5th Lect.

Haumschild

False conflict b/c Cal. doesn’t really have any interest in Wisc marital relations but again if you kept the facts but switch the laws a true conflict arises. Wisc wants to protect marital relations and Cal. wants to apply its law to encourage safe driving

* Court recharacterized tort case as one concerning marital relations in order to get Wisc law to apply
* Another argument, which the court rejected, was renvoi. Because a California court would have applied Wisc law, the plaintiff argued that the 1st Rest rule of using Calif law included Calif’s choice-of-law rules, which would mean using Wisc law

But this is contrary to the 1st Rst. With a few exceptions, it applies the laws of another state not which laws that state’s courts would apply. Generally won’t apply another state’s conflicts/choice of law rules

Distinction between renvoi and desistement

Renvoi – if your rules says apply the law of state X, that means apply whichever law X’s courts would apply. Borrow their conflicts resolution

Desistement – Don’t apply a state’s law if they wouldn’t apply their own law – does not mean you necessarily apply the law that their courts would apply

Desistement can be considered relevant to interest analysis – a state might be considered interested in its law applying only if its courts would apply its law

Characterization problems concerning contract/property

Swank v. Hufnagle

Ohio woman secured husband’s debt through promissory note entered into in ohio – backed up by mortgage on Indiana land

* + 1. Ohio allowed woman to be surety for their husbands
    2. Indiana did not

In suit to enforce security interest in Indiana, court characterized as property – Indiana law applied

Burr v. Beckler

* In Florida, Illinois wife guaranteed husband’s debt, backed up by security interest in Illinois property
* Florida had prohibition on wives acting as surety
* Illinois didn’t
* Suit in Illinois to enforce security interest

Here court characterized as contract – Florida law applies

Are these cases compatible with one another? Green – Yes – separate the contract issue from the property issue

In Swank there was a valid obligation under the promissory note, under the law of the place of contracting, but the security interest was not binding because contrary to law of the situs

In Burr there was no valid obligation under the promissory note under the law of the place of contracting, so there was no security interest in the situs state

* Thomson v Kyle
* Alabama woman executed promissory note in Ala backed up by mortgage on land in Florida
* Once again wives can’t be surety under Ala law
* They can under Florida law
* Suit in Florida to enforce security interest

FL courts recognize the security interest as established

Green: I have trouble understanding this one. If there is no valid promissory note, how can there by anything to back up with a security interest? This would apparently mean that the plaintiff could go after the security interest but not sue for the obligation under the note.

Caldwell v. Gore

* D erected dam on La property
* Obstructed flow of water upstream to P’s property in Ark
* La had servitude of lower land to higher to receive water flow freely
* Ark law allowed obstruction if reasonable etc.

Characterization – tort (nuisance) or property? If tort, then Ark law applies. If property, which property, the La or the Ark property? Court characterizes as La property case.

Grant v. McAuliffe

* 1. Collision in AZ
  2. Betw car in which Ps were riding (all were Californians) – and Pullen (also Californian)
  3. Pullen died
  4. Suit in Cal by Ps to recover from Pullen’s estate
  5. AZ law – no survivorship, Cal law there is

1st Rst clearly applies law of the place of the harm but the court calls the issue procedural to get the result suggested by interest analysis. Court also says the case is an estate question, which is domicile at time of death

Court uses analogy with statutes of limitations to argue for procedural characterization.

More generally, how do you distinguish between substance and procedure?

Here is one theory – does rule intend to regulate out of ct activity or litigation activity

* + 1. Evid. – litig activity
    2. Duty of care – out of ct

This is largely the way the 1st Rest does it

Problem

* + 1. Subst rules regulate procedure
    2. Too narrow for substantive – rules related to procedure can recalibrate substance
       1. change in burden from more prob than not to clear and convincing could be because the old rule was overdeterring

Here is a 2nd theory – outcome-determinativeness

* does the rule make a difference to how the case turns out? If so substantive
* that labels too many rules as substantive

3rd theory - what do the various jurisdictions’ officials want?

* Do those who made forum law want it to apply even when the right sued upon was created elsewhere
* Do those who created the foreign right want this rule to follow that right into another ct system?
* The problem is getting evidence of what the foreign jurisdiction’s officials want – their courts won’t say because they only talk about what they should do not what other courts should do
* Have to certify the question