional torts**
- 3) Strict liability?**

Variance of the elements of tort from jurisdiction to jurisdiction, and the legal effects of these variants.

Traditional Conflicts

Analysis

p.15

See 1st Restatement of the Law of Conflicts (1934) – concerning “wrongs.”

Is a “vested rights” analysis to be applied – i.e., are the legal rights of parties when “wrongs” have occurred to be recognized across jurisdictional borders?

Traditional rule: *lex loci delicti* – the law of the place of the wrong or the tort controls.

Alabama Great Southern RR Case p.15

Plaintiff a citizen of Alabama.

Defendant/employer an Alabama corporation.

Lawsuit for negligence filed in Alabama.

Employment contract in Alabama.

Negligence of fellow servants/effect in Miss.?

Employer's liability? Under Alabama law but not under Mississippi law.

Where was negligence? Injury in Mississippi.

Court adheres to a “vested rights” theory.

Alabama Great Southern RR, cont.

Why is the law of Mississippi relevant in the Alabama based proceeding?

Should not the Alabama court just seek to produce the “right” or “just” result between these parties?

But were rights “vested” in the parties, as derived from the specific place of the wrong?

continued

Alabama Great Southern RR, cont.

Should the primary objective of “conflicts” rules be:

- 1) To achieve uniformity of the best results among the various jurisdictions? or,
- 2) To respect the results that would occur if this proceeding has been initiated in the courts at the “place of wrong,” therefore, negating forum shopping possibilities? Is this a respect for territoriality concepts?

continued

Alabama Great Southern RR, cont.

Did the employment contract between the plaintiff and the employer incorporate the rights identified in the Alabama?

If so, how do we identify this applicable contract law of Alabama?

Consider (p. 24): (1) the possibility of vicarious liability in the car rental context under an applicable state statute, but (2) possible pre-emption of that state statute by federal law.

1st Restatement –

Basic Rules

p.25

The fundamental jurisdictional rule for torts –
“place of wrong” is where the “last event”
necessary to cause liability for tort takes place.

Special rule for poisoning – where the harmful
force takes effect; why not ingestion place?

Harm to land or chattels – place where force
takes effect on the thing (causing damage).

Defamation – where the statement is
communicated – causing harm there.

1st Restatement – Basic Rules, cont. P.27

§ 384 - tort liability created at the place of wrong will be recognized in other states.

§ 385 - impact of contributory negligence as precluding liability is also determined at the place of the wrong.

§ 390 – survival of actions – tort actions survival of death is determined by law of place of wrong.

§ 412 – measure of damages is determined by the law of the place of the wrong.

§ 421 – similar for exemplary damages.

Intentional Torts

Marra v. Bushee p.28

Intentional tort issue – Alienation of affections.

Diversity case filed in Vermont Fed. Dist. Ct.

N.Y. resident sues Vermont resident.

Jury verdict for plaintiff but defendant asserted that NY law applied and action not valid in NY.

Court of Appeals: Holding that Vermont law applies : (1) intentional tort – punitive response – where harm occurs (domicile?); or

(2) Place of wrong is where “last event” occurs to cause the injury, i.e., Vermont.

Intentional Torts

p.33

Should the jury determine the location of the conduct – i.e., a factual issue, i.e. where had the defendant's tortious conduct primarily occurred?

Or, is this a legal issue – to be determined by the judge?

Contracts

p.35

1st Restatement: §311 – has a contract been formed – see the law of the “place of contracting.” Forum law picks the state.

I.e., where is the place of the “principal event” necessary to make a contract?

§312 – a formal contract – if effective on “delivery.” The place of contracting is where the delivery of the contract is made.

Contracts **p.36**

How Becoming Binding

§314 – delivery when document is posted in the mail, or received by carrier.

§315 – formal contract completed when delivered by an agent. E.g., broker as agent.

§323 - informal unilateral contracts – made where event takes place which makes the promise binding

Contracts

p.37

Validity of the contract

What law governs the validity of a contract?

See 1st Restatement, §332 – place of contracting governs with respect to (1) legal capacity of the parties (corporation?), (2) necessary form, (3) the consideration required, (4) fraud or illegality, (5) time for performance.

§333 – place of contracting determines the legal capacity to enter into a contract. Cf., capacity to transfer land (e.g., capacity of a minor or a married woman).

Contracts

p.38

Formalities for making a contract.

1st Restatement, §334 – determined by the place of contracting.

