

# **CH. 3 MODERN APPROACHES TO CHOICE**

**Modern choice of law theories:**

**A new approach -**

**“center of gravity” or**

**“grouping of contacts”**

**theory for choice of law purposes.**

**Abandon “vested rights” (re torts & contracts)?**

**Does a sovereign state have right to control  
events within its territory, i.e., a territoriality  
approach?**

# **Auten v. Auten**

## **p.179**

**Contracts case – rejection of traditional “rigid general rules” for “most significant contacts.”**

**Holding that marital separation agreement should be governed by English law even though agreement was made in New York.**

**All important factors in U.K.: (1) wife & children lived there; (2) husband domiciled in U.K. when agreement; (3) performance in U.K.**

**Her suit terminating separation agreement?**

**Yes, in NY; no, in England.**

# Haag v. Barnes

## p.181

Married Illinois attorney produces child with NY secretary while in N.Y. Birth in Illinois.

She signs support agreement in Illinois.

Agreement choice of law clause specifies Illinois.

Later New York lawsuit for additional support.

Illinois law: her suit barred by prior agreement.

New York law: support agreement no valid without court approval.

Held: Ill. law governs—most significant contacts.

# Comparing Auten & Haag cases

Was a new approach (i.e. the “grouping of contacts”) essential? Are some contacts more important than others?

How evaluate these “contacts” and their relevance and the significance of these various contacts?

Would the old rules have produced the same result?

# The “Guest Statute” Revolution p.182

Function of the “guest statutes:” to limit the liability of drivers who injure passengers while in the driver’s automobile.

**Babcock v. Jackson, p. 182:** Three N.Y. resident friends on Canada car trip where wreck and injuring passengers. Passenger sues in N.Y.

Court rejects place of injury rule & therefore the Canada guest (non-liability) statute.

N.Y. tort law applied and recovery to Plaintiff.

N.Y. had a greater concern in this case. *cont.*

# **Babcock v. Jackson continued**

**Relevant factors: (1) N.Y. as the place of residence of both injured guest and driver.**

**(2) NY state policy of requiring compensation for guests by negligent driver.**

**(3) Purpose of Ontario statute (preclude insurance fraud) only relevant to Ontarians?**

**(4) No interest of Ontario in this proceeding.**

**Dissent (p.183): Governing law at the place of injury should be controlling. Here is a substantial change in the conflicts rules.**

# **Tooker v. Lopez**

## **p.184**

**Facts: N.Y. domiciliaries & N.Y auto & accident in Michigan.**

**NY law applies – based on NY compulsory insurance law & NY state interest in applying NY tort law (& no Mich. interest in applying a guest/liability limiting statute here).**

**Court ruling impact: only domicile was important here and physical presence in Michigan not relevant.**

**Dissent: Michigan law should be applied.**

# **Neumeier v. Kuehner**

## **p.186 Guest Statute?**

Ontario domiciliary killed in Ontario while guest in car owned & driven by NY defendant.

Wrongful death action by decedent's widow in NY – to avoid the Ontario guest statute.

NY court: Ontario guest statute applies – Ct. must recognize the public policy of foreign jurisdiction as applicable to its domiciliary when an incident within its jurisdiction (& guest statute applied to preclude recovery).

Use law of the place of the injury.

Cont.

# Summary of the Rules

## p.188

- 1) Apply the law of the parties common domicile when domiciled in same state with car.
- 2) Apply defendant's domicile law when acting in home state and not liable under law.
- 3) Passenger & driver from different states: Apply law of the place of accident unless displacing normal rule with advanced substantive law.

# **Schultz v. Boy Scouts**

## **p. 188**                      **Other Torts**

Two children sexually assaulted in N.Y & N.J.  
One child committed suicide from trauma.

Parents sued charities for damages suffered by children and parents.

N.J. recognized charitable immunity, not N.Y.

N.Y. court finds claims barred by N.J. law –  
locus of torts affecting parental rights was N.J.

