Conflict of Laws Notes

1. **Property**
   1. Rule in 1st Rest - succession of interests in land is determined by law of state where land is located
2. What is argument for law of situs approach? Taken from an early draft of 2nd Rest
   * 1. State of situs has greatest interest in laws affecting its land
        1. Green: not always so
     2. Argument that only the state of situs can control land within its borders, so only that state’s law should apply
        1. Green: that at most argues that the judgment about the property should be issued by that state’s courts
     3. arg from efficiency and transparency of title
        1. someone doing title search will know that law of that state applies
        2. Green: argument doesn’t work when there is a judgment disposing of the property – the judgment will be something upon which the title searcher can rely even when the judgment applies another jurisdiction’s law

NOTE the exception to full faith and credit for judgments in connection with real property. We will discuss this more later.

Keep in mind the distinction between immovables and movables. Immovables are determined by the law of the site is state. With movables some issues are determined by domicile, such as intestate succession, validity of a will, revocation of a will, marital rights, etc.

But some issues, such as the conveyance of a movable, adverse possession, etc., are determined by the law of the place with immovable is.

Note: there is a distinction between a contractual obligation to convey property, which is determined by the law of the place of contracting, and whether there has actually been a conveyance, which is determined by the law of the place where the property is located.

Where is a movable located?

* 1. In Illinois, A conveys to B the personalty assets of his business, which operated out of Iowa. At the time of the conveyance some trucks used in the business are in Illinois. Under the law of Illinois the conveyance is valid. Under the laws of Iowa it is not. Who owns the trucks?

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* Caveat: The Institute expresses no opinion whether the conveyance of an aggregate unit of movables may not be governed by the law of the place where the various items are aggregated as a unit, or that a conveyance of an aggregate unit made up of a number of units, themselves aggregates, may not be governed by the law of the place where the entire unit is managed so far as such conveyance is not contrary to the public policy of a state in which any constituent unit is.

Notice that the first restatement punts on the idea of an aggregate unit of movables

Location of personalty can also be a problem with respect to intangible property

* + - 1. interest in copyright
      2. good will of a business

Problem of circularity again:

According to the law of Illinois the window treatments in a house on Mary Barrie’s property in Iowa are not fixtures and so are personalty, not real property. Under the law of Iowa they are fixtures. An Illinois court, using the First Restatement approach, is trying to determine whether Barrie’s will is valid with respect to the window treatments. What result?

a. Problem? Need law to determine applicability of state’s law

How does the first restatement answer it:

Section 208 Whether an interest in a tangible thing is classified as real or personal property is determined by the law of the state where the thing is.

Domicile

1. Example: White v Tennant
   1. White lived life in WVa on farm
   2. Sold farm and agreed with mother and siblings to occupy 40-acre tract in Pa
   3. Left – made it to Pa house, but wife complained too damp
   4. Dumped off goods
   5. Went to stay with family in WVa
   6. Visited, but never slept in Pa
   7. He died intestate in WVa at manor home
   8. Pa law gives ½ to brothers and sisters
   9. WVa law gives all to widow
   10. WVa ct applied Pa law
       1. Note that this is only with respect to the movables. Intestate succession of the immovables is determined by the law of the place where the immovable is located.
   11. Domicile = intent to make place your home plus actual presence

§ 15. Domicil Of Choice

**(1) A domicil of choice is a domicil acquired, through the exercise of his own will, by a person who is legally capable of changing his domicil.**

**(2) To acquire a domicil of choice, a person must establish a dwelling-place with the intention of making it his home.**

**(3) The fact of physical presence at a dwelling-place and the intention to make it a home must concur; if they do so, even for a moment, the change of domicil takes place.**

1. Why should domicile matter for this purpose of law of intestate succession
   1. Really a type of interest analysis…?
2. Note – ct says “even when the point of destination is not reached, domicile may shift in itinere, if the abandonment of the old domicile and the setting out for the new, are plainly shown.”
   1. cases tend to be those of reversion to original domicile (e.g., domicile of birth)
   2. If you are really establishing a completely new domicile, you need presence
3. Ct gives argument that White must be domiciled in Pa house bc not domiciled at old house and not domiciled at mansion house (family house)
   1. But is there is another option - he could be domiciled in West Virginia but not domiciled in any particular place in West Virginia
      1. It is important keep the possibility in mind
   2. Assume that he died in WVa after abandoning his house (in this example there is no Pennsylvania house at all)
      1. Where is he domiciled
      2. In WVa but at no place there
   3. So why can’t we say that here?
4. Problem –

A lawsuit, brought in West Virginia, is attempting to determine whether White domiciliary of West Virginia or Pennsylvania.

