Conflicts Lect 6

1. 1st Rest approach to subst/proc
   1. formalism – what is regulated – litig activity or out of ct activity

§ 592. Procedure In Court

The law of the forum governs all matters of pleading and the conduct of proceedings in court.

§ 594. Mode Of Trial

The law of the forum determines whether an issue of fact shall be tried by the court or by a jury.

§ 596. Witnesses

The law of the forum determines the competency and the credibility of witnesses.

§ 597. Evidence

The law of the forum determines the admissibility of a particular piece of evidence.

* 1. evidence/proof of facts
  2. service

problem – ignores state interest – other state may want its rule to be used by forum

general problem of 1st Rest – doesn’t actually consider other state’s view about scope of law – saw in other cases

1. How does 1st Rest approach this case?
   1. P ships goods in Mass using D as transport
   2. P received printed bill of lading which contains limitations on liability
   3. Under law of Mass, this bill is not sufficient to show that P assented to limitation
   4. Under law of NH, it is, though it is rebuttable
   5. P sues D in NH
   6. Should court assume that liab is limited?
   7. 1st Rest – Yes

§ 595. Proof Of Facts

(1) The law of the forum governs the proof in court of a fact alleged.

(2) The law of the forum governs presumptions and inferences to be drawn from evidence.

1. But that ignores Mass interest

exceptions to 1st Rest. Formalism

parole evid rule – this is an irrebuttable presumption – is considered substantive

§ 599 Integrated Contracts  
When a contract is integrated in a writing by the law of the place of contracting, no variation of the writing can be shown in another state which could not be shown in a court in the place of contracting under the law of that state, whatever the law of the other state as to integrated contracts.

1. Burden of proof for contributory negligence
   1. P, in state Arizona, is injured by the alleged negligence of D. P sues D in state California. By the law of Arizona, a plaintiff has no cause of action until he has shown that his own negligence did not contribute to his injury. By the law of California, contributory negligence is an affirmative defense to be pleaded and proved by the defendant.
   2. Must P show freedom from contributory negligence?
      1. Comment to 595
      2. Thus, if a requirement concerning proof of freedom from fault exists in the law of the place of injury and if such condition is there interpreted as a condition of the cause of action itself, or as affecting the nature or amount of recovery, the court at the forum will apply the rule of the foreign state (see § 385). In such a case, the remedial and substantive portions of the foreign law are so bound together that the application of the usual procedural rule of the forum would seriously alter the effect of the operative facts under the law of the appropriate foreign state.
         1. most 1st Rest jurs take burden of proof to follow cause of action
2. What about limitation on damages?
   1. Keep in mind
   2. 1st Rest on torts – limitation of damages is generally considered substantive – law of place of harm

412 The measure of damages for a tort is determined by the law of the place of wrong.

Problem of a damage limitation at forum

But might be procedural – 1st Rest recognizes that this is possible

§ 606. Limitation Of Amount Recoverable

If a statute of the forum limits the amount which in any action of a certain class may be recovered in its courts, no greater amount can be recovered though under the law of the state which created the cause of action, a greater recovery would be justified or required.

*Comment:*

* + 1. *Interpretation of statutes.* Such a limitation is imposed only by a statute; and it is a question of interpretation whether the statute qualifies the cause of action, applying therefore only to a cause of action created by the statute, wherever sued on; or whether it is to be construed as limiting the amount of recovery in any action of the type described brought in the state, wherever the right was created; or whether (as in some instances) it has both effects.
  1. 1st Rest suggests the following
     1. Assume mass damage limitation of one million – place crash there
     2. Further NY damage limitation of $500,000
  2. possibilities
     1. NY limitation procedural, MA limitation substantive ($500,000)
     2. NY limitation procedural, MA limitation procedural only ($500,000)
     3. NY limitation substantive only, MA limitation substantive (1 Million)
     4. NY limitation substantive only, MA limitation procedural only (no limit)

Notice that having no limit is not incoherent

Similar example

* 1. Marie v Garrison case
     1. Suit in NY re oral K entered into in Mo
     2. Both Mo and NY had a stat of frauds
     3. NY law said K’s “shall be void” is not in writing
        1. suggest subst or proc?
           1. Subst
        2. so does it apply here?
           1. NO
     4. Mo law said no K action “shall be brought” if oral
        1. suggest subst or proc?
           1. Proc
        2. so does it apply
           1. NO
     5. Is that crazy?
        1. Would not work in fully domestic case in either state’s ct