E.g., requirement of a writing and the applicability of the “statute of frauds.”

§336 (p. 39) concerning law of negotiable instruments – for determining whether the instrument is “negotiable.”

§340 – re place of contracting to transfer land controls validity of contract; cf., transfer of the land itself – controlled by situs law.

Contracts

Performance

p.39

Restatement §355 duty for performance – where that performance is to occur.

Note: difference between (1) obligation location and (2) performance location.

§360 - illegality of performance – determination of legal status at the place of the anticipated performance.

§358 – for determining the law governing whether performance has occurred.

Poole v. Perkins

p.40

H & W executed joint promissory note to the order of P when residing in Tennessee.

Enforcement sought when all parties were domiciled in Virginia where note was payable.

Tenn. - contract of a married woman was voidable (at time of note delivery; not later).

Virginia – no such limitation on legal capacity.

Was her legal disability effective in Virginia – where note was payable? No, intention imputed - law of place of performance applies. *continued*

Poole v. Perkins continued

p.40

The focus of Poole vs Perkins:

- 1) **Should parties be treated as intending to enter into an enforceable contract as of the inception (otherwise fraud)?**
- 2) **Can the parties agree to the location of enforcement even though not physically located in that state (e.g., domicile state) when contract made?**
- 3) **How evidence this location for performance in/outside the contract?**

Linn v. Employers

Reinsurance

p.44

Insurance brokers seeking commissions from the insurance carrier. Trial Ct. dismissed suit.

Insured risk in N.J. Broker went to N.Y. to negotiate agency with insurer & informed that agency status accepted by Kansas City home office. Paid commissions for 27 years!

Assertion that N.Y. contract & not enforceable because of Stat. of Frauds – not in writing for contract more than one year. *continued*

Linn v. Employers

Reinsurance *continued*

Is the contract formed where acceptance is heard or where the acceptance is spoken?

Restatement: Where words spoken by acceptor.

But, what if no evidence as to where words were spoken: various options – N.Y., K.C. or Pa.?

Jury determination that Defendant did not prove contract made in N.Y. (and, therefore, NY laws did not apply). Presumption then that forum law (Pa) applies (and no writing required here under the Statute of Frauds).

Problem

p.50

International air travel example:

- 1) Tokyo – Alaska – Denmark – Paris (air travel contract –safe passage)
- 2) Food from Alaska eaten over Canada (tort issue - where & type – source or place of effect?)
- 3) Ticket from AmEx – Michigan – NY - & modification in Japan (ticket purchase contract)
- 4) Refusal to stop in Denmark (contrib. neg.?)
- 5) Dies in France & wrongful death action – tort & survival of wrongful death action? *continued*

Problem

p.50

Possible Issues

- 1) Law governing action for wrongful death?
- 2) Law governing whether negligence or strict liability rules apply?
- 3) Refusal of medical assistance and, therefore, contributory negligence?
- 4) What law applicable to airline's responsibility for safe passage?
- 5) Refusal (contract action) to mitigate damages (limiting recovery)?
- 6) Law governing tort and/or contract status?

Domicile Individuals

p.51

1st Restatement, §9, domicile as place where person has a “settled connection.”

§10 - forum law determines this question.

§11 - a person has only one domicile (cf., multiple “residences”).

§13 - home defined as where “intimacy” of relation between “person and the place.”

§14 - domicile of origin established at birth.

§15 – domicile of “choice” – changed to new location identified as “home”

Domicile, continued

p.52

§16 – physical presence at the location required (general vicinity).

§18 thru §20 - no change of domicile without current, specific intent to relocate the domicile (& make a “home”).

§41 – domicile of corporation – where incorporated; cf., other entities (e.g., LLC & partnership); cf., “seat of management and control” – “stapled corps.” IRC §269B.

White v. Tennant

p.53

What is the situs of domicile at time of death when dying intestate? (1) West Va. – where intestacy laws provide all personal property to spouse, or (2) Pa. – 1/2 of personalty to siblings.

Facts show removal from West.Va. to Pa., even returning temporarily and dying in West Va.

West.Va. court holds Pa. intestacy laws are controlling since domicile had been relocated.

How avoid this conflict? Must have a domicile!

Domicile as “personal territoriality.”

Rodriguez Diaz v. Sierra Martinez -1st Cir. p.56

Minor (under 21) in P.R. in accident in P.R. and then moves to N.Y. where emancipated (18+).

Eligible to invoke diversity jurisdiction in P.R. Fed. Court for his negligence action?

