

CONFLICTS - SUMMARY

Choice of law between states (including nation states) –

traditional approaches

modern approaches

Constitutional limitations

Jurisdiction of courts over persons and property

Recognition of judgments

Federal law & extraterritoriality

Choosing legal regimes

Traditional Approaches to Choice of Law

Substantive subject areas:

torts (non-intentional & intentional)

contracts - place of contracting?

domicile - where a “settled connection”

marriage – where “contract of marriage”

property - situs law controls

business entities (e.g. corps) – where organized

government regulation

taxation

The Choice of Law Process

Location – territorial or vested rights

Interest analysis – 1st Restatement

Modern approaches – 2nd Restatement

Possible constitutional constraints

privileges & immunities clause

due process clause

full faith & credit clause

Additional Fundamental Considerations

Characterization of the substantive issue- e.g., contract or tort?

Renvoi –which law decides the approach to resolving conflicts?

Substance v. Procedure – are conflicts rules applicable only to substantive issues?

Statutes of limitations (procedural?)

Public policy (possible limitation in the forum)

Penal laws – not enforceable in another jurisdiction?

Modern Approaches to Choice of Law

Interest analysis – using an alternative approach: “center of gravity” or “grouping of contacts” or “most significant contacts”

Demonstrated by various “guest statute” cases

Comparative impairment – in which state would policies be most impaired? Weighing harm.

Use a “better law” analysis?

Conflicts Restatement 2nd – apply “most significant relationship” test – in tort & contract

Constitutional Limits on Choice of Law

Issues:

Cross border limitations

Obligation to provide a forum

Interstate discrimination

Extraterritorial/inconsistent regulations

Constitutional Provisions:

Due process & equal protection clause

Full faith & credit clause

Privileges & immunities clause

5/1/2019 **Commerce clause** (c) William P. Streng

Jurisdictions of Courts Over Persons & Property

Possible “due process” claim?

1) **Consent & waiver – re: location of legal proceedings; i.e., forum selection & agreement re personal jurisdiction. E.g., qualification to do business in the state; “minimum contacts” tests.**

“Special appearance” possibility?

2) **“Activities” as a basis for jurisdiction, including purchases? “Tag” jurisdiction?**

Personal jurisdiction and the internet.

3) **Jurisdiction for property location. “In rem.”**

Recognition of Judgments

What enforcement or rejection of judgments from other jurisdictions? Is “full faith & credit” recognition required?

What jurisdictional requirements apply? E.g., the land ownership & foreclosure cases.

What substantive interest of the enforcing state?

Exception for enforcement of “penal claims.”

Domestic relations issues & DOMA & divorce (other jurisdictions) & spousal support & child custody.

Extraterritoriality of Federal Law

What extraterritoriality/transnational application of federal statutes (& U.S. Constitution)?

Territorialism – limit to the water’s edge?

But, contacts & effects – U.S. citizens abroad.

Presumption against extraterritoriality?

“Comity” – to not apply rule to foreign conduct.

**International law of prescription jurisdiction -
i.e., regulation of personal conduct**

Extraterritoriality & the U.S. Constitution

Choosing Legal Regimes

1) Possible contractual choice of substantive law to govern relationships. Pertinent for business transactions and contracts. Objectives include predictability and uniformity.

Parties can contract re governing law.

2) Choice-of court/forum clauses: treated as valid and enforceable, including on a transnational basis? Public policy limitation?

3) Arbitration clauses: Specifies an alternate format for dispute resolution, possible for cross-border disputes. Subversion of the proceedings?