White lived in West Virginia until he was convicted of a federal crime in West Virginia and sent to prison in Pennsylvania.

There he died.

Under the law of Pennsylvania, prisoners have the domicile they had before imprisoned, since Pennsylvania follows the approach that a person cannot acquire a domicil of choice by any act done under legal or physical compulsion.

Under West Virginia law White is domiciled in Pennsylvania, since he intended to remain in that state after release. How should the West Virginia court decide?

§ 10. Domicil By What Law Determined

1. **A question of domicil as between the state of the forum and another state is determined by the law of the forum.**

Does it make sense to say that he is a Pennsylvanian when Pa rejects him?

* This brings up a very important issue in connection with interest analysis. In determining whether Pennsylvania is interested in its law applying, should we look to whether Pennsylvania courts would apply Pennsylvania law to the facts.
* In this case, a Pennsylvania court would not – does that mean Pennsylvania’s not interested?
* We will discuss this, arguably ad nauseam, in class later

1. distinguish
   1. Domicile from residence
      1. Residence requires some time, but domicile can be immediate
      2. no real concern about intent in connection with residents
      3. Usually don’t need intent at all
   2. Domicile from nationality
      1. Can be US national domiciled in France
   3. Diff from habitual residence – if
      1. Looks to intent like domicile, but you cannot become a habitual resident in a single day
      2. Hague Conf on Private Int’l Law

Note that the interest analyst also uses the idea of domicile when speaking about state interests. But it’s not clear that it is really domicile in the first restatement sense that is at issue. After all, I can be domiciled in a state while having no real connection with that state anymore, simply because I have not established a new domicile elsewhere.

1. Some examples of 1st Rest rules - no domicile if under physical or legal compulsion
   1. Has changed to more flexible approach
2. Other rules
   1. Validity of marriage
      1. Valid everywhere if complied with law where celebrated
      2. 121
      3. Although that jurisdiction will usually have a residence requirement
         1. but not domicile requirement
   2. So if domiciliaries of state A are married in state B accd to laws of state B it is valid even in state A
   3. As we will see, is taken back to a great extent
   4. BUT consider converse – invalidates marriage
   5. (set aside ***Obergefell v. Hodges***) Two domiciliaries of Massachusetts of the same sex enter into a marriage in Virginia, which does not allow for same-sex marriages.  Would the marriage be recognized in Massachusetts under 1st Rest.
      1. NO

§ 122. Requirements Of State Of Celebration

**A marriage is invalid everywhere if any mandatory requirement of the marriage law of the state in which the marriage is celebrated is not complied with.**

But place of celebration rule taken back

1. Taken back by 132 – don’t let domiciliaries escape in some situations
2. – esp when contrary to strong public policy of domicile

§ 132. Marriage Declared Void By Law Of Domicil

A marriage which is against the law of the state of domicil of either party, though the requirements of the law of the state of celebration have been complied with, will be invalid everywhere in the following cases:

(a) polygamous marriage,

(b) incestuous marriage between persons so closely related that their marriage is contrary to a strong public policy of the domicil,

(c) marriage between persons of different races where such marriages are at the domicil regarded as odious,

(d) marriage of a domiciliary which a statute at the domicil makes void even though celebrated in another state.

1. also true in 2nd Rest 283(2)
2. **(2) A** **marriage which satisfies the requirements of the state where the** **marriage was contracted will everywhere be recognized as valid unless it violates the strong** **public policy of another state which had the most significant relationship to the spouses and the** **marriage at the time of the** **marriage.**

A same sex couple domiciled in Virginia get married in Massachusetts. Assuming that a Massachusetts court uses the 1st Rest., will it recognize the marriage? No – will apply law of state of domicile.

Compare:

Uniform Marriage Evasion Act:

This is Massachusetts’s 1913 Act:  
  
No marriage shall be contracted in this commonwealth by a party residing and intending to continue to reside in another jurisdiction if such marriage would be void if contracted in such other jurisdiction, and every marriage contracted in this commonwealth in violation hereof shall be null and void.