Dist. Ct. says domicile still with P.R. parents.

Minor's P.R. domicile controlling for diversity?

Use N.Y. law to determine (1) domicile and (2) emancipation?

Use a separate concept of federal common law?

Rodriguez Diaz v. Sierra Martinez -1st Cir., cont.

Holding: presumably a domiciliary in N.Y. (meeting physical presence and intent tests), notwithstanding a minor under P.R. law.

Discussion re purpose of diversity: p. 62.

Local prejudice – relevant here?

Dissent: Not possible for this P.R. minor to lose his old domicile by reason of P.R. law.

Plus, this case has all P.R. elements (p.63) and no reason to invoke diversity jurisdiction. (i.e., valid local interests).

Domicile – Other Purposes

p.64

Applicable state law will control:

- 1) Marital status, including divorce jurisdiction.**
- 2) Child legitimacy**
- 3) Adoption**
- 4) State tax issues**
- 5) U.S. domicile – federal tax issues**

Special Domicile Situations

p.65

- 1) Military status examples:**
 - (a) location in a state on the military base; or,**
 - (b) located outside the U.S., with domicile still in the U.S.**
- 2) In a federal prison outside state of pre-prison domicile.**
- 3) Buildings on the “state line.”**

Marriage

p.66

1st Restatement

§121 - law governing marriage - where “contract of marriage” takes place.

§123 – “common law” marriage recognized if acts to create it occurred in state where valid.

§128 – cf., marriage in nomadic tribe

§129 - evasion of the requirement of domicile, e.g., marriage in Las Vegas - recognized

§130 – remarriage within a prohibited time period OK if married in another state. *Cont.*

Marriage

p.67

1st Restatement, cont.

§132 – marriage declared void by domicile is invalid everywhere (public policy grounds).

§134 – marriage contrary to public policy not recognized in second state.

§137 – law governing legitimacy of child – governed by domicile of parent whose status is questioned.

§138 - §140 – further child legitimacy rules – determined at domicile.

Marriage Legitimacy & Foreign Law p.68

Restatement §141 – legitimacy transfers from law of creation to another state.

In re May's Estate, p. 68 – decedent marries niece and six children to these married persons.

Mom dies. Father & some children contest issuance of letters of administration to one daughter. Daughter says father not a surviving spouse since marriage never valid.

Marriage in Rhode Island as permitted under Jewish faith exception to consanguinity limits.

In re May's Estate,

cont.

p.68

Marriage recognized in New York or marriage void in New York? Void under “natural law” (public policy) and by reason of statute?

NY law prohibits this marriage. But:

- 1) No “positive” law in New York state to invalidate foreign marriage in New York .**
- 2) Marriage not directly violating public policy.**

Dissent: N.Y. statute invalidates marriage.

The real dispute: does the father get a surviving spouse's statutory share of the estate?

Lanham v. Lanham

p.73

Widow seeks support from husband's(?) estate and heirs object. Widow wins in Wis. Sup. Ct.

Earlier divorce & to marry replacement – but prohibited by time limit. Went to adjoining state (Mich) & married and returned to live.

Unsuccessful attempt to marry immediately before death; but, assert common law marriage.

Limiting Wis. statute is not penal. But, Mich. marriage declared void & not OK common law.

Again, the ultimate dispute is over estate money.

Insurance Proceeds

p.76

Para. 2 – re designation of surviving spouse as beneficiary under a life insurance policy – but who is the surviving spouse?

Common law marriage situation?

Result of divorce & not change in beneficiary designation? State law rescue this situation?

What if a subsequent spouse? Applicable here?

What if change in domicile (& governing law)?

What planning considerations here?

Marriage & Public Policy Concerns

p.77

Recognition across state lines of:

- 1) Incestuous marriages?
- 2) Polygamy – some foreign jurisdictions recognize validity.
- 3) Interracial marriage prohibitions? Any of these remaining limiting statutes in the U.S.?

Marriage of J.B. and H.B – Texas - p.78

Issue re subject matter jurisdiction in Texas court over divorce proceeding in same-sex marriage which occurred in Massachusetts.

Holding: (1) No subject matter jurisdiction, and (2) denial not violating 14th Amendment equal protection clause.

Presumed purpose of this proceeding: to get share of community property; would not occur if marriage were declared void ab initio. But, equitable relief? *continued*

Marriage of J.B. and H.B – Texas - continued

Texas legal framework: 1) Texas Constitution – marriage only between a man and a woman.

