1. **Traditional choice-of-law approach:**
2. Legislative jurisdiction is defined territorially
   1. But actually, in the end all choice of law is defined territorially
3. A multistate transaction can be localized within a particular territory
   1. By a triggering event
   2. Place of harm with respect to torts, etc.
4. Once the localizing event occurs a vested right is created that can be taken to any jurisdiction, which must recognize it
5. **Torts:  
    *place of the harm (but really, place of the wrong—a completed wrong)***

Problems:

1. Identifying place of the harm – (harm stretching out over a number of states)
2. Circularity (what is harm is itself a legal question)
   1. Must presume a certain amount of harm to figure out what the law is, and to determine the place of the harm
   2. Use this place’s law to figure out what is compensable
3. Characterization
   1. You can take a certain COA and re-characterize it as another COA.
   2. This is a big temptation in the first rst because everything is determined by the characterization.
   3. Not just a tricky escape device; really have to do it to accurately apply the first rst.
4. Frustrating reasonable expectations of parties
   1. Concerning what law would apply.
   2. Fortuitous where the harm occurred.
5. Frustrating state interests
   1. See: Carroll

**Exceptions to Place of the Harm Rule**

§ 380(2)

* Where by the law of the place of wrong, the liability-creating character of the actor's conduct depends upon the application of a standard of care, and such standard has been defined in particular situations by statute or judicial decision of the law of the place of the actor's conduct, such application of the standard will be made by the forum.
  + Application of the standard of care of the law of the place of the wrongdoing.

§ 382

* A person who acts pursuant to a privilege conferred by the law of the place of acting will not be held liable for the results of his act in another state.
  + The law of the place where the person acts determines privileges.

§ 387

* When a person authorizes another to act for him in any state and the other does so act, whether he is liable for the tort of the other is determined by the law of the place of wrong.
* Note: In order that the law of the state of wrong may apply to create liability against the absentee defendant, he must in some way have submitted himself to the law of that state. It is sufficient if he has authorized or permitted another to act for him in the state in which the other's conduct occurs or where it takes effect.
  + Employer can’t be submitted under a jurisdiction where he didn’t order the employee to act.

**Contracts**

***Milliken v. Pratt*** (Mass. 1878)

Facts:

* P: ME; D: MA
* Wife guaranty of loan for husband; sent from MA by husband to ME; accepted when acted upon in ME

Problems:

1. Identifying place of contracting–
   1. Which was the offer?
   2. The acceptance?
   3. Type of K?
   4. Etc.
2. Circularity (what is place of contracting is itself a legal question)
   1. First rst answers here by presuming the common law of K;
   2. also says forum should use its law of K to determine the place of K, and thus what law applies.
3. Characterization
4. Frustrating reasonable expectations of parties
5. Frustrating state interests
6. Is there an analogous problem of circularity in torts?
   1. Law of place where harm materializes
      1. What is compensable harm is a matter of law
      2. A is exposed to a harmful chemical in state A, he learns about it in state B where he worries excessively, the difficulties manifest themselves in state C. Under law of state B, fear of exposure is a legally cognizable harm, under law of state C it is not. Which state’s law applies?
      3. use law of place of first physical harm

§ 333. Capacity to Contract

* The law of the place of contracting determines the capacity to enter into a k.

§ 332. Law Governing Validity of Contract

* The law of the place of contracting determines the validity and effect of a promise with respect to:  
  (a) capacity to make the contract;  
  (b) the necessary form, if any, in which the promise must be made;  
  (c) the mutual assent or consideration, if any, required to make a promise binding;   
  (d) any other requirements for making a promise binding;…
  + All associated issue are determined by the law of the place of the K

§ 347

* The law of the place of contracting determines whether a promise is void, or voidable for fraud, duress, illegality or mistake or other legal or equitable defense.

§ 348

* Whether a right under a contract is capable of being transferred by the owner, is determined by the law of the place of contracting

§ 352

* The law of the place of assignment determines the formalities necessary to make an effective assignment of a right under an informal contract.

§ 361

* The law of the place of performance determines the details of the manner of performing the duty imposed by the contract
* **Place of Performance (*pretty much everything to do with Breach)***
  + Manner of performance
  + Time and locality of performance
  + Excuse for non-performance
  + Also right to damages and measure of damages
* X and D enter into an employment contract in Maine.
* Under the law of Maine, X cannot assign his interest in future wages.
* Under the law of Massachusetts, he may.
* In Massachusetts, X assigns his interest in future wages to P.
* Is the assignment valid?
  + First thought: Yes; MA law applies because an assignment is a separate K made in MA
    - Two Ks: employment K and assignment K
  + But actually, it’s ME law that applies…
    - Really, interpreting the nature of the employment K.
    - ME says w/ respect to the employment K that parts of it aren’t assignable
* X and D enter into an employment contract in Maine.
* Under the law of Maine, D may assign his interest in future wages.
* But in Maine the assignment must be in writing, whereas in Massachusetts, assignment may be done orally.   
  In Massachusetts, X assigns his interests in future wages to P orally.
* Is the assignment valid?
  + Now we’re asking if the assignment K itself is valid; therefore MA
* In Maine A agrees to sell and B to buy goods to be packed in Massachusetts in the presence of two adults.
* Under Maine law someone is an adult if 18 or over.
* Under Massachusetts’s law the relevant age is 17.
* 17 year olds are used.
* Has the provision been satisfied?
  + Place of performance is used for the details of the manner of performing K.
  + Distinction between *duties* (place of K) and *manner of fulfilling duties* (place of performance).
    - But, it’s really hard to draw these distinctions
  + Obviously, a rule that can be contracted around (K could state must use 18yo)

