Lect. 7

Statute of Limitations

Generally you must speculate about whether a state thinks its SOL is substantive or procedural. Their courts have no reason to answer the question unless it is certified to the state SCt. That is because there is no appeal from, say, a NY state court system when entertaining a PA action to the PA SCt. Same problem in fed ct. No appeal from the federal court system when entertaining a PA action to the PA SCt.

The state’s courts will not answer the question

Eg a NY court is trying to determine whether a Mass 2 year stat lims for wrongful death is subst or proc – looks at the following cases…  
  
Mass ct applies Mass 2 year stat lims to Mass wrongful death action?

* No way to tell, could be either

Mass ct applies Mass 2 year stat lims to CT wrongful death action with 3-year stat lims?

* Means it is procedural but still could also be substantive

Mass ct refuses to apply Mass 2 year stat lims to NH wrongful death action with 3-year subst stat lims?

* Does this definitely show it is substantive?
* - no because it could still be solely procedural for Mass actions only – don’t know that the Mass ct wants a NY ct to use the 2 yr limitations period

This worry can extend far beyond stat lims

The Pa SCt holds, in a case on appeal from Pa state courts, that a property owner has only a duty not to be reckless to a trespasser.  
  
A NY state court is entertaining a tort action in which a Pa trespasser is suing a Pa property owner for negligence. The cause of action arose in Pa. Is the NY state court bound by the Pa SCt decision…?

We don’t know that the PA SCt wants– never has occasion to say this (unless certified to it)

Same point is true about whether a federal court is bound by the Pa SCt decision

In short, the disagreement expressed in Swift v. Tyson and Erie can be understood as different views about a state law question, namely whether a state SCt wants its decisions to bind federal and sister state courts when entertaining common law cases that arise in the state.

No one knew the answer because the state SCts never had occasion to answer it

BUT reverse Erie is an exception – when a state court entertains a federal action, there is direct appeal to the US SCt

- P sues D in state court under FELA.  
- FELA has a two-year federal statute of limitations  
- The forum state has a three-year procedural statute of limitations  
- P has waited two and a half years to sue  
- Is P barred?  
*Atlantic Coast Line Railroad Co. v. Burnette* (US 1915) (barred)

USSCt has held SOL is substantive and follows COA into state court.

Borrowing statutes

* There are reasons that a forum might use a sister state’s statute of limitations period when entertaining the sister state’s action that does not have to do with the sister state SOL being substantive

E.g. P (Pa) sues D (Pa) in NY state court for a cause of action that arose in Pa.   
The Pa procedural statute of limitation is 2 years.  
P has waited 2 ½ years.  
NY has a 3 year procedural statute of limitations.

Might borrow Pa limitation to keep people from forum shopping…

* Going to NY to get longer SOL

2nd Rest approach to SOLs has a borrowing element to it

2nd Rest - § 142. Statute Of Limitations  
The following § 142 replaces the original §§ 142 and 143:  
Whether a claim will be maintained against the defense of the statute of limitations is determined under the principles stated in § 6. In general, unless the exceptional circumstances of the case make such a result unreasonable:  
(1) The forum will apply its own statute of limitations barring the claim.  
(2) The forum will apply its own statute of limitations permitting the claim unless:  
(a) maintenance of the claim would serve no substantial interest of the forum; and  
(b) the claim would be barred under the statute of limitations of a state having a more significant relationship to the parties and the occurrence.

In effect you will choose the shortest SOL – this is even more unforgiving than a borrowing statute

- but this may be merely an interpretation of sister-state SOL as substantive –

- but such a generic conclusion that sister state SOL is substantive is odd in a modern approach - the whole point of modern interest analysis is to avoid generic answers and to look to the purposes of the particular law at issue

Green thinks it is a bad rule:

What is sometimes called the **twin aims of Erie** is really about a federal court borrowing forum state law to serve federal purposes

Guar. Trust v. York  
  
NY actions brought in federal court in NY  
NY has a SOL of 2 years  
Can federal court use its own common law limitations period (laches)?  
NO  
Does it matter whether the NY stat lims is subst. or procedural?

NO

* The point is not that NY wants its limitations period to be used, but that the federal court borrows it to avoid forum shopping

Notice that what is relevant is forum state law not the law of the state that created the COA

EG

A federal court in NY is entertaining a PA cause of action.  
The PA 3-year stat lims is procedural  
NY has a 2 year procedural stat lims  
Can the federal court use is own common law stat lims?

No – must use NY’s limitations period, even though neither the NY nor the Pa limitation period is substantive

* Much forum state law is borrowed under twin aims of Erie – not just forum state’s SOL

There might be something similar to the twin aims in reverse Erie  
P sues D in state court under FELA.  
- FELA has a two-year statute of limitations  
- The forum state has a one-year procedural statute of limitations  
- P has waited one and a half years to sue  
- Is P barred?  
- *Engel v. Davenport* (US 1926) (not barred)

* Here the federal court is forcing, in effect, the state court to borrow federal *procedure*
* It is not really about substantive law, since if the forum had dismissed the action under its own SOL, the dismissal would have been w/o prejudice

NOW-

RENVOI :

When your choice of law rule says use the law of X that is taken to mean – use the law that X’s courts would

Distinguish désistement – where the fact that the courts of X would not use their own law means that you should not too

Under renvoi if the courts of X would use Y’s law that means use Y’s law

Under désistement if the courts of X would use Y’s law, that means do not use X’s law

* Désistement is more relevant to interest analysis when the fact that X’s courts would not use X’s law is a reason to think X is not interested in its law applying

Renvoi is an escape device

* If you don’t like the law that your choice of law rule points to (say the law of Pa) – look to Pa’s choice of law rules and see if it would chose something other than Pa law for those same facts – if so, mention it to the court
* But more fundamentally renvoi is accepted under the 1st Rest in limited cases

**In re Schneider’s Estate** (1950): normally Swiss court would take jurisdiction of property, but the property has already been sold and the money is sitting before the NY court; *legitime* v. common law testator discretion;

NY choice of law is law of situs for rights in event of death

BUT the rule is not to use situs state law but the law that a situs state court would use

Here ct concludes a Swiss ct would sue NY law so applies NY law

Why renvoi for real property?