2) Texas Family Code §6.204 – state body can not give effect to same sex marriage (including any claim for protection or a benefit).

Holding that §6.204(c) is a jurisdictional bar.

3) No requirement of “comity” here. The conflicts rule is “most-substantial-relationship” test and not place-of-celebration test for marriage. See p. 84.

DOMA Impact

p.86

Defense of Marriage Act – federal legislation (1996).

Constitutional?

Impact in tax area? Bankruptcy area?

Is an alternative status available under state law? Relevance for DOMA purposes?

Collateral Effects of this Issue p.86

Child adoption rights (& restrictions but not to opposite sex couples).

Health care decision rights.

Spousal health care benefits.

Child status when artificial insemination, etc.

Inheritance statutes.

Property

p.87

1st Restatement

§211 – tangible property – governed by law of state where property created.

§214 – language in deed transferring real estate interpreted under law of situs state.

§216 – capacity to convey land determined by law of situs.

§217 – formalities of deed as conveyance determined under the law of situs. *Cont.*

Property, cont.

p.88

§218 – validity of deed as conveyance is determined under the law of situs of land.

§219 – capacity of grantee to hold land is determined by law of situs.

§220 – effect on interests in land of conveyance determined by law of situs.

§221 – nature of interest in land determined by law of situs.

continued

Property, cont.

p.89

§225 – validity and effect of mortgage on land is determined by law of the situs of the property.

§226 – assignment of mortgage on land determined by law of the situs of land.

§227 – foreclosure process (for mortgage) determined by law of situs of land.

§§237 & 238 – effect of marriage on land interests determined by law of land situs.

continued

Property, cont.

p.89

§245 – inheritance (intestate) of land – determined by law of state of situs.

Also, §§249, 250 & 251 – re effect of a last will on land – law of the situs.

**§248 – spousal share of land in divorce proceeding determined by law of situs.
(Texas couple owns Colorado land?)**

Burr v. Bechler p.90

Illinois defers to Florida

Suit to foreclose on trust deed securing debt on Illinois real estate.

Defendant (she) allegation that (1) falsely induced to sign note and trust deed (in Florida); (2) not a BFP; and (3) she was legally not competent (as a woman) to sign documents.

Query as to whether note is valid – not if the contract became effective in Florida.

Effective when dropped in the U.S. mail (in Florida).

Thompson v. Kyle p.92

Land in Florida; mortgage and note delivered in Alabama. Note executed by husband & wife.

Her liability was void in Alabama and therefore void in Florida (as to her separate property)?

Her domicile in Alabama; her liability would exist if documents were executed in Florida.

Presumed to have contracted under Florida law.

Valid obligation of husband – but, secured by her valid security by her property.

Separate: usurious interest - Alabama law.

Real Property – Why Defer to Situs?

Location, location, location! Immovable.

No physical power over the property if person/court is in another state (even if clear court jurisdiction over the persons).

Historical reasons - Sanctity of local real property rules?

Personal Property

1st Restatement

p.95

§255 - validity of conveyance based on location of property (chattel) when conveyed.

§256 – form of conveyance based on law of situs of the property.

§258 – nature of interest in conveyed property controlled by situs at transfer.

§290 – movables acquired during marriage – law of domicile at acquisition.

Personal Property

1st Restatement p.96

§291 - movables acquired during marriage – no ownership status change when relocating to another jurisdiction.

§306 – last will – domicile controls disposition of movables.

§307 – revocation of a will - effect on movables based on law of domicile at time of death.

Blackwell v. Lurie

p.97

**Defunct law firm partner with \$1.1 mil.
deficiency judgment under Title 11 (USC).**

**Domiciled in Missouri; painting on consignment
in New. Mex.; moved to Montana.**

**Liquidating trustee authorized to execute on the
painting. Petition for writ of execution.**

**Defense: exempt - owned as tenants by entirety.
Usual rule: exempt except for joint marital debt.**

Trustee - not entirety property under N.M. law.

Blackwell v. Lurie continued

Which law (Mo. or N.M.) characterizes this property? Controlled by the law applicable at time of acquisition, i.e., Missouri.

Under Missouri law – became joint owners as tenants by the entirety (in 1978).

Not superseded by N.M. community property law – argument of trustee is rejected.

No public policy limit –requiring N.M. law.

Held: No imposition of separate property debt against tenancy by the entirety property.

Morson v. 2nd Natl.

