Lect 22

Obligation to provide a forum

Hughes v Fetter (US 1951)

* + - * 1. Facts:

Wisconsin resident got into an accident in Ill. Parties were Wisconsin domiciliaries. Sued under Illinois law.

Wisconsin wrongful death statute said that it only applied to deaths within the state. Wisconsin court read into this a policy against entertaining sister state wrongful death actions.

The Wisconsin court dismissed the case with prejudice. If the court applied Wisconsin law, this might have been ok. But the question was solely the entertainment of an Illinois action. They refused to entertain it and then dismissed with prejudice.

Supreme Court makes it seems like there is an obligation for states to take sister states' causes of action. There would have been a problem even if the action had been dismissed without prejudice.

“We are called upon to decide the narrow question whether Wisconsin, over the objection raised, can close the doors of its courts to the cause of action created by the Illinois wrongful death act. Prior decisions have established that the Illinois statute is a ‘public act’ within the provision of Art. IV, § 1 that ‘Full Faith and Credit shall be given in each State to the public Acts . . . of every other State.’ It is also settled that Wisconsin cannot escape this constitutional obligation to enforce the rights and duties validly created under the laws of other states by the simple device of removing jurisdiction from courts otherwise competent."

But that is a puzzle 0 it is permissible for a forum to dismiss a sister state cause of action without prejudice for lots of reasons - *forum non conveniens*, public policy exception, statute of limitations, etc.

* + - * 1. The SCt distinguished the Public Policy Exception

“We hold that Wisconsin's policy must give way. That state has no real feeling of antagonism against wrongful death suits in general. To the contrary, a forum is regularly provided for cases of this nature, the exclusionary rule extending only so far as to bar actions for death not caused locally. “

Basically, Wisconsin has no public policy against wrongful death actions

* + - * 1. Dismissing under the Forum’s Shorter Statute of Limitations is OK

Wells v. Simonds Abrasive (US 1953)

PA state court may apply its procedural limitations period to Alabama action even though Ala. substantive limitations period is longer

* + - * 1. The SCt distinguished the Forum Non Conveniens

“The Wisconsin policy, moreover, cannot be considered as an application of the forum non conveniens doctrine, whatever effect that doctrine might be given if its use resulted in denying enforcement to public acts of other states. Even if we assume that Wisconsin could refuse, by reason of particular circumstances, to hear foreign controversies to which nonresidents were parties, the present case is not one lacking a close relationship with the state. For not only were appellant, the decedent, and the individual defendant all residents of Wisconsin, but also appellant was appointed administrator, and the corporate defendant was created under Wisconsin laws.”

Makes it sound as if dismissal would have been OK if it was based on the more nuanced questions of forum non conveniens

But here the dismissal was merely on the basis of its being sister state law

Can't discriminate sister state law simply because it is sister state law.

* + - * 1. “We also think it relevant, although not crucial here, that Wisconsin may well be the only jurisdiction in which service could be had as an original matter on the insurance company defendant. And while in the present case jurisdiction over the individual defendant apparently could be had in Illinois by substituted service, in other cases, Wisconsin's exclusionary statute might amount to a deprivation of all opportunity to enforce valid death claims created by another state.”

May be an obligation to take a case if that state is the only possible forum.

Necessity jurisdiction creates the power to take a case (even if Int’l Shoe is not satisfied) because there is no other forum

Perhaps there is also a duty, at least with respect to sister state actions

* + - * 1. Assume Wisconsin court had applied Wisconsin law and then dismissed with prejudice for failure to state a claim because the accident was not in Wisconsin:

This would apparently be permissible. The parties would be applying Wisconsin law. Wisconsin had a constitutionally permissible interest.

"The present case is not one where Wisconsin, having entertained appellant's lawsuit, chose to apply its own, instead of Illinois', statute to measure the substantive rights involved. This distinguishes the present case from those where we have said that, '[p]rima facie, every state is entitled to enforce in its own courts its own statutes, lawfully enacted.'"

Green: but this is bizarre – it would mean that Wisc law is such that Wisconsiners are not protected from wrongful death outside the state…

* + - * 1. The problem in Hughes is that the motivations of the Wisc court appeared to be like those standing behind forum non conveniens

So what is wrong about what they did?