But, locus of torts affecting children's personal injuries was New York.                      *Cont.*

# **Schultz v. Boy Scouts**

## **Other Torts *continued***

Neumeier rules apply (common domicile):

1) Boy Scouts headquarters in N.J. and apply rule of common domicile – recognize N.J. charitable immunity defense.

2) Brothers incorporated outside N.Y./N.J and apply place of tort rule – N.Y. tort where no claim of charitable immunity. But, then displaced by the N.J. interest for domiciliaries (& N.J. interest in promoting charitable activity in N.J.)? Note dissenting opinion, p. 190.

# **Padula v. Lilarn Prop. P.191**

**NY resident sues NY corp. for injuries on Corp's Mass. property – scaffolding accident.**

**Allegation re violation of NY Labor Law.**

**But, N.Y. court concludes that N.Y law not applicable, since not the situs of the accident.**

**Here a “conduct regulating rule” and not relevant where the tort occurred (i.e., Mass.).**

**Is conduct-regulating distinction appropriate?**

**Cf., “territoriality” vs. “personality.” p.192.**

# Interest Analysis p.193

## The “Rule of Decision”

- 1) Should courts normally apply the law of those states that created them. Therefore, the default rule should be to apply law of the forum.
  - 2) If a party asserts law of another jurisdiction should apply: determine the governmental policy of the forum and apply forum law if promoting the local purpose.
  - 3) If forum policy is not advanced, use the law of the other jurisdiction – if that jurisdiction’s policy is advanced.
- continued*

# Interest Analysis

*continued*

**p.194**

Therefore, should courts look to the purpose of the law and, if necessary, compare the policies of the several states with different laws.

If only one state has interest in the application of the law – then use that state’s law.

If multiple states have an interest – use the forum’s law (even if the interest in the forum state law is trivial).

# Interest Analysis

## Currie Proposals p.196

- 1) Inquire into policies of the foreign state, when forum law challenged.
- 2) Apply law of the only interested state.
- 3) Conflict exists – use moderate approach.
- 4) Unavoidable conflict – use law of forum.
- 5) Forum disinterested but conflict with two other states – use forum state law.
- 6) Different results in the same circumstances – let U.S. Congress resolve.

# **Liliental v. Kaufman**

## **“True Conflicts” p.197**

Action to collect on promissory notes.

Defense that note maker declared under a guardianship in Oregon and obligations void.

But, notes executed and delivered in Cal. & Cal. not recognizing this spendthrift disability.

Oregon Trial Court holds for Defendant.

Even though claims were valid under Cal. Law.

Normal perspective: law of place of contract.

Plus: other connecting factors (p.199). *Cont.*

# **Liliental v. Kaufman** ***continued***

Under the law of place of contract (Cal) –  
should be enforceability.

But, does Oregon have important interests  
here? Oregon legislature has declared  
spendthrift's contracts to be voidable.

Each state has a substantial interest.

Public policy of Oregon (forum) should prevail.

Should advance the policies of Oregon.

Therefore, protection from debt collection.

# Bernkrant v. Fowler

## True Conflict? P.201

Plaintiffs owed money to Decedent. Plaintiffs agreed to refinance to enable more payment to Decedent who promised debt balance at his death to be cancelled. Defendant's estate in Cal. Debt not cancelled and Pl-debtors sue in Cal.

Trial Court says action barred by both Nevada and Cal. statute of frauds & rule for Defendant.

Cal. Sup. Ct. says contract is valid under Nev. Law but not under Cal. Statute of Frauds.

*Cont.*

# Bernkrant v. Fowler

## True Conflict? *cont.*

Therefore, question is which S/F applies.

Deceased had moved to Cal. at time of death.

But, determine Statute of Frauds applicability as of the time of making the contract – and Cal. not involved at that time.

Multiple Nev. contacts & Nev. law controls.

Holding that Trial Ct. wrong about Nevada law barring action & holding for Plaintiffs – under Nevada law. No conflict re conflicts laws?

Here not under the Cal. Statute of Frauds.