Bank of Boston p.101

Share certificate delivered to transfer agent with request by estate administrator to transfer shares into “donee’s?” name. Injunction sought to preclude transfer (& stock reverts to estate).

Attempted gift transfer in Italy (where Uniform Stock Transfer Act not applicable), but substance of transfer rules are satisfied.

Held: Italy law not applicable and he completed the transfer of the shares (cf., the certificate).

See Restatement, §53, comment d.

Transfer of Ownership of Chattels

p.103

What effect on ownership of chattels when a change of domicile occurs?

Corporate shares – appropriate to distinguish between the certificates and the corporate shares themselves?

Perfecting a security interest in chattels under UCC Article 9: where file the “financing statement”?

Trust Property

Question (6)

p.103

Property held in trust:

- Chattels in another state – law of state where chattel is located when trust is created.
- Choses-in-action – where transaction occurs.
- Validity of testamentary trust – based on domicile at the time of death.
- Law for administration of trust – where the administration is located.

Planning: identify the “choice of law.” Move to trust friendly state; e.g. rule against perpetuities

Corporations

p.105

1st Restatement

§154 – recognition of a foreign corporation – incorporation to be recognized in all states.

§155- status of incorporation – determined by law where the incorporation is sought.

§165 – power of a foreign corporation – as prescribed under the law where it is organized.

§182 – title to the shares is governed by the law of the state of incorporation.

§183 – participation in management & profits – governed by law of state of incorporation. *Cont.*

Corporations

p.106

1st Restatement

§187 – director's & shareholder's liabilities – governed by law of state of incorporation.

§188 – possible directors' liabilities for acts within the state.

§190 – state of incorporation imposing liabilities on shareholders for creditor obligations. When?

§191 – liability on the shareholder is imposed by the foreign state where participation in the act.

§205 – reincorporation in another state – governed by law of 1st state of incorporation.

McDermott v. Lewis

p.107

Panamanian corp. & 92% Delaware owned sub.
(resulted from an inversion transaction for U.S.
income tax purposes). Louisiana main offices.

Del. Sub owns 10% interest in Pan. parent.

Can Sub vote these shares in Parent Corp?

10% minority shareholders of Del. Sub.

challenge this voting by Sub.

Lower court: Del sub could not vote its shares
in Parent (Panama) corp.

McDermott v. Lewis

p.107, continued

Under Del. or La. law the Panama shares held by Del. Sub. could not be voted by Sub.

Panama law does permit this vote by Sub.

Then, relevance of the “internal affairs” rule?

I.e., relevant to corporation-shareholder issues.

Delaware conflicts rule: defer to the jurisdiction of incorporation, i.e., here Panama, where dispute concerns voting rights in Parent.

Cf., using law of state where “major contacts.”

Irving Trust v. Maryland Casualty P.112

Trustee in bankruptcy pursues transferees of bankrupt Del. corp. with business in New York.

Previously Corp indebted to four surety companies and promised to transfer certain property to these surety companies.

Allegation re fraudulent conveyances to these creditors in anticipation of bankruptcy.

Property in N.Y., N.J., Fla. & Missouri.

Held: N.Y. proceeding – decree to reconvey property to corp. In personam jurisdiction.

“Pseudo-foreign” or “tramp” corps. P.115

Should forum state apply its own law to foreign organized corp. engaged exclusively in activities in the forum state?

E.g, to prevent “stock watering”? See p. 115.

“Commercial” or “economic” domicile may be the forum state – and then is the state of incorporation illusory as relevant for determining rights?

Possible Problems in Internal Affairs Rule?

Relevance of “piercing the corporate veil”?

See page 115-6. Consider these possible issues when Del. Corp engages in significant activities in another jurisdiction:

- Access to corporate books
- Access to shareholder list
- State securities laws
- Others?

Federal Pre-emption Concerns

p.116

Federal law preempting state law:

- **Federal bankruptcy laws**
- **Sarbanes-Oxley (SOX) – re Public Company Accounting – re board composition, etc.**
- **Dodd-Frank – Wall Street Reform and Consumer Protection Act**

Preempting state corporate laws.

European Union

corporate law p.116

EU countries moving towards an “internal affairs” doctrine and away from the “real seat” (or primary offices) rule for determining applicable governing corporate law.

See decisions of the European Court of Justice (ECJ) concerning these matters.

Consider the EU incorporation option: the *Societas Europaea* (or “SE”) (to have a “registered office in one of the EU states).

