Conflicts Lect 13

Redid Schultz

one issue we did not get to:

and expectations of the parties and concerns about forum shopping:

Finally, application of New Jersey law will enhance "the smooth working of the multi-state system" by actually reducing the incentive for forum shopping and it will provide certainty for the litigants whose only reasonable expectation surely would have been that the law of the jurisdiction where plaintiffs are domiciled and defendant sends its teachers would apply, not the law of New York where the parties had only isolated and infrequent contacts as a result of Coakeley's position as Boy Scout leader.

expectations of parties may recommend NJ law, given that most of the harm and wrongdoing was there -

 but what about forum shopping

odd to change choice of law as punishment for forum shopping, although courts do sometimes do it

also not clear that the choice of NY forum was a good idea:

P.V. ex rel. T.V. v. Camp Jaycee (NJ 2007)

like Schultz except molestation in PA

NJ SCt applied PA law

agreed with dissent in Schultz

1. Unprovided for Case
	1. Use simple example
		1. variation on Grant v McAuliffe
		2. Assume that Arizonan and Californian get in accident in Arizona
			1. Californian dies
			2. AZ has no survivorship of actions
			3. Cal does (common law rule abrogated by statute)
			4. Purposes? Cal wants to allow Ps to prevail at expense of beneficiaries of estate
				1. In favor of loss compensation to Ps (even if it harms estates)
				2. But not interested in AZ Ps to prevail against Cal estates
			5. Deterrence? Probably minimal, since dying is pretty good deterrence on its own
				1. In any event, not relevant bc wrongdoing is in AZ
			6. AZ wants to protect beneficiaries of estates at expense of Ps
				1. they did nothing wrong
				2. But not interested in protecting Cal beneficiaries at expense of AZ P’s
			7. unprovided for case
		3. Neumeier also an unprovided for case
			1. Ontario guest riding in NYer’s car
			2. accident in Ontario
			3. Ontario has guest statute, NY doesn’t
			4. reason behind Ont guest statute
				1. worries about fraud
				2. worry about fraud that would harm NY?

No

* + - 1. NY’s policy
				1. Want P to get compensation

Non NY Ps? - No

* + - * 1. Wants deterrence of negligent hosts

Outside NY? - No

* + - 1. neither applies
			2. unprovided-for case generally exists when
				1. P’s domicile’s loss-allocating law benefits D (by prohibiting action)
				2. D’s domicile’s loss-allocating law benefits P (by allowing action)
				3. and harm is in P's domicile, so no deterrence interest
		1. what to do?
			- 1. Currie

apply forum law

but forum is not interested

sometimes suggests use law that is most humane and enlightened

* + 1. one solution is to read loss allocating rules more broadly
			1. burden as well as benefit domiciliaries
			2. the limit of a loss-allocating law’s scope to benefitting domiciliaries can be understood as a presumption. When the question is the burden on a domiciliary, the presumption is that the other jurisdiction whose domiciliary would benefit has the greater interest
			3. no need to read loss-allocating rules broadly, generating countless true conflicts, and then resolving the true conflicts by weighing interests. It is better to limit the scope of loss allocating laws to begin with
			4. The presumption is not intended to disadvantage non domiciliaries, but exists in the interest of comity with other jurisdictions
			5. But in the unprovided-for case the presumption doesn’t work
			6. The solution, one might argue, is for each jurisdiction to read in its loss-allocating law as burdening its domiciliaries
			7. So in the Grant variation, Arizona will be understood as wanting to keep Arizona plaintiffs from making unjustified demands against the blameless beneficiaries of non-Arizona estates. And California will be understood as wanting to ensure that the beneficiaries of California estates make non Californians harmed by the decedent whole
			8. The case turns out to be a true conflict, with each jurisdiction having a relatively small interest in its law applying
		2. Kramer’s solution is different
			1. He points to stronger interests that one particular jurisdiction has in the case
			2. The unprovided-for case turns out to be a false conflict, without having to give up the pro domiciliary presumption
			3. In Neumeier, Kramer would point to Ontario’s interest in compensation to an Ontario guest and Ontario’s interest in deterring the negligence of hosts in Ontario
			4. It seems reasonable to say that Ontario has these interests. But is there an Ontario law to apply? Kramer says yes.
				1. No such thing as unprovided for case