# Hurtado p.205

## Unprovided for Cases

Mexican widow & children sue for wrongful death damages for Cal. Auto accident death.

Which law governs as to any liability amount?

Deceased was Mexico domiciled but defendants all Cal. residents (and all Cal. licensed cars).

Tr. Ct. - Cal. Limit; Ct. App. - Mex. Limit.

Cal. Sup. Ct.: Cal. Law applies; Mexico has no interest in applying Mex. law here.

*Cont.*

# Hurtado cont.

## Unprovided for Cases

Objective of Mexico law is to protect defendants resident in Mexico – not the situation here.

Cal.: place of wrong, Def. domicile and forum.

Mex.: domicile of Plaintiffs & deceased.

No interest of Mexico in limiting damages here.

Consider Cal. deterrent policy re no limit.

What validity of the deterrence argument?

See p.208 re aspects of cause for an action for wrongful death.

# **Criticisms of Interest Analysis p.209**

**Does interest analysis provide a satisfactory approach to the resolution of conflicts? No.**

**Should interest analysis be used to implement the best (or the forum) legislative policy? P.211.**

# **Interest Analysis in Other Nations p.212**

**Choices necessary between laws of nations.**

**What about other federal/state systems?**

**Europe: “seat of the relationship”?**

**Resolution through treaties & conventions?**

**Limited flexibility for civil law judges.**

**EU effort to law harmonization. Cf., NAFTA?**

**Differentiating treatment based on type of  
subject matter, i.e., tort, contract, domicile?**

# **Comparative Impairment**

**p.215**

Alternative to the “interest analysis” approach?

Apply law of state whose policies would be most impaired.

Weigh the harm rather than a weighing of the interests of each state.

Apply the law of the state with the greatest concerns over the matter?

# **Bernhard v. Harrah's Club**

## **p.216**

Cal. auto accident with Cal. Parties after defendants' excessive drinking in Las Vegas.

Assertion of negligence against gambling enterprise for serving alcohol.

Cal. court – but no longer using place of wrong.

What civil liability of tavern keeper to Pl.?

Do both states want their law applied? Yes.

Here a “true conflict”. What “rule of decision”?

What Cal. policy re tavern keepers? *Cont.*

# **Bernhard v. Harrah's Club**

## **p.216**

Significant impairment of Cal. interests if the policy of liability in this situation were not imposed.

Nevada does have a rule forbidding sales to intoxicated persons – but, a criminal sanction.

Cal. has an important interest in applying its “rule of decision” in this matter.

See subsequent Cal. Legislation – p. 225, re abrogating Bernhard v. Harrah's Club.

**Purpose of this enactment?**

# **Blamey v. Brown**

## **p.223**

**Similar tavern-keeper liability issue as in Bernhard case. Wisconsin alcohol purchase and Minnesota one-car accident.**

**Minnesota court: Minnesota strict liability statute was inapplicable (by its terms); no Wisconsin tavern-keeper liability statute; but, Minn. court finds Minnesota law re common-law negligence applies to impose liability.**

**Using a “better law” analysis (see p. 231).**

# **Further: Comparative Impairment p.223**

The question: Which state's interests would be most seriously impaired here?

Bernhard case, revisited:

- Did the victim have recourse against the drunk driver? Or recourse against own insurer for uninsured motorist coverage?

- Is this sufficient to enable equitable treatment, without considering Cal. regulatory structure?

See legislative change (re Bernhard), p. 225.

**This theory too difficult to apply?**

# **Kearney v. Solomon Smith Barney p.225**

Cal. residents bring class action against Salomon Smith Barney re illegal recording of telephone conversation: Cal. law - both must agree; Ga. law - only one to agree. Cal. law provides (1) damages & (2) stop future action.

Which privacy statute should control (in the Cal. state court proceeding)?

Cf., majority rule: only one party need consent.

Finding that a “true conflict” exists and then which law should control the result? *Cont.*

# **Kearney v. Solomon Smith Barney, cont.**

Comparative impairment analysis, i.e., which state's interests are more severely impacted?