Wrinkles in the Theory

p.117

Issues re “characterization.”

Is the issue “contract” or “tort”? (Carroll Ala/Miss RR case)?

Is the issue real property law or law governing a promissory note? (Burr-Beckler case). I.e., property location vs. place the note was made.

In each situation the characterization of the transaction will determine the conflicts rule (and substantive law) which is applicable.

Haumschild v. Cont.

Casualty Co.

P.117

Wisconsin domiciled wife sues Wisconsin domiciled husband in Wis. court for negligence in California automobile accident.

Issue re inter-spousal liability for tort.

Options: – forum state (Wis., permits action); place of tort (Cal., not permitting action); or, state of domicile (Wis., permits action).

Holding: situs of the domicile as controlling for determining “capacity to sue” a family member.

Marital/family law trumps!

Haumschild v. Cont. Casualty Co., continued

Additional issues:

1) Reaffirming that the substantive rights in a tort action are determined at the place of wrong.

2) Concurring opinion seeking to apply California's conflict of laws rules? Re: determining capacity to sue – at domicile.

3) Rejection of the renvoi doctrine (p. 119).

Concurring opinion: Overruling prior Wis. precedent without an adequate consideration.

Dèpecage

p.121

Splitting Conflict Issues

Where: (1) Several issues exist and (2) different jurisdictional laws control each issue.

E.g., Haumschild case;

- tort rules determined under California law;**
- interspousal immunity issue determined under Wisconsin law.**

Does this approach promote equity?

Renvoi

p.122

Choice of Law Squared

Consider that under choice of law rules the law of the place of contracting governs the interpretation of the contract.

But, does this also mean that the law of the place of contract mandates the use of the choice of law rules in that “contracts state”?

E.g., State A laws say look to State B and State B laws say look to State A.

Reject this “renvoi” concept?

Estate of Damato

p.123

N.J. probate proceeding and Fla. savings accounts. N.J. judge says (1) governed by law of Fla. and (2) under the Totten (tentative) trust rule, accounts pass to son Philip at death.

Intervivos trust is governed by situs law.

Invalid (ineffective) transfer under N.J. law.

Trial Judge says the law of Florida applies (& substantive law to cause title passage to Philip).

continued

Estate of Damato

p.123

Continued

But, does Fla. conflicts law refer this issue to the domicile (where the trust accounts concept is invalid)?

However, does N.J. law then refer this matter to Florida for the substantive law? Renvoi approach applicable?

Held: Trial Judge correctly determined that Florida substantive law applied (but not the Fla. conflicts law). Apply conflicts law of the forum.

University of Chicago v. Dater p.125

Owners seeking a loan with Illinois property as collateral. Notes to be payable in Illinois.

Documents signed in Michigan and mailed to Illinois and some defects were then removed and the funds were loaned. One male borrower dies and the widow become borrower of a portion.

Foreclosure action and decision for widow.

No liability for widow in Michigan but liability in Illinois – was obligation accepted in Illinois?

continued

University of Chicago v. Dater continued

Conflict of laws issue involves the capacity of widow to enter into the contract.

Under (1) Michigan law the law of the case is governed by Illinois law, but (2) under Illinois law the law of the matter is Michigan law.

Held: Under Illinois law refer to Michigan law and no capacity of the widow under Michigan law and no enforceability.

Note dissent (p. 127): Place contract was made was Illinois & an Illinois contract & valid.

Renvoi issues

p.131

Should the forum apply its own law by default?

P. 131 – doctrine of renvoi is accepted for (1) real property and (2) marriage questions.

Why?

But, should the situs state always have its law applicable in the real estate context?

Substance vs. Procedure

p.132

Traditional approach: choice of law rules apply only to issues characterized as “substantive” (rather than “procedural”).

Procedure is governed by the law of the forum – usually! Based on a “rule of convenience”?

But, how delineate between “substance” and “procedure”?

Conflicts Restatement

p.132

§584 – forum determines whether the question is substance or procedure.

§585 – matters of procedure are governed by the law of the forum.

§588 – forum determines who may/must sue and be sued.

§594 – forum determines whether trial to the bench or the jury.

§595 – forum law determines proof, presumptions and inferences.

continued

Restatement – cont.

re: Procedure p.133

§596 – witness – competency and credibility determined by law of the forum.

§597 – evidence rules determined at forum.

§600 – execution of judgment – controlled at the forum.

