**Conflicts Notes 1/11**

Class called “Private International Law” outside of US

-can be considered international law between the states

Class can be broken down into

1. Personal jurisdiction (covered in civ pro, not much in this class)
2. Choice of law (we’ll spend most of our time on this)
3. Recognition of foreign judgment

Class is about how court deal with fact that there are many states/nations considered at the same level in terms of law

-none has priority over others

-horizontal relationship

Dealing with both constitutional and sub-constitutional law on issues

-PJ (mostly constitutional - 14th Amend.)

-choice of law (limited amount of constitutional law, but mostly sub – at least 7 different approaches to choice of law)

-foreign judgments (mostly constitutional – Full Faith and Credit Clause)

Disagreement over whether choice of law is even law

Incredible differences between jurisdictions on conflicts

Most of law actually created by professors

-theories are law

-1st Restatement a little less professor driven

Have to get used to fluid rules

-even in 1st Rest. jurisdictions

Conflicts issue often makes or breaks case (can exploit as needed and other side/court gets scared)

Conflicts more common than used to be

-more transactions/issues crossing state/international borders

Four aspects to choice of law:

1) sometimes feels like statutory interpretation

-what is scope of state law – did the people who drafted it want it to cover a transaction that crosses state/national borders?

- this isn’t law at all, but a method for interpreting law

2) sometimes feels like it’s international law

-transcends states (and nations) determining whether they have lawmaking power

-ex: couple from PA in crash in NY and sue in VT, VT can’t just impose its own law on an event occurring outside VT

-beyond VT power to legislate outside of state

- here it is like law, but not the law of any particular jurisdiction

3) sometimes feels like it’s procedure

- rules a court has for choosing between states’ laws

-VT would use VT choice of law rules to determine whether NY or PA law applies (because procedural)

4) sometimes feels like it is normal substantive lawmaking – the forum is making its own common law rule for liability and is simply choosing whether to incorporate standards from another jurisdiction’s standard into its rule

**Traditional Approach**

10 jurisdictions still use

-holdouts are REALLY holding out (none likely to flip to Modern anytime soon)

Carroll

-harm in MS

-sued in AL (forum state)

-negligence in AL by fellow employee

-suing employer

-both sides of v domiciled in AL

-under common law, can’t sue corp for neg of fellow employee

-MS follows common law

-AL has statute allowing action

Court says MS law applies

-applies based on place of harm (place of wrong determines whether there is a fellow servant rule)

To get feel for theory, use a simple case

Assume everything happened in Alabama:

Plaintiff and Defendant were from there, the fellow employee’s wrongdoing was there, and the harm occurred there.

But a Mississippi court has jurisdiction of the case. – say because D has Miss. property

J Story

“[E]very nation possesses an exclusive sovereignty and jurisdiction within its own territory. The direct consequence of this rule is, that the laws of every state affect, and bind directly all property, whether real or personal, within its territory; and all persons, who are residents within it, whether natural born subjects, or aliens; and also all contracts made, and acts done within it.

Another maxim…is that no state or nation can, by its laws, directly affect, or bind property out of its own territory, or bind persons not resident therein, whether they are natural born subjects, or others.”

Only Alab. can extend its law to the matter

Would Story that Miss. ct simply has no power to use Miss law?

- set aside constitution

No, curiously

If a Miss court was legally obligated to use Alab. law then Alabama would have the power to regulate the defendant’s property in Miss – in violation of the principle of territorial sovereignty

It is important to draw the distinction between the power of a lawmaker to legally regulate an event and the power of a court to determine what happens to the person or property within its borders that gives it jurisdiction when adjudicating the event

Only Alabama lawmakers can regulate the antecedent event in Ala. But only Miss can determine the legal principles on the basis of which the D’s property does or does not flow to the P.

Story concludes that a court uses another jurisdiction’s law only as a matter of discretion – due to comity

“From these two maxims or propositions there flows a third . . . that whatever force and obligation the laws of one country have in another depend solely upon the laws and municipal regulations of the latter, that is to say, upon its own proper jurisprudence and polity, and upon its own express or tacit consent.”