**Determined:** Cal. has a strong interest in privacy protections from one-sided recordings of telephone conversations. Applying Cal. law would treat all enterprises equally.

**Further, strong current Cal. legislation.**

**No violation of Ga. privacy law – Ga. interests are not impaired. Result: Cal. law applies.**

# **Kearney v. SSB**

## **Observations p.229**

**Does the minority rule (two consents to record) trump the majority rule (one consent)?**

**What is the objective of most recordings and what are the policy implications?**

**How enforce criminal portion beyond Cal. state borders?**

**Did/does sufficient notice exist to non-Cal. businesses?**

**How protect for the future?**

# Butler v. AdoptionMedia

## p.229

Cal. same-sex partners want to list on adoption related website in Arizona and are denied.

In Cal. Fed. Dist. Court seeking damages and injunction. Asserting violation of Cal. law which precludes discrimination against same-sex couples; but, Arizona has no such law.

Was this a “true conflict”? Ct. says yes.

If so, which law to apply? Is Cal. law more protective of consumers than Ariz. law? What relevance of this inquiry? Cont.

# **Butler v. AdoptionMedia**

## **p.229 cont.**

Defendants argue “undue and excessive burden” on interstate commerce. Rebuttal that Cal. law seeks to prevent discrimination.

What about the contract which states that Arizona law and Arizona venue apply? P.231.

But, if defendants sought business in Cal. did they submit to jurisdiction there & Cal. law should apply – using a comparative impairment analysis? Result: injunctive relief granted.

# **The “Better Rule”**

## **p.231**

**Should a “better rule” approach be adopted?**

**How should this “better rule” be identified?**

- Predictability of results?**
- Maintaining interstate order?**
- Simplification of judicial decision making?**
- Advancing governmental policy interests?**
- Seeking a “better rule of law” - based on expectations of the parties and justice and socio-economic analysis?**

# Milkovich v. Saari

## p.233

Ontario residents travelling to Minnesota have auto accident and passenger sues driver in Minnesota. Ontario has a guest statute (plaintiffs must establish “gross negligence”). Minnesota has no guest statute.

But, not accepting “lex loci,” i.e., accident place. Adopting a “better-law” approach, p.235, and rejecting Ontario guest statute requirements. Compelling factors are: (1) advancement of governmental interests and (2) better law. *Cont.*

# Milkovich v. Saari

p.233

cont.

Will not accept rules that “are inconsistent with our own concept of fairness and equity.” P.237.

Do not encourage shopping for hospitals if no expectation of treatment of medial facilities.

Court is convinced of “the superiority of the common-law rule of liability..” p.237.

Dissent: Apply the “center of gravity of the contacts” theory, and that center is Ontario.

Parties from Ontario expected Ontario law.

This is merely the law of the forum.

# Judicial Orderliness

How determine the “better law”?

Consider the trial court process when the “better rule” approach is adopted by a state supreme court. And, assume the law of that state is not currently the “better rule.”

What should the trial court do? Apply the current law as enunciated by the local supreme court or anticipate a law change by adopting as a rule for decision a “better rule” provided by another jurisdiction?

# Considering the Legislative Process

If the state supreme court adopts the “better rule” approach should the legislature, when enacting laws, declare a particular rule to be the “better rule” so as to assure that it is used in cases involving conflicts in that jurisdiction?

Should the legislature declare certain existing laws as “better rules” so that the courts do not subvert the policy of these existing statutes.?

# **Standards to Determine the “Better Rule” p.239**

**Should rules be adopted for guiding the decision towards the “better rule”?**

- Must be a “true conflict.”**
- Objective standards – how identified**

**Should the better rule approach only be used when the equities are lopsided?**

**Otherwise, leave the decision to the legislative body?**

# **Restatement Second p.241**

**“Most significant relationship” test applies §145 – tort – apply local law of the state which has “the most significant relationship” to the occurrence and the parties.**

**These contacts include: place of injury; place where injury causing conduct occurred; domicile or residence; place “where relationship between the parties is centered.”**

# **Restatement Second**

## **p.241**

§188 – contract – rights and duties under contract determined by local law where exists “most significant relationship” to transaction and the parties.” Relevant contacts include:

**Place of contracting**

**Place of negotiating the contract**

**Place of performance**

**Location of the subject matter of the contract**

**Domicile of the parties**

# **Restatement Second**

## **p.241 §6 - Principles**

Court to follow “statutory directive” of its own state on choice law matters.