§606 – limitation on amount recoverable – controlled by forum limit, even though greater amount might be recoverable where cause of action arose.

See next slide

Substance vs.

Procedure

Examples

Jurisdiction

Form of action

Service of process

Proper & necessary parties

Pleading, joinder & splitting claims

Trial by judge or jury

Competence and credibility of witnesses

Admissibility of evidence

Execution of judgments; Appellate process

Sampson v. Channell

p.133

1st Cir.

Car collision in Maine; tort suit in Fed. Dist. Ct.
– Mass. in diversity action.

Husband's action – Defendant (testator) was negligent, but plaintiff contributory negligent.

Whose burden to show contributory negligence on the plaintiff (defendant – Mass law) or on defendant (on plaintiff – Maine law)?

Determination that under Erie RR Co. Fed. Dist Court must follow state law in diversity case concerning burden of proof. *Cont.*

Sampson v. Channell

p.133 ***continued***

This situation does necessitate the application of the Erie RR Co. rule. Cf., Swift v. Tyson.

Burden of proof as to contributory negligence is a matter of substantive law for Erie purposes.

- 1) In local Mass. proceeding application of Mass. law re burden of proof on defendant.**
- 2) This rule is not violating U.S. Constitution.**
- 3) Fed. Ct. in diversity action to use Mass. law.**

Reversed so as to correct the jury instructions.

O'Leary v. Illinois

Terminal RR

p.138

Missouri judgment for personal injuries sustained in Illinois auto accident.

Challenge re who has burden of proving contributory negligence (or no such negligence).

Illinois law that Plaintiff has burden to disprove contributory negligence.

Holding of Mo. Sup. Ct.: Burden of proof is substantive and not procedural; an essential element of the right to recover damages.

Illinois rule applies: Plaintiff has the burden.

Issues: Substantive vs. Procedural

p.141

- 1) Statutes of fraud**
- 2) Statutes of limitation**
- 3) Burdens of proof, privilege, and parol evidence rule**
- 4) Joinder, counterclaim, setoff, impleader, right to jury trial.**
- 5) Survival/revival of a cause of action**
- 6) Equitable relief and remedy questions**

Grant v. McAuliffe

p.142

Cal. resident plaintiffs injured in Arizona auto accident by Cal. resident who died from event.

Tort action against deceased's estate survives in California; does not survive in Arizona (unless the proceeding was commenced before death)

Proceeding occurring in California courts.

Holding: Question re survival of action is procedural – governed by the law of the forum.

“Survival” relates to procedure. Really?

Plus, all parties in California. Sensible result?

Statutes of Limitation

p.146

1st Restatement on Conflicts:

§603 – forum statute of limitations can bar the action (even though not barred at the situs).

§604 – foreign (situs) statute of limitations does not bar action at forum where S/L is applicable.

§605 – time limitation imposed on cause of action bars actions wherever sought.

Duke v. Housen

p.146

Plaintiff alleges gross negligence, jury award and judgment; defendant on appeal asserts that 3 year NY statute of limitations bars this action.

Forum is Wyoming; tort in D.C. and multiple other jurisdictions. Incident in April 1970.

Re S/L – “borrowing statute” says refer to laws of state where cause of action arose.

When did statute of limitations start to run?

At time of act; not discovery of injury. *Cont.*

Duke v. Housen

p.146 *continued*

Tolling of S/L applicable? No. Part of each statute which is borrowed. E.g., New York – absence from N.Y. does not toll S/L – since still subject to N.Y jurisdiction based on N.Y tort. Same for other states.

Dissent (p. 154) (do not dismiss case):

- 1) Some relevant states had four year S/L.
- 2) Defendant has burden (not proved) to show S/L of each state enabled relief to Defendant.

Bournias case

p.155

**Federal law (maritime statute) in U.S. Dist. Ct.
(not a state court).**

Case under the Panama Labor Code.

S/L – one yr. for Panama law or longer in U.S.?

U.S. (federal law) has no “borrowing statute.”

Held: Panama S/L was procedural (since not part of a single statute) and, therefore, S/L at the forum (for longer) applied (and the matter could proceed).

Statutes of “Repose”

p.155

Extinguishing a cause of action after lapse of a specified period of time.

E.g., for torts discovered after a considerable time.

Statute of repose is treated as substantive (rather than as procedural) and can bar a proceeding.

Public Policy

p.156

1st Restatement, §612 – no action can be maintained in the forum state on a cause of action arising in another jurisdiction if that action would be contrary to the “strong public policy” of the forum state.

