Conflicts Lect 20

**Const’l Restrictions on choice of law**

Have seen much variation in sub-constitutional choice of law

– what are outer const’l limits?

SCt starts out with high expectations

* looks like constitutionalization of choice of law
* Dick and Bradford
* But retreat later
* Very light restrictions in the end
* Also initially looks like big difference betw FF&C and due process
* Also becomes minimal but here some important difference remain

Odd – FF&C sounds like it is there to decide choice of law

EG

* Husband and wife from California get in accident in Nevada
* Nevada has spousal immunity
* California doesn’t
* Case brought before Nevada court, which uses 1st Restatement, which law applied?
  + NV
* Case brought before California court which uses interest analysis, which law applied?
  + CA

Each can apply own law?

* that does not seem like a consistent constitutional order
* compare fed/state  
  - fed law trumps state law in fed *and state* ct
* one would think that the constitution requires consistent choice of law

Home Ins Co v Dick (US 1930)

Dick – citizen of TX – sues Mex Ins Co for boat fire covered by ins contract

* PJ through garnishment by ancillary writs against two NY corps that had reinsurance contracts with Mex Co
  + odd theory of PJ
  + Assume suit against Mex Co succeeds
    - Then there will be a debt from reins cos to Mex co
    - resins cos are present in Tex, could attach it there

So really suits against reins cos, but they can assert the defenses of the Mexican ins co

* defense, not within one year as identified in contract
* this limitation is OK under MX law, and choice of MX law provision is in contract
* K issued in MX to Mexican that was assigned to Dick
* Premiums paid in MX, payment under ins contract to be in MX pesos, loss in MX waters
* At time of loss Dick was resid of MX
* Dick appeals to TX statute forbidding contractual limitations on suing that are less than 2 years –
* article 5545 of the Texas Revised Civil Statutes
* 'No person, firm, corporation, association or combination of whatsoever kind shall enter into any stipulation, contract, or agreement, by reason whereof the time in which to sue thereon is limited to a shorter period than two years. And no stipulation, contract, or agreement for any such shorter limitation in which to sue shall ever be valid in this State.'
* TX cts applied TX law
* SCt reversed
* applying TX law violates due process
* Why not say this is a question of statutes of limitations, which is clearly governed by lex fori?

“The statute is not simply one of limitation. It does not merely fix the time in which the aid of the Texas courts may be invoked. Nor does it govern only the remedies available in the Texas courts. It deals with the powers and capacities of persons and corporations. It expressly prohibits the making of certain contracts.”

* + TX law is really addressing the contract

Hypo:

What if the contract said that the recovery was not possible unless the service in the suit was in-hand (and such specification was valid under Mexican law)?

* forum law would override contract, but why can’t a procedural interest of forum do so?
* ct suggest applying forum law would be OK in that case

It is true also that a state is not bound to provide remedies and procedure to suit the wishes of individual litigants. It may prescribe the kind of remedies to be available in its courts and dictate the practice and procedure to be followed in pursuing those remedies. Contractual provisions relating to these matters, even if valid where made, are often disregarded by the court of the forum, pursuant to statute or otherwise. But the Texas statute deals neither with the kind of remedy available nor with the mode in which it is to be pursued. It purports to create rights and obligations. It may not validly affect contracts which are neither made nor are to be performed in Texas.

hypo:

* Mexico builds in a one year statute of limitations into contract cause of action
  + the limitations period is not actually specified in the contract
  + may the Texas court use its two-year statute of limitations anyway?
  + ct punts on question…
* It is true that a state may extend the time within which suit may be brought in its own courts if, in doing so, it violates no agreement of the parties. And, in the absence of a contractual provision, the local statute of limitation may be applied to a right created in another jurisdiction even where the remedy in the latter is barred. **[Whether a distinction is to be drawn between statutes of limitation which extinguish or limit the right and those which merely bar the remedy we need not now determine.]** In such cases, the rights and obligations of the parties are not varied. When, however, the parties have expressly agreed upon a time limit on their obligation, a statute which invalidates the agreement and directs enforcement of the contract after the time has expired increases their obligation and imposes a burden not contracted for.