Notice that this is even stronger –it doesn’t require a strong public policy of the domicile

Also taken back by

Section 134

**If any effect of a marriage created by the law of one state is deemed by the courts of another state sufficiently offensive to the policy of the latter state, the latter state will refuse to give that effect to the marriage.**

Notice the distinction between whether the marriage is valid, and whether a state will recognize an effect of the marriage.

If

* X and Y, an interracial couple, are married in Illinois, which allows such marriages. Both are domiciled in Illinois. Will they be allowed to cohabit if they are visiting Mississippi, which prohibits such marriages?

1. Other rules
   1. Legitimacy of child at birth determined by domicile of relevant parent when child was born
   2. Corporate law – in its internal affairs – issue of state of incorporation
      1. That is why Del law is important
      2. This might even be constitutionally obligated
   3. But law governing what corp wished to do in state is determined by law where it is accomplished
      1. property, K tort
      2. Corp incorped in state A, by law of state A a corp is not liable for the torts of its agents
      3. Agent of Corp commits tort in state B where corps are liable
      4. Corp is liable

problems of characterization

* must be faced by cts using 1st Restatement
* **Must always characterize**
* **BUT characterization can be used to become an escape device**
* **Became a kind of nascent interest analysis**

Characterization

* Tort/contract
* Levy v Daniel’s U-Drive Auto Renting Co

Conn SCt 1928

* + Daniels rented a car to Sack in Conn
  + While driving in Mass, Sack (with Maginn, another driver) negligently injured Levy, a passenger in Sack’s car
  + Conn statute held auto lessors liable for damage caused by lessee
  + Mass had no such statute – would have to show their negligence
  + Lex loci deliciti would argue for Mass law
* Ct characterized as contract, not tort
  + So Conn law applied
* what are reasons why it would make sense to have Conn law apply? – Doing interest analysis
  + Conn has greater interest in consequences of business dealings in Conn
  + Purpose of Conn statute (which is to encourage lessors to lease to careful drivers and to allow compensation to those hurt by those leasing cars) would be partially frustrated by application of Mass law
    - Mass thinks it’s inappropriate to hold someone who leases a car responsible for damage unless he isnegligent
    - But Massachusetts is not interested in imposing this view of justice on Connecticuters
* What is driving characterization
  + hidden interest analysis
  + BUT maybe also something more problematic
  + Venuto v Robinson (3d Cir 1941)
  + Robinson agreed in NC to lease his equipment to Ross Motor Lines and to take load for Ross from NC to NE
  + Robinson had accident in NJ
  + Venuto sues Robinson and Ross in NJ
    - NJ law allowed for derivative liability
    - NC law did not
    - Characterized as tort, bc allowed in-state P to recover…?
  + Same true in Levy
    - characterized as K, because that allowed in-state P to recover…?
  + Compare Carroll
    - characterized as tort even though kept in state P from recovering
* BUT does the characterization of the action as contractual make sense?
  + Was this part of the K
  + Ct says statute did not create liability – it imposes liability only on condition of entering into lease K
    - That was true in Carroll too – K is condition for tort liab.
  + How can it be contractual when the P is not party to the K
    - 3rd party beneficiary?
    - that's why court speaks of exclusive and sole beneficiary
    - could cause problems in other areas – for example statutes limitations
* also does it really help characterizing as contract, what about competing Mass law, is that contract too?
* Mass has tort rule of no liab

1. Haumschild v Continental Cas Co. (Wisc SCt 1959)
   1. Ms Haumschild sued former husband and his insurer
   2. Due to Cal auto accident that occurred when they were married
   3. Both domiciled in Wisc
   4. Trial ct dismissed bc Cal law applied
      1. Place of wrong
      2. Cal had interspousal immunity
   5. Wisc SCt reversed
      1. Overturning past Wisc SCt dec (Buckeye v Buckeye)
      2. Characterized as family law subject to law of domicile
      3. Why good idea? Interest analysis
         1. Purpose of interspousal immunity - there to prevent family discord  
            Green: also arguably follows from community property principles
         2. other purpose?
            1. Avoiding fraud against insurance companies due to collusive suits between husband and wife
         3. Either way California is not interested
         4. What are purposes of Wisconsin’s law?
            1. Deterrence of negligence by husbands toward wives
            2. Compensation of wives harmed by husband’s negligence
            3. Wisconsin is interested, especially concerning the compensatory purpose