**Property**

***In re Barrie’s Estate*** (Iowa 1949)

Facts:

* What counts as revocation of a will?
* Before the Iowa Court (previously litigated in Illinois)
* Parties domiciled in Illinois (all of them)
* Decedent wrote and attempted to revoke will in Illinois
* Illinois court and Illinois law determining validity of will of what is movables and Illinois real property
* Looks like previous judgment purported to apply to all property.
  1. Why not binding upon Iowa court? FFC?
  2. Crude exception to not so iron-clad rule. Real property is the exception. Situs state courts can ignore prior judgments by other states that purport to act in rem on real property in the situs.
* Differences in laws: how the will can be voided
  1. IL: you can just write void (therefore will is invalid and IL property and personalty go in intestate succession)
  2. IA: must be witnessed by two persons or destroyed (concern for fraud)

§ 250. Revocation Of Will Of Land

* The effectiveness of an intended revocation of a will of an interest in land is determined by the law of the state where the land is.

§ 633.49 (IA Statute)

* “A last will and testament executed without this state in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state, provided that such last will and testament is in writing and subscribed by the testator.”
  1. Considered to not be applicable to issues of revocation – statute in derogation of common law so read narrowly
* Green: is this really a choice of law statute – more like an Iowa law that incorporates foreign law standards to serve Iowa interests in protecting expectations
* Husband dies intestate in Illinois
* Husband owns land in Iowa and Nebraska
* Under Iowa law, wife gets all property of husband
* Under Nebraska law, wife gets ½ - rest goes to children
* Who gets what?
  + Wife gets everything in IA and half of what’s in NE
  + So, ¾

**Immovables:**

* Distinction drawn in the first rst between movables and immovable
* Immovables include real property, but also some things that are considered personalty, esp leaseholds

**Early draft of 2nd Restatement:**  
First, land and things attached to the land are within the exclusive control of the state in which they are situated, and the officials of that state are the only ones who can lawfully deal with them physically. Since interests in immovables cannot be affected without the consent of the state of the situs, it is natural that the latter’s law should be applied by the courts of other states. The second reason is that immovables are of greatest concern to the state in which they are situated; it is therefore proper that the law of this state should be applied to them. The third reason is to be found in the demands of certainty and convenience…

Why use situs state rule?

* 2nd rst still uses it too, largely
* First argument: power—no other state can control the property
  + That argues for having only the situs state issue a judgment, not that that judgment should apply its law
* Second reason—other states ***do* have** interest as well
* 3rd reason – is true about law governs quick decisions (like trespass) where they need to know what law applies
  + BUT not an important concern about matters – like succession of interests – that are going to be decided by courts
* Title searches often cited as relevant for situs approach. Person doing title search knows what law is applying and therefore definitively “who owns this property”
  + But, to repeat, for disposition of property by courts, this does not matter – the title searcher will be able to rely on the judgment

***Miller v. Lucks*** (Miss. 1948)

Facts:

* A white man and black woman (originally from Mississippi) live in Illinois and eventually marry there.
* The marriage is valid under Illinois, but not Mississippi, law.
* Mississippi does not, in general, recognize interracial marriages even if they are valid under the laws of the state where the marriage was celebrated.
* The woman dies and the husband claims a husband's interest in Mississippi property owned by the wife.
  + MS SCt concludes they don’t have an interest in their law (even though they hate interracial marriage). This could have been done through a will, the fact that the property goes to him is really no skin of their nose.
  + The situs state just isn’t really interested.
* Massachusetts (but not New Hampshire) has a law preventing wives from contracting with their husbands.
* X (from Massachusetts) enters into a contract in Massachusetts to convey New Hampshire property to her husband.
* What result?
  + Characterization issue here.
    - Contract? Or Property? Which Law?
    - Place of K or Location of Property?
  + Contract; MA law applies
  + Note: in some cases we can slit the difference – contract obligations determined by place of contracting, whether ether is actually transfer of ownership determined by situs state – will discuss later
* In Illinois A (a domiciliary of Illinois) conveys land located in Iowa to B (a domiciliary of Illinois).
* A then dies.
* Under Illinois law, A’s widow retains a dower in the property.
* Under the law of Iowa, she does not retain a dower.
* Does A’s widow retain a dower or not?
  + Marital interest is not determined by the law of the marital domicile but by the law of the state where the property is located. So, she doesn’t have a dower.

§ 220. Effect Of Conveyance Of Interest In Land

* The effect upon interests in land of a conveyance is determined by the law of the state where the land is.

§ 237. Effect Of Marriage On Existing Interests In Land

* The effect of marriage upon interests in land owned by a spouse at the time of marriage is determined by the law of the state where the land is.

**Movables:**

* Treated differently than immovables.
* Intestate succession of movables determined by the law of the domicile of the decedent at the time of death.
* Validity of will with respect to movables determined by domicile
* But some things are determined by situs of the movable – eg adverse possession
  + (BUT, movables move).
* Under Illinois law of adverse possession, one must hold onto personalty for 2 years to acquire title.
* Under Iowa law of adverse possession, it takes 3 years.
* After holding onto P's television set in Illinois for two and a half years, D moves with the set to Iowa and is sued by P there.
* What result?
  + There is a problem with *WHEN*: at what point to you look to the location?
  + After two years at that magical moment it was his, and he could go anywhere he wants with it.