* Problem is that they used a suspect category discriminating against sister state law
  + - * 1. "A state may not 'discriminate' against foreign law by refusing to enforce it unless the state (a) has a sufficient justification and (b) tailors the discrimination to fit that justification. The fact that the state has a substantive interest and applies its own substantive law always satisfies these requirements. Concern for the conduct of litigation in the state's courts may constitute an adequate justification. But if the mechanism chosen to further this interest is overbroad, it will be struck down. The law in Hughes was thus found unconstitutional because it treated every claim based on foreign law as inconvenient, while forum non conveniens is permissible because it furthers the state's legitimate interests in a way that is narrowly tailored to prevent undue discrimination.
    1. Broderick v Rosner (1935) -
       1. NY law allows piercing the corporate veil concerning NY banks to get to shareholders
       2. NJ doesn’t like this and wants to protect NJ shareholders
       3. Sets up impossible procedural hurdle: Only way in which one could pierce corporate veil for banks in a NJ court is to have all parties present (all officers stockholders debtors and creditors)
       4. Suit in NJ against New Jersey shareholders of NY bank
       5. Supreme Court concludes that this is a violation of Full Faith and Credit. This procedural hurdle is a form of discrimination against sister state law. This was a neutral law with a discriminatory effect.
          1. Green: But NJ doesn’t hate sister state causes of action. NJ just doesn’t like people piercing the corporate veil.
       6. Perhaps there is a different justification of the case. Not about discrimination against sister state law. New Jersey might simply have no legitimate interest in applying its law. Since only New York law can apply, New Jersey can’t erect procedural barriers to thwart this. Might be wrong to have anything but one law apply to the internal affairs of a corporation. Can't have different laws applying to different shareholders. They need to all be treated the same. Might be constitutionally mandated that the internal affairs doctrine that applies to a corporation is determined by the state of incorporation. This would be an exception to Allstate
    2. Tennessee Coal, Iron & RR Co v George (US 1914) - page 392
       1. Issue: when can a state make it impermissible for sister states to take its cause of actios.
       2. George injured in Alabama. Brought suit in Georgia. Sued under Alabama law, which limited that cause of action to only be heard by courts in the Alabama.
       3. Court held that Georgia court could take the case
       4. "There are many cases where right and remedy are so united that the right cannot be enforced except in the manner and before the tribunal designated by the act. For the rule is well settled that "where the provision for the liability is coupled with a provision for the special remedy, that remedy, that alone, must be employed." But that rule has no application to a case arising under the Alabama Code relating to suits for injuries caused by defective machinery. [I]t is … evident that the place of bringing the suit is not part of the cause of action -- the right and the remedy are not so inseparably united as to make the right dependent upon its being enforced in a particular tribunal. The cause of action is transitory, and, like any other transitory action, can be enforced 'in any court of competent jurisdiction within the State of Alabama. . . .'"
       5. The court held that Alabama cause of action was transitory and that a Georgia court could hear this cause of action.
       6. NOTE: Any state cause of action is vertically transitory, in the sense that a Federal Court has the power to take it under diversity. The court suggests that a state can make a statute not be transitory horizontally if the state stated a specific court in which the cause of action could be brought.
    3. Crider v Zurich Ins Co (US 1965) -
       1. Alabaman injured in Ala while working for Ga corporation
       2. Ala Ct awarded remedy under Ga workers comp statute even though Ga statute said action had to be brought before Ga Comp board. So the action must be brought before a particular administrative agency in Georgia. It is, in effect, bound up with the Georgia cause of action under Tennessee Coal
       3. But court says, the rule of Tennessee Coal “has been eroded by the line of cases beginning with Alaska Packers and Pacific Insurance.”
       4. The Supreme Court allowed Alabama to hear the case anyways.
       5. The appeal two Pacific Insurance suggests that Alabama has a sufficient interest to apply its own law instead of Georgia law. An Alabama Court is not bound by the Georgia law because it can replace it with an Alabama law.
       6. As long as the forum has a pacific employers interest in applying its own law, then it can displace the sister state rule that requires the case to be before a specific court or agency.
       7. The court carved out part of the Georgia law and replaced it with Alabama law so that the case could be brought in Alabama.
       8. So - A forum only needs to respect the sister state's requirement that a COA be brought in a specific location when the forum state does not have a Pacific Employers interest in the cause of action.
    4. Compare: Pearson v NE Airlines (2d Cir. 1962)
       1. NYer killed in place crash in Mass
       2. Flight from NY to Boston
       3. Fed Ct in NY used Mass law, but not Mass damage limitation
          1. Claimed PPE applied
          2. Also claimed issue was procedural
       4. but could court have said there was NY interest in NY law applying even though Mass law could apply otherwise? Yes. Here too it would be carving out a part of Massachusetts law and replacing it with New York law
       5. This is related to depecage – perhaps this is impermissible if the two parts of the law must be together?
       6. Or could we simply reinterpret this as the New York ct replacing all of Massachusetts law with New York law?

Privileges and Immunities

1) P and I: state cannot withhold from non-residents something important (something bearing on the vitality of the nation as a single entity), unless there is a substantial reason for discrimination and the means chosen (namely, state citizenship) bears a substantial relation to achieving that end.

E.g. Piper case: N.H. says that only N.H. domiciliaries can be members of its bar. Being a member of the bar is “something important,” and while there was arguably a substantial reason for limiting bar membership to N.H. citizens (encouraging pro bono work and ensuring attorneys having a working knowledge of state rules), the means did not bear a substantial relation to achieving that end.

2) There has been concern among many that interests analysis gives certain benefits to in-state domiciliaries and residents in violation of the P & I Clause.

a) CT has guest statute, New York does not. NY guest and host get into accident in CT. Guest sues host in CT court, which – using interest analysis – does not apply guest statute. Is the P&I Clause violated, because CT provides a protection to CT defendants that it does not provide to NY defendants?

1) Green: No, because CT is not really discriminating against New Yorkers; rather, it is simply deferring to NY and allowing NY to define the benefits afforded its own citizens. Such a move is actually in the spirit of the P&I Clause, b/c it fosters friendly relations between states (i.e., it allows NY to fulfill its own regulatory purposes). There is a substantial reason for the discrimination (deferring to NY’s regulatory interests), and the means chosen are the only ones that would allow this.

2) what if NY guest sues CT host in CT state ct for accident in CT? CT resolves true conflict by applying NY law. Any P&I violation? No: even though CT has an interest, it is allowing NY to fulfill its own regulatory purposes.

- Ct resolves true conflict by applying CT guest statute. Any P&I violation? No – because treating new Yorkers and CT’ers the same in this case.