Ontario negligence law – without guest statute applies

* + - * 1. heart of Kramer’s argument…
				2. if a law is read in the light of its purposes, then a law that limits another law (like an affirmative defense) should also be read in the light of its purposes
				3. guest statute is an affirmative defense that limits Ont negl law. But it should only limit negligence law when Ont. has an interest in its doing so.
				4. in Neumeier the guest statute is inapplicable bc the D-host is from NY
				5. But normal Ont tort law is applicable bc

Ontario P-guest to be compensated

Ontario accident to be deterred

* + - 1. Is the same thing true of our changed Grant v McAuliffe
				1. P was from AZ, D was from Cal, accident was in AZ
				2. Kramer would say Cal law does not apply

But AZ law does

NOT the survivorship rule

BUT Arizona negligence law, minus the rule concerning survivorship

1. Problem with Currie’s approach according to Kramer –
	1. He assumes that Ontario’s guest statute completely excludes negligence actions by guests against hosts
		1. Even in cases where host is not from Ontario
	2. But that assumes a guest statute has a scope that’s not determined by its purposes
	3. Which is contrary to the fundamental premise of interest analysis

Now for Green’s criticism:

Kramer assumes that there really is an Ontario negligence law that allows Ontario guests to sue hosts concerning accidents in Ontario when the host is not from Ontario.

Let us assume that there really is such a law on the books in Ontario. Absurdity results.

Assume facts of Neumeier (Ont. Guest, NY host, Ont. Acc.) *except* NY has a guest statute too
what is the result….?

The case would turn out to be a true conflict. New York’s guest statute would apply, because the host is from New York. And Ontario’s negligence law, minus the guest statute, would apply for the same reasons that it applied in Neumeier

* The point is that if Ontario has negligence law allowing guest host suits for the facts of Neumeier, that it has such law no matter what the competing jurisdiction’s law is
* But that’s crazy. No one would expect Ontario negligence law to apply in such a case.
* It would completely violate the expectations of the parties.
	+ Since both jurisdictions have guest statutes.

The way we should understand Kramer’s argument is that it points to interests that Ontario has *independently of Ontario law*. Ontario legislators would want negligence law to apply given the facts of Neumeier. But they don’t actually have such a law.

Another problem with Kramer’s argument is that if the way that affirmative defenses limit other laws should be read in the light of their purposes, then the way that repeals limit other laws should likewise be read in the light of their purposes. And that also leads to absurdity.

Ontario eventually repealed its guest statute. The guest statute applied, as we have seen, whenever the host is from Ontario. Presumably the purposes of the repeal of the guest statute are those of negligence law: compensation to harmed Ontario guests, and deterrence of negligence by hosts in Ontario. But under Kramer’s argument that means that the guest statute has not been repealed in cases where the purposes of the repeal are not implicated. The guest statute would still exist when there is a non Ontario guest, non Ontario accident, and Ontario host.

G’st Host Acc. GS Repeal GS post repeal
NY NY NY
Ont NY NY X
NY Ont NY X X
NY NY Ont X
Ont Ont NY X X
NY Ont Ont X X
Ont NY Ont X
Ont Ont Ont X X

One might argue that the repeal of the guest statute completely repudiated worries about fraud. If so, then there would be no rump guest statute left after the repeal. But it seems more plausible that the repeal of the guest statute was simply the expression of the view that compensation and deterrence are more important than worries about fraud, not that worries about fraud do not exist that all. If that’s so then a rump guest statute should remain after the repeal under Kramer’s argument.

Again the lesson is not that there is actually a law that is a rump guest statute after the repeal. The lesson is that even after the repeal, Ontario would want a guest statute for cases involving non Ontario guests, not Ontario accidents, and Ontario hosts. Ontario interests recommend such a law. But there isn’t yet a law on the books.

But once we give up the idea that there are preexisting laws to apply in the unprovided-for case, and that we can look to the relevant jurisdictions’ interests to consider what laws should be created for such a case, we can conclude that the case is actually a true conflict, not a false conflict as Kramer claims

Consider Neumeier again

* Ontario guest riding in NYer’s car
* accident in Ontario
* Ontario has guest statute
* NY doesn’t

Interests:

Ont. interest in compensation to Ont. guest

Ont. interest in deterrence of negligent hosts in Ont.

NY interest in avoiding fraud

* Kramer is right that Ontario would want negligence law for such a case. But it looks like New York would want a guest statute for the case.

Green: the unprovided-for case shows that interest analysis is unworkable, because one must not just consider the purposes of laws that are on the books, but also the purposes that jurisdictions have that would recommend laws that aren’t on the books.