Conflicts Lect 11

NOTE – with respect to a choice of law clause that *invalidates* the K, 2nd Rest says that if clause was bargained for deliberately and in good faith, then it will be considered a mutual mistake and disregarded

* + 1. If no real bargaining, will hold to term and invalidate K
       1. important bc invalidity is often form of protection for a vulnerable party

Interest analysis

Finally – heart of course

Basic idea –

* Scope of law should be read in light of law’s purposes unless text answers the matter

Harris v. Harris (Ga. 1984)  
two married but separated Georgians get into car accident in Georgia in which husband is negligent – wife sues  
does Georgia spousal immunity rule apply?

Court might have concluded that text answers the question – separated spouses are spouses

* But did not take the matter to be answered by the text
* So answered it by law’s purposes
  + Promoting marital harmony and avoiding fraud
* No marital harmony to promote if spouses are separated
* And not more likely to collude than unmarried people
* So law is not applicable
* GA negligence law applies instead

Interest analyst claims same approach applies for territorial scope

* Does law apply to the cross-border facts?
* Can’t answer by text – laws do not limit their territorial scope in text
* With only a few exceptions
* Wis. Stat. § 895.03 (action for wrongful death “caused in this state”)

So must answer by law’s purposes

two married Californians get into car accident in Georgia in which husband is negligent, wife sues  
does Georgia’s spousal immunity rule apply?

* Answer by looking to law’s purposes
  + Promoting marital harmony and avoiding fraud
* GA not interested in marital harmony of Californians
* And GA not interested in fraud concerning CA insurance contracts
* So not applicable
* CA law is applicable
  + Purposes of CA negligence law is compensation and deterrence
  + CA not interested in deterring negligent husbands, even CA husbands, in GA
  + BUT is interested in compensating CA wives harmed by their negligent husbands
  + So CA law applies

Green’s criticism

The interest analyst claims that the reasoning of an interest analysis court is like that of a court determining scope in a fully domestic case

That is not true

In Harris v. Harris, the court determines whether GA spousal immunity or GA negl law applies

In determining whether GA spousal immunity applies, it considers the strength of:  
avoidance of fraudulent suits  
marital harmony

In determining whether GA negligence law applies, it considers the strength of:  
compensation to wife  
deterrence of negligent husbands

The court weighs *all relevant concerns* and comes to what it thinks is the right result

BUT that is not so in the interest analysis case

The court in our conflicts case takes into account:  
  
compensation to wife (which is a CA interest)

That’s it

Does it weigh that interest against:  
deterrence of negligent husbands?

* NO – that is supposed to be GA’s concern, but it is not weighed bc GA has no law supporting that interest

avoidance of fraudulent suits?

* NO – that is supposed to be CA’s concern, but it is not weighed bc CA has no law supporting that interest

marital harmony?

* NO – that is supposed to be CA’s concern, but it is not weighed bc CA has no law supporting that interest

The only interest taken into account is compensation, but that is bizarre

The problem with interest analysis can be seen if we give weights to all the relevant interests…

Assume GA has spousal immunity because it gives the following values to these purposes

Avoidance of fraud concerning GA insurance contracts 3

Marital harmony of GA married couples 2

Deterrence of interspousal negligence in GA 1

Compensation to Georgians harmed by the negligence

of their spouse 2

The sum of the first two is greater than the sum of the second two, so spousal immunity is appropriate for an all-GA context

Assume CA has spousal negligence liability because it gives the following values to these purposes

Avoidance of fraud concerning CA insurance contracts 2

Marital harmony of CA married couples 2

Deterrence of interspousal negligence in CA 3

Compensation to Californians harmed by the negligence

of their spouse 2

The sum of the first two is less than the sum of the second two, so spousal negligence liability is appropriate for an all-CA context

NOW: What is the appropriate rule when you have a CA married couple having an accident in GA?

CA interest in avoidance of fraud concerning CA insurance contracts 2

CA interest in marital harmony of CA married couples 2

CA interest in compensation to Californians harmed by the negligence

of their spouse 2

GA interest in deterrence of interspousal negligence in GA 1

So what is the proper rule to apply taking into account all relevant interests?