Marchlik v. Coronet

p.157

Illinois Ct. dismisses actions against two insurance companies. Constitutional issues.

Wisconsin “direct action” statutes permits suits directly against insurance companies.

Does Illinois public policy preclude direct action against insurer in Illinois court when a “no action” clause is in the policy?

However, does the “full faith & credit” clause force this action in Illinois?

Substantive or procedural right? *continued*

Marchlik v. Coronet

p.157, continued

Wis. Ct. has said substantive right created for direct action by injured party against insurer.

Here Ill. Ct. says the Wis. direct action right is substantive – but, query re public policy?

No statutory prohibition vs. direct action in Ill.

Ill. rule of no disclosure of insurance coverage.

Wis. statute directly contrary to Illinois no action treatment – & violation of public policy & no violation of full faith & credit clause.

Holzer v. Deutsche RG

p.160

**Employment contract – German national & Germany based services for German company.
Plaintiff discharged for religious discrimination.**

1st count -New York Ct. says not a cause of action & for dismissal on this ground.

2nd count – action on damages claim for agreed damages where not able to continue services.

N.Y. Ct. says fact question for 2nd count.

Cont.

Holzer v. Deutsche RG

p.160, continued

Is the N.Y. court condoning Nazi doctrine, i.e., the Aryan laws of Nazi Germany are not contrary to local public policy?

What if the employer was required to act as it did? A violation of a public policy?

Penal Laws

p.164

1st Restatement, §610 – re foreign public right: no action can be maintained on a right created by the law of a foreign state for furthering its own governmental interests.

1st Restatement, §612 – No action can be maintained to recover a penalty the right to which is given by the law of another state.

Paper Products v.

Doggrell

p.164

Proceeding in Tenn. against two shareholders personally for debt of Arkansas corporation where failure by 3rd shareholder to file corp. certificate in local Arkansas courthouse.

Ark. law says shareholders liable when failure to completely comply with organizational rules.

Tenn. court says this provision is penal and not to be enforced in Tennessee re public policy.

See Petition to Rehear and reference to U.S. 6th Circuit decision in similar case (as not penal).

Penal Enforcement Restriction Examined

Why not enforce another state's penal statutes?

**Was the Arkansas statute (in Paper Products)
really a penal statute?**

**Could Arkansas partner sue Tenn. partners for
contribution to pay a judgment?**

**P. 170: See Restatement rule re no enforcement
of another state's revenue laws as being penal.
Question re legitimacy of tax imposition?**

Proof of Foreign Law

Tidewater p.170

Diversity jurisdiction in Okla. Fed. Dist. Ct.

Personal injury in Turkey because of air transport negligence of Defendant.

Injury in the course of employment – duty to use ordinary care under the laws of Turkey(?).

No evidence of governing Turkish law.

Plaintiff has burden of going forward with proof of Turkish law. Defendant says no proof of governing foreign law. *continued*

Proof of Foreign Law

Tidewater, cont. p.170

Choices in absence of proving foreign law:

- 1) **Dismiss claim.**
- 2) **Apply law of forum.**
- 3) **Presumption as to foreign law.**

Foreign law proof issue: fact or law?

Here: Assume Turkey as a civilized country which facilitates compensation in this situation.

FRCPP 44.1 – court’s determination of foreign law treated as a ruling on a question of law.

Proof of Foreign Law

Notes

Choices for proving foreign law:

- 1) **Expert testimony and affidavits from foreign counsel, foreign government officials, & U.S. experts?**
- 2) **Use a “certification” technique (seeking advice from another court, e.g., in a diversity action?)**
- 3) **Difference between another U.S. state (full faith & credit clause) and a foreign country?**

The Traditional System Summarized

- 1) Court must characterize issues into substantive and procedural.
- 2) Court must “localize,” e.g., decide where the tort occurred (e.g., the “last act” rule).
- 3) Court must apply the local rule (after identifying the locale and the pertinent local rule).
- 4) Does a public policy exception apply?
- 5) Should renvoi be used/rejected? *Cont.*

The Traditional System Summarized, cont.

Should another choice of law “system” be used?

What should be the objectives?

- 1) **Uniformity?**
- 2) **Predictability?**
- 3) **Ease of application?**
- 4) **Fairness? (consistent with expectations)?**
- 5) **Efficiency?**
- 6) **Accommodation to state policies?**

Does traditional system meet these objectives?