Otherwise, choice of law factors include:

needs of interstate systems

policies of the forum

policies of the interested states

protection of justified expectations

basic policies in substantive field of law

predictability and uniformity of result

ease in law determination and application

# Restatement Second

## p.242

§154 - Interference with marriage relationship.  
Law of the state where the conduct principally occurred determines the liability of the party interfering with the marriage relationship, unless some other state has a “more significant relationship.”

# **Phillips v. General Motors**

**p.242**

**Facts: Truck purchased while Plaintiffs (deceased) resident in N.C.; moved to Montana; killed in truck accident in Kansas; estates probated in Montana (survivor child in N.C.).**

**Products liability action filed in Federal District Court in Montana (diversity action).**

**Questions certified to Montana Supreme Court concerning Montana choice of law rules.**

**Cont.**

# Phillips v. General Motors

p.242

Question One: Will Montana follow the “most significant relationship” test in 2<sup>nd</sup> Restatement, §146 in personal injury/products liability cases in determining which state’s substantive law is to be applied?

Traditional rule: last event necessary for the tort right to vest.

Here Montana is adopting the “most significant relationship” approach.

# Phillips v. General

# Motors

p.245

Question Two: Which state's law applies?

Plaintiff says Montana; GM says Kansas.

Relevant restatement provision: law of place of injury unless another state has a more significant relationship.

Most significant relationship analysis/factors:

- 1) Needs of interstate system – law of the state with the most significant relationship to the issue.

*Cont.*

# Phillips v. General Motors

p.245

Most significant relationship analysis/factors:

2) Policies of interested states – Montana has the more significant relationship.

a) Place of injury analysis –

Kansas – multiple defenses to product liability claim, including comparative negligence.

Kansas does not care about Montana residents.

Kansas significant limit on punitive damages.

b) Place of conduct – North Carolina – where truck purchase; but referral to injury place.

# **Phillips v. General Motors**

**p.250**

**Most significant relationship analysis/factors:**

**c) Michigan – place of design & manufacture – products liability law not relevant to regulation of design and manufacture.**

**d) Montana – residence of the parties – has direct interest, including strict liability and punitive damage provisions; including applicability to child who moved from the state.**

**Montana as the place where the relationship is centered.**

# Phillips v. General

## Motors

p.253

**Question Three: Does Montana recognize “public policy” exception that would require application of Montana substantive law rules (even though Montana choice-of-law rules would dictate another result)?**

**Answer: here public policy concerns are subsumed in the analysis re the “significant relationship” test.**

# Questions, p.254

**Main conflicts resolution guidepost: “Most significant relationship test” or “interest analysis.”**

**What about the welfare of the manufacturer corporation? Wherein most significant relationship? Place of manufacture?**

**What about state products liability laws – if corporate influenced – a “race to the bottom.”**

**Does Restatement 2<sup>nd</sup> provide sufficient guidance, or just for case-by-case decisions?**

# America Online

## p.256

Suit by AOL against NHCD for spamming through AOL electronic mail facilities.

State law claims in Iowa Fed. Dist Ct. & court to look to Iowa's choice of law rules.

Iowa follows “most significant relationship” test, i.e., Restatement §145 (see p. 241).

Def. as Iowa corp, but little activity there.

Injuries from spamming in many jurisdictions.

Injury clearly demonstrable in Virginia – where AOL computers are & Virginia law controls.