BUT does suggest that even if TEX law was understood as procedural it could not override a limitations period specified in the contract that is valid under the applicable law of contracting

* Deprives garnishees of property w/ due process
* BC no contact w/ TX at the time of contracting
* The Texas statute as here construed and applied deprives the garnishees of property without due process of law. A state may, of course, prohibit and declare invalid the making of certain contracts within its borders. Ordinarily, it may prohibit performance within its borders, even of contracts validly made elsewhere, if they are required to be performed within the state and their performance would violate its laws. But, in the case at bar, nothing in any way relating to the policy sued on, or to the contracts of reinsurance, was ever done or required to be done in Texas.

Why due process rather than FF&C

FF&C applies to laws, not just judgments

* Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.
* BUT not laws of other countries
* BUT due process does apply to aliens – MX company is the one being denied due process (also reinsurers)
  + Notice that this has nothing to do with contacts with Mexico or deference to Mexican interests
  + Has to do with lack of contacts with Texas and expectations of parties
* attempt to constitutionalize the place of contracting rule?
* probably not
* Dick is written by Brandeis and Brandeis dissented in earlier case
  + Dodge –
    - Mo resident purchases insurance from NY ins co at MO office
    - Applied for loan on ins policy
    - Accepted in NY
    - defaulted on loan
    - Under term of policy and NY law the ins co could cancel policy to repay loan
    - MO law does not allow cancellation of policy
    - insured died and widow wants to collect
      * MO ct applied MO law
      * SCt reversed
        + Loan contract entered into in NY
        + so NY law applied
        + Despite manifest MO interest

Really Brandeis is trying to change Dodge

So not place of K rule constitutionalized

* + better to say a question about party expectations
  + Could never have anticipated application of MX law
  + and about complete lack of TX regulatory power
    - Different if you had two Texans contracting in MX
* another important element
  + Dick claimed publ policy exception allows ct to apply TX law
  + Dick urges that article 5545 of the Texas law is a declaration of its public policy; and that a state may properly refuse to recognize foreign rights which violate its declared policy. Doubtless, a state may prohibit the enjoyment by persons within its borders of rights acquired elsewhere which violate its laws or public policy; and, under some circumstances, it may refuse to aid in the enforcement of such rights. But the Mexican corporation never was in Texas; and neither it nor the garnishees invoked the aid of the Texas courts or the Texas laws. The Mexican corporation was not before the court. The garnishees were brought in by compulsory process. Neither has asked favors. They ask only to be let alone.
  + Point is Dick’s suit in under MX law and so can’t use publ policy exception to get rid of MX defense – like Holzer

FF&C

Bradford Elect Light v Clapper

Clapper – citizen of VT – worked for Bradford (VT corp w/ PPB in VT)

Clapper sent to NH to take care of some fuses

* accident
* electrocuted
* state administrator chooses to sue in NH
* NH allows election of common law or workers comp
* VT requires you to waive out of workers comp in beginning of relationship
* NH ct applied NH law
  + SCt reversed
* Start with choice of law analysis
  + 1st rest?
    - Place of injury – NH
    - so ct is saying 1st Rest is unconstitutional
* Why talk about state interests rather than party expectation?
  + D sent him to NH
  + could anticipate NH law
* Conclusion that FF&C requires application of VT law
* Because Vt policy gravely impaired if law not applied
  + What about NH interest in its tort law applying?
    - * it has a deterrence interest

Ct suggests a greatest interest rule or comparative impairment rule is constitutionally mandated

Pacific Employers Ins. Co. v. Industrial Acc. Comm’n (US 1939)

P is from Mass, employed by Mass D, sent to work in CA and injured there. P files workers comp claim in CA