Is that a problem? Consider…

* + - 1. P enters into an oral K with D in Missouri
      2. No statute of frauds in Missouri
      3. But Missouri’s procedural statute of limitations on contract actions is two years
      4. P sues D on the contract in New York 3 years after breach
      5. New York has a statute of frauds (substantive) for New York contracts
      6. But its procedural statute of limitations is 4 years for contract actions

The case proceeds even though it would not proceed if it were all MO or all NY – and that isn’t a travesty

* + 1. Not like there is no law – what law is applied when oral K is entered into?
       1. MO
* MO law may have been misinterpreted in Marie, but the result is not incoherent

example of manipulation of subst/proc to get out of foreign law

* 1. Kilberg v NE Airlines
  2. Plane crash in Mass
  3. NY P, Mass D
  4. Bought ticket in NY
  5. Mass limitation on damages for wrongful death
  6. Suit in NY
  7. Applied NY law
  8. Two args by ct
     1. public policy exception – will talk about later
  9. 2nd – Mass limitation was procedural
  10. How about making it contractual… that is another escape device

1. what about direct action (sue directly against insurer)
   1. under 1st Rest – forum law 592 parties that may be sued

interest analysis suggests that state that created cause of action is interested

* allowing suits against insurers encourages juries to give excessive awards
* foreign state would not want that to happen on its causes of action in other ct systems

1. What about privileges
   1. In Alabama, a business man doing business in Alabama, gives certain information to an accountant, which is not privileged under Alabama local law. The information would, however, be privileged under the local law of Mississippi, the forum. Is the evid admissible?
   2. 1st Rest – no 597 – evid is procedural
   3. interest analysis – tends toward state where communication occurred
   4. 2nd Rest 139 – has a rule that makes it almost a requirement that it is privileged under both forum law and under law of most significant relationship

§ 139. Privileged Communications

(1) Evidence that is not privileged under the local law of the state which has the most significant relationship with the communication will be admitted, even though it would be privileged under the local law of the forum, unless the admission of such evidence would be contrary to the strong public policy of the forum.

(2) Evidence that is privileged under the local law of the state which has the most significant relationship with the communication but which is not privileged under the local law of the forum will be admitted unless there is some special reason why the forum policy favoring admission should not be given effect.

1. Stat Lims
   1. Trad 1st rest rule was that stat lims are procedural for conflicts purposes

§ 603. Statute Of Limitations Of Forum

If action is barred by the statute of limitations of the forum, no action can be maintained though action is not barred in the state where the cause of action arose.

§ 604. Foreign Statute Of Limitations

If action is not barred by the statute of limitations of the forum, an action can be maintained, though action is barred in the state where the cause of action arose.

* 1. BUT an exception
     1. Built in or specificity test (Davis v Mills)
        1. Stat lims will be substantive if not a general limitation, but one specifically directed to the created right
     2. arises in statutory causes of action
        1. the common law ones seemed to precede the limitations
     3. best when the limitation was written in the same section or at least same statute as cause of action

1. § 605. Time Limitations On Cause Of Action
2. If by the law of the state which has created a right of action, it is made a condition of the right that it shall expire after a certain period of limitation has elapsed, no action begun after the period has elapsed can be maintained in any state.  
   1. Bournias v Atlantic Maritime Co Ltd. (2d cir 1955) is an example
      1. Admiralty action (libelant)
      2. Panamanian seaman suing shipping co under Panamanian Labor Code
      3. Should Panamanian 1 yr stat lims apply
      4. Ct concluded NO
         1. Panamanian Labor Code is big
         2. and stat lims applies to almost all actions under it
         3. is that plausible
            1. this is a civil law country
   2. Why can’t the built in test apply to a common law right?
   3. Fundamental problem
      1. When would a court of the other jurisd. ever have occasion to directly answer q of whether its stat lims is subst
      2. Means saying when the courts of another jur should do something

Suit in NY on Mass cause of action, 1.5 year wait  
1) Mass. 2 yr. subst., NY 1 yr. proc. Dismissed under NY  
 - preclusive effect of dismissal? Probably w/o prejudice  
2) Mass. 1 yr. subst., NY 2 yr. proc. Dismissed under Mass  
 - preclusive effect of dismissal? preclusive  
3) Mass. 2 yr. proc., NY 1 yr. proc. Dismissed under NY  
 - preclusive effect of dismissal? Probably w/o prej  
4) Mass. 2 yr. subst., NY 1 yr. subst. Not dismissed  
5) Mass. 2 yr. proc., NY 1 yr. subst. NEVER DISMISSED…

To avoid 5), states always have a procedural limitations period for all actions