# **Conflicts Problems in the Internet Context**

**Multi-jurisdictional contacts occur.**

**What should be the governing situs? Where the server is located?**

**What if the server is located offshore?**

**What should be the most significant contact when transactions occurring in cyberspace?**

**What national government impact in this context?**

# **Wrinkles in the Theory Domicile p.260**

Consider the prior analysis concerning the importance of domicile in determining the applicable governing law.

Under the 1<sup>st</sup> Restatement importance of where the domicile was located – and how to prove domicile.

What if a party's domicile changes after the event triggering the liability?

Note many people in U.S. change domicile with regularity – a mobile society.

# Reich v. Purcell

## p.261 Interest Analysis

Cal. proceeding in wrongful death action.

Auto collision in Missouri; Cal. resident kills son & wife of Ohio resident; survivor moves from Ohio to Cal. & files lawsuit in Cal.

Relevance of after- acquired domicile of P?

Court: residence at time of accident controls.

No definite intent to change domicile then.

Cal: no limit on damages; Ohio interest?

Missouri interest in its wrongful death limit?

# **Reich v. Purcell**

## **p.261, cont.**

**Ct. holds that after acquired domicile is not relevant; residence at time of accident determines applicable law.**

**Concern re forum shopping by moving to a jurisdiction having more liberal rules for recovery before initiating the litigation?**

**See Restatement 2<sup>nd</sup>, p. 264, with no position re dealing with a post-occurrence change in domicile of the plaintiff.**

# ***Renvoi* - Pfau v. Trent Aluminum Co. P.265**

Auto accident and question re host's liability to guest for negligence in an auto accident.

N.J. resident driving in Iowa with Conn. resident & accident injury to Conn. person.

Iowa had guest statute protecting driver.

Con. & N.J law do not limit suit by guest.

Def. argues Conn. choice of law rules require Iowa law application (place of injury) and no recovery (even in Conn. court). Decision: no application of Conn. choice of law rule.

# **Richards v. U.S.**

**p. 268**

**Airplane crash in Missouri. Defendant was FAA. Suit for negligence at Okla. repair facility.**

**Suit under Fed. Torts Claims Act. Under this legislation similar liability as if a private person.**

**How determine which law determines liability?**

**Lawsuit in Oklahoma. Liability based on law of place of negligence or the place of injury?**

**Whole law of Ok. applies (& no separate fed. law); use interests analysis of Okla.; or, use place where injury occurred (Mo.) & limit applies.**

# **Richards v. U.S.**

## **p. 268**

**Note: no substantive federal law exists on deciding jurisdiction in a federal tort liability issue.**

**Richards: The “law” referred to in the Federal Torts Claims Act includes a state’s choice of law rules. Accepting renvoi in this situation?**

**Here: Fed. Cts. say Okla decisions chose law of state where death/injury occurred. Therefore, Mo, law applies and Mo. Limit (\$15,000) applies.**

# **Substance & Procedure**

## **P.271      See prior p.132**

**P. 272: Forum rules concerning how cases are handled as treated as “procedural;” Rules affecting liabilities (or to control behavior) are “substantive.”**

**What happens when these rules conflict?**

**Resolve the conflict by applying the law of the forum?**

# Statutes of Limitations p.274 (prior p.146)

Ledesma v. Jack Stewart Productions

Fed. Dist. Ct. dismisses personal injury claim on basis of S/L expiration. Fed. Ct. of Appeals agrees that Cal. choice of law rules should have precluded application of Cal. 1 year S/L.

Cal. residents & auto/truck accident in Arizona by Ark. resident & owned by Okla. corp.

Diversity case in Cal. Fed. Dist. Court.

Two yr. S/L in Ariz. & Ok. & 3 yrs in Ark.

# **Ledesma case, cont.**

## **p.274**

**Federal courts to apply the forum choice of law.**

**Cal. has a “governmental interest” approach.**

**Does each state have an interest in this case?**

**Pl. are Cal. residents (reducing Cal. interest).**

**Ariz. has an interest – where accident occurred.**

**True conflicts – whose laws are impaired?**

**Ariz. interests would be most impaired & Ariz.**

**2 yr. S/L is deemed applicable.**

**See Dissent re Restatement 2<sup>nd</sup>. S/L =procedural**

# **Global Financial Corp. p.277 Borrowing Stat.**

Where does non-resident's contract claim accrue for S/L purposes?