Beale puts it differently

Beale

“Law being a general rule to govern future transactions, its method of creating rights is to provide that upon the happening of a certain event a right shall accrue. The creation of a right is therefore conditioned upon the happening of an event.... When a right has been created by law, this right itself becomes a fact.... A right having been created by the appropriate law, the recognition of its existence should follow everywhere. Thus, an act valid where done cannot be called into question anywhere.”

When the event happened in Alab. there were an Alab. legal right created giving the P a right to relief. That fact, that an Ala. right had vested, is a fact for all jurisdictions.

The fact that there is a vested right is the reason that the Miss court should use Ala. law.

so does Beale say the Miss ct is therefore legally obligated to use Ala. law?

Beale (like Story) says no

[T]he territorial law has the right to make such rules as it pleases for the solution of the conflict of laws. . . .

Recognizing vested rights is not legally obligatory – a court can choose not to give legal effect to the fact that there is a vested right

* But it is vested rights, not comity, that is the reason a Miss court should, at its discretion, choose the law Ala in our simple case
* But what about Carroll – where the wrongdoing is in Ala (and the parties are from Ala) but the harm is in Miss

Why is that the only Miss that can extend its tort law to the matter?

Metaphysical argument that has to be this way

- no tort until there is harm, so the place of the harm has the sole power

* “Up to the time this train passed out of Alabama no injury had resulted. For all that occurred in Alabama, therefore, no cause of action whatever arose. The fact which created the right to sue, the injury, without which confessedly no action would lie anywhere, transpired in the state of Mississippi. It was in that state, therefore, necessarily that the cause of action, if any, arose; and whether a cause of action arose and existed at all, or not, must in all reason be determined by the law which obtained at the time and place when and where the fact which is relied on to justify a recovery transpired.”

- But wrongdoing is also necessary for a tort and in Carroll that occurred in Ala.

In addition to metaphysical argument (or international law argument) about scope of state power, AL Supreme Court in Carroll engages in statutory interpretation

-legislature likely thought it was limited to AL harm when writing statute

-taking into account conflicts law of the time

* “Section 2590 of the Code, in other words, is to be interpreted in the light of universally recognized principles of private, international, or interstate law, as if its operation had been expressly limited to this state, and as if its first line read as follows: ‘When a personal injury is received in Alabama by a servant or employee,’ etc.”

- AL legislature apparently COULD exert power if it wanted, eg if statute said that it applied to out of state harm (it later did so) but we should presume that it did not

“Another consideration… *it is insisted, entitles this plaintiff* to recover here under the Employers' Liability Act for an injury inflicted beyond the territorial operation of that act. This is claimed upon the fact that at the time plaintiff was injured he was in discharge of duties which rested upon him by the terms of a contract between him and defendant which had been entered into in Alabama, *and hence was an Alabama contract*...  
[The plaintiff’s] theory is that the employers' liability act became a part of this contract, that the duties and liabilities which it prescribes became contractual duties and liabilities, or duties and liabilities springing out of the contract, and that these duties attended upon the execution whenever its performance was required, in Mississippi as well as in Alabama, and that the liability prescribed for a failure to perform any of such duties attached upon such failure and consequent injury wherever it occurred, and was enforceable here, because imposed by an Alabama contract…”

This is known as characterization

For contracts the existence and scope of contractual duties is determined by the place of contracting (place of acceptance)

In Carroll the P tries to characterize the cause of action as contractual because then Ala. law would apply. Very common strategy that sometimes works.

Finally – let us try interest analysis

Would Ala. legislature want its law to apply in Carroll?

Why did it abrogate the fellow servant rule?

Wanted compensation to employees from employer because fellow employee would likely be judgment proof

Would it want that for all employees/employers?

No – Alabama employees/employers, even when the harm occurs elsewhere

And you have that in Carroll

Another reason for Alab. statute is to encourage employers to monitor employees to keep them from committing torts against fellow employees

Would it want that for all employees/employers?

No only when the wrongdoing that needed to be monitored occurred in Alab.

But that’s so in Carroll.

Interest analyst would say that Alab is interested in its law applying in Carroll, making the decision in the Carroll case absurd