*Spousal Immunity* – the opposite of what interest analysis suggests

Green: this same problem will arise in the unprovided-for case, as we shall later see

BUT, just like you need to know how to use the 1st Rest, even though its view about exclusive lawmaking power based on territory is nonsense, so you need to know how to do interest analysis , even though its view about state interests is nonsense

OK, so let’s do interest analysis

1. Example – Currie on Milliken v Pratt
2. Currie’s analysis
   * 1. Mass D contracted with Maine Ps to guarantee D’s husband’s payment
     2. Sent by her husband by mail from Mass to Maine
     3. D’s husband did not pay
     4. Ps demanded of D
     5. She refused
     6. Mass had law not allowing married women to contract as surety
   1. Maine didn’t
   2. Interest analysis looks to purposes of law
   3. Start with purposes in a fully domestic context
   4. What is interest behind Mass law
      1. Protecting married women, even though there is a cost to security of transactions and expectations of parties
      2. applies to Mass married women, which we have here
      3. so Mass is interested
   5. Interest behind Maine law
      1. Protect security of transactions, expectations of parties
      2. Not everyone’s transactions and expectations, just those in which Mainers are involved
      3. But Mainers are involved
      4. So Maine is interested

This is a true conflict

BUT 1st Rest led a Mass ct to choose Me law – vindicating Me over Mass interests

It’s like treason

Is it a false conflict when both states have the same law? NO

One might think it means that court doesn’t need to make choice of law decision in such a case, because laws are the same

BUT is that true? It may be that neither state is interested in its law applying

remember Marie v Garrison

* + - 1. NY forum, MO contract
      2. NY’s statute of frauds was read as substantive
         1. Not applicable bc a MO contact
      3. MO’s statute of frauds was read as procedural
         1. Not applicable bc forum was NY

So neither applied – the action could proceed under MO contract law minus MO statute of frauds

Not saying Marie was a correct interpretation of NY & MO law, but the principle remains true

And can apply to two states’ substantive laws, not just cases concerning the distinction betw substance and procedure

Will see in Unprovided for case

OK now…Schmillikan v Schmratt  
Maine D contracted with Mass Ps to guarantee D’s husband’s payment  
Sent by her husband by mail from Maine to Mass  
D’s husband did not pay  
Ps demanded of D  
She refused  
Mass had law not allowing married women to contract as surety  
Maine didn’t

This is a false conflict

It is false conflicts that motivate the move from 1st Rest to interest analysis

1. 1st case to make the change
   1. Babcock v Jackson
      1. NY P – guest in car w/ NY D-host
      2. Crashed into stone wall in Ontario
      3. Question of application of Ontario guest statute
      4. Guest statute exists…
         1. to prevent collusion between guest and host to defraud host’s insurer
      5. Ontario interested only of Ontario host
      6. So Ont not interested
      7. NY is interested in its guest-host negligence liability rule applying
         1. Purposes…?
            1. Deterrence of negligent hosts

Not interested because negligence occurred in Ont

* + - * 1. Compensation to guests harmed by negligent hosts

Interested because there is a NY guest deserving compensation

* 1. Dym v Gordon
     1. P and D both NY domiciliaries
     2. BUT taking courses at U of Colo
     3. Collision with another vehicle (from Kansas) in Colo
     4. Colo has guest statute
     5. NY has host liability for negligence to guest
     6. How not like babcock?
        1. another non NY party in accident
        2. relationship started in Colo
     7. Also new theory of guest statutes
        1. make ungrateful guests later in priority
        2. Colo interested bc the guest host relationship is a Colorado one
     8. So true conflict, bc NY interest as well
        1. wants recovery for NY guest

nevertheless NY ct applied Colo law

* + 1. Is this a permissible conclusion given it is a true conflict?
       1. should choose NY law…?

Tooker v Lopez

1. Marcia Lopez (NY) crashed car (overturned after trying to pass other car)
2. Killed guest in car, Catharine Tooker (NY)
3. And injured Susan Silk (Michigan)
4. All at Mich State
5. Action by Tooker’s father for wrongful death
6. Mich has guest statute
7. What makes it like Babcock?
8. no other side of accident (seems relevant)
9. What makes it like Dym?

parties residing in Mich, even though domiciled in NY

1. Court applies NY law

how to get out of Dym?

reinterprets guest statute

* + - * 1. Guest statutes can’t be about priority with respect to ungrateful guests
        2. can’t be, if it allows guest to sue host only if host is reckless

if you satisfy higher standard, then are not later in line

if you don’t satisfy standard you are not later in line, you don’t get anything

* + - * 1. ct argues that case is really about higher burden of proof because of worries of fraud

1. Green: maybe the priority argument doesn’t work but might still be about ungratefulness of guests
2. Purpose is view that guest is biting the hand that feeds him
3. Compensation is inappropriate
4. unless relationship is really abused (when the host is reckless)
5. that would suggest Mich is interested, because guest host relation is centered in Mich
6. More fundamentally the question of the purpose of a guest statute must be answered on a statute by statute basis

Purposes of CO guest statute could be different from Mich’s and Ont’s

1. But let’s assume that Mich guest statute is about fraud
   1. What suggests that NY is the interested state concerning fraud?
   2. Domicile of host may not be relevant
      1. It may be where the car is registered

Or where insurer is incorporated

where insurer has most customers