Defendant raises defense of MA law, which has lower recovery

Ct allows CA to apply law

* here CA has interest
* “Although Massachusetts has an interest in safeguarding the compensation of Massachusetts employees while temporarily abroad in the course of their employment, and may adopt that policy for itself, that could hardly be thought to support an application of the full faith and credit clause which would override the constitutional authority of another state to legislate for the bodily safety and economic protection of employees injured within it. Few matters could be deemed more appropriately the concern of the state in which the injury occurs, or more completely within its power.”
* no balancing anymore
  + basically overruled Bradford
  + just need a legitimate interest for a state to extend its law to an event
  + does not have to be stronger interest

1. Allstate Ins v Hague – very close case
2. ct’s decision can be justified but not the way court does it
   1. Husband works in Minn, lives in Wisc
   2. Owned three cars – each insured against uninsured motorists
   3. Killed in accident (in Wisc) with unins Wisc drivers
   4. Wife moves to Minn, remarries
   5. Files under ins policies
   6. Does stacking apply?
      1. Minn allows, Wisc does not
   7. Minn Ct uses Leflar to allow stacking
      1. Better law
      2. Also forum interest as a justice administering state
   8. Constitutionality challenged - upheld
   9. Notice no distinction betw FF&C and due process
      1. Except in Stevens concurrence
      2. Footnote 10: “This Court has taken a similar approach in deciding choice of law cases under both the Due Process Clause and the Full Faith and Credit Clause. In each instance, the Court has examined the relevant contacts and resulting interests of the State whose law was applied. Although at one time the Court required a more exacting standard under the Full Faith and Credit Clause than under the Due Process Clause for evaluating the constitutionality of choice of law decisions, see Alaska Packers Assn. v. Industrial Accident Comm'n, 294 U. S. 532, 294 U. S. 549-550 (1935) (interest of State whose law was applied was no less than interest of State whose law was rejected), the Court has since abandoned the weighing of interests requirement.”
   10. Brennan treats them as the same
       1. The lesson from Dick and Yates, which found insufficient forum contacts to apply forum law, and from Alaska Packers, Cardillo, and Clay II, which found adequate contacts to sustain the choice of forum law, is that for a State's substantive law to be selected in a constitutionally permissible manner, that State **must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.**
       2. What are contacts?
          1. member of Minn workforce
             1. commuted to work there
          2. allstate present and doing business in Minn
             1. that’s why there is PJ
          3. post event move to Minn

two concerns – party expectations and state interests

start with party expectations

* + 1. even dissent (Powell) agrees not a problem
    2. allstate agreed will cover accidents outside of Wisc
    3. knew he drove every day to Minn
       1. accident was not while he was driving there though
          1. arguably does not matter because Allstate thinks in the aggregate
       2. also could have included choice of law provision (Stevens)
    4. is large amount of Minn business relevant?
       1. NO
       2. would not think Minn law applies on that basis
       3. large amount of Alaska business too
       4. does not mean allstate can anticipate that Alaska law would apply to this Wisc accident
    5. is post event move relevant?
       1. no – allstate could not anticipate

now state interests

What about fact that Hague was a member of Minn workforce

* + 1. Is that an interest justifying application of Minn law?
       1. majority says yes
       2. Powell (dissent)
          1. How are Minn employment policies fostered by stacking?
          2. they aren’t
  1. Allstate does business in Minn?
     1. Not relevant to this case, otherwise Minn law always applies to any accident
  2. P is a Minn dom?
     1. this does give Minn interest in stacking rule
     2. does not matter (under book’s and Green’s analysis) that it is not relevant for party expectations
        1. notice that Powell says not relevant, but that is because of party expectations

So

expectations satisfied bc Allstate knew car could have had accident in Minn

state interests satisfied because of post-event move of P

No role played by fact that Allstate does lots of business in Minn

- relevant only to PJ