N.Y. proc. rule says borrow S/L from foreign jurisdiction where cause of action accrued (if a shorter S/L). Where did accrual occur?

Pl. action to recover commissions and fees.

Did Pa. or Del. short S/L apply or NY longer?

Or, accrual in NY & only NY S/L (under a “center of gravity” approach)?

2/29/2012 A “statutory construction” issue.

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Cont.

# **Global Financial Corp. p.277 Cont.**

**Cause of action accrues at time and place of injury. For an economic injury – incurred where the plaintiff resides. 1<sup>st</sup> Restatement criteria are applied: place of injury.**

**Here time barred whether looking to (1) Del. (incorporation) or (2) Pa. (principal business site). Longer N.Y. statute does not apply.**

# Restatement 2<sup>nd</sup>

## Revision

**p.281**

Re: Statute of Limitations - §142

Unless “unreasonable”: forum applies its own S/L to bar the claim.

Unless (1) maintenance of forum S/L “would serve no substantial interest of the forum” and (2) Claim would be barred under S/L of a state having a more significant relationship tp the parties and the occurrence.

See Mass/Tex case at p. 281 – where Texas with most significant relationship; Tx S/L applies.

# Public Policy

**p.282**

In determining more “significant relationship” should public policy even be considered?

Or, is the “public policy” consideration already embedded in the determination of the “interests” or the most significant relationship?

# Postscript

p.283

## Paul v. National Life

Two West. Va. residents killed in Indiana.

Estate of passenger sues estate of driver in W.Va. & defendant asserts immunity under the Ind. guest statute and no evidence of willful misconduct by the driver.

West. Va. Trial Ct. says Ind. law voids action.

Does Ind. or West. Va. law apply?

Criticism of Restatement 2<sup>nd</sup> for “indeterminate language” and “lack of concrete guidelines.”

P.285

# **Postscript, p.283 *Cont.***

## **Paul v. National Life**

P.284: conflicts of law as a “playpen.”

Analysis: See reference to NY Babcock case, p. 286, re “dominant contacts” case.

Alternative test suggested: “choice influencing considerations”, p. 286.

Further (p. 287): Adhere to *lex loci delecti*.

But, here this rule violates forum public policy & foreign guest statute will not be enforced.

Persons injured by another’s negligence should recover in tort (& not barred as in Ind. law).

# **Statutory Resolution of Choice of Law Issues**

Note at p. 289: 1<sup>st</sup> Restatement – certainty but lack of fairness; 2<sup>nd</sup> Restatement – flexibility, but lack of certainty.

**Salavarría v. National Car Rental, p.289**

**National Car liability for a La. accident caused by an unauthorized user? Pl. claims dismissed.**

**La. situs auto accident: La. plaintiffs vs. Fla. residents who signed a Florida based contract.**

**Pl. claims dismissed on appeal.**

*Cont.*

# **Salavarría case, cont.**

## **Florida law not applying**

National asserts that La. law should apply.

Trial Ct. held that Fla. law controlled the obligations arising from the contract.

Conclusion that place of contract not relevant – particularly where driver was unauthorized (i.e., not a party to the contract).

La. conflict of law statute (p.290) – determine whose policies most seriously impaired?

Here all relevant conduct occurred in La. & La. (& not Fla.) law controls – no liability for Natl.

# **Enact statutory conflicts rules?**

At the state level (e.g., La.)?

Or, enact a federal choice-of-law statute to control choice of law, including at state level?

What would be Congressional (constitutional?) authority to enact such provisions?

Would this be a good approach?

See (p.296) UCC §1-105(1) re transaction with relation to several states the parties may agree;

If no agreement, local law applies if transaction bears “an appropriate relation” to the state.