* The primary reason for its existence lies in the fact that the law-making and law-enforcing agencies of the country in which land is situated have exclusive control over such land. As only the courts of that country are ultimately capable of rendering enforceable judgments affecting the land, the legislative authorities thereof have the exclusive power to promulgate the law which shall regulate its ownership and transfer.…

Should do what they would do because if you don’t they will simply refuse to recognize your judgment

Green: but that’s not an issue here – the $ is in NY

And it usually isn’t an issue when renvoi comes up – if the property had not been sold, the NY court would never have taken jurisdiction of the case…

Will this lead to circling?

The swiss court also refers to what a NY court would do…?

Not generally – the situs court does not have a reason to try to imitate what another court would do, even if it does think that the other jurisd’s law should apply

* In Schneider it referred only to NY internal law

In addition, it is often the case that when you adopt renvoi, situs court will refer to situs law

* + - MOST of the time it just doesn’t matter whether you adopt renvoi or not
      * The same reasoning that led state A to look to law of state B will lead state B to look to law of state B
    - assume that every state had same choice of law rules
      * + Outcome would be exactly the same under renvoi or not

Circling only if = A wants to do what B’s courts do and B wants to do what A’s courts do does

This might have happened in…

In re Annesley

British subject in France dies

* domiciled in Fr according to British law
* NOT according to Fr law
* what law governs her movable property?
  + British law – law of domicile at death
  + French law – use law of nationality
* A French court had decided this issue as follows:
  + Chose Engl law, but thought this meant whole law – what an Engl ct would do - which referred back to French law
  + France decided to accept the reference as one to its internal law
  + Basically French court was saying we will do as Engl ct does and assumed that Engl would not say do as France ct does, but would choose internal law of France
* Now an Engl court had to decide
  + The truth is that the French court was wrong
  + Engl wanted to do as France ct does
  + Now we really have a circle
* Eng ct solved the problem by decided to do what the French ct had earlier done
  + - That is choose Fr internal law
    - But that was only because the Fr ct wrongly thought that an Engl ct would choose internal law of France
    - the Engl ct knew that was wrong…

Green – it is theoretically possible to have circling, but in general one ct will have a reason to break the circle of mutual deference

Americans generally reject renvoi

1st Rest

* only exceptions
  + land title and divorce decrees

2nd Rest

* renvoi only when
  + the objective of the particular choice of law rule is that the forum reach the same decision as that of another state (on the same facts)
  + examples, validity and effect of transfer of interests in land
  + and succession of interests in movables in a decedents estate

Some cts wrongly say that renvoi sometimes exists for marriage, wills

Green: this is really another phenomenon

Forum choice of law rules say law of X applies and law of X *incorporates or borrows* a standard from Y – thus will mean that by using the law of X one uses Y’s standard

* Massachusetts wants marriages celebrated in Mass to be valid if they are valid according to a standard upon which the parties might have reasonably relied
* Therefore Mass will treat a marriage entered into in Mass as valid if it is in accordance with Mass law *or* the law of the parties’ domicile
* Two Virginians who are cousins get married in Mass
* Marriage is illegal under Mass law but not Virginia law
* Marriage is being adjudicated by a Wisconsin court, which uses the place of celebration rule
* Wisc ct will use VA standard

another example

* CA ct is determining validity of will with respect to personalty in CA
  + decedent domiciled in CA at time of execution of will and executed it in CA, but domiciled in NY at time of death
* CA's choice of law rules is that the domicile of the decedent at death determines the validity of a will
* NY law wants to protect the expectation of the testator
  + says a will is valid if it is valid under the law of either the domicile at the time of execution, or the domicile at death or the place of execution
* CA ct should apply CA law

Final Escape Device:

Public policy exception

* truly an escape device, in the sense that its purpose is to avoid the application of the law chosen by the 1st Rest
* always was around
  + still is around under 2nd Rest.

Intro to idea

Loucks v Standard Oil (NY 1918)

- Ps are administrators of estate of Everett Loucks (NY domiciliary with wife and children NY domiciliaries)

- killed by negl of Standard Oil’s servants

- Ma has statute that allowing for liability due to death from negligence

- not directly tied to damages

- tied to degree of culpability

- between $500 and $10,000

- Ds argued that law was penal (we will discuss)

- also argued for public policy exception

- rejected

- not enough that NY and Mass law are different

- Must “violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal.”

1. assume that Cardozo had accepted that public policy exception applied
   1. what would he have done
      1. dismissed action?
      2. Applied NY law?
      3. Applied Mass law without Mass statute?
   2. Answer – dismissed action
2. Consider idea of vested rights
   1. Argues for Dismissal
3. Assume that after the dismissal, the action is brought in CT
   1. Can one argue res judicata?
   2. No, like dismissal for lack of jurisd
4. The idea of dismissing w/o prejudice follows from vested rights theory –
5. A foreign statute is not law in this state, but it gives rise to an obligation, which, if transitory, ‘follows the person and may be enforced wherever the person may be found.’ The plaintiff owns something, and we help him to get it. We do this unless some sound reason of public policy makes it unwise for us to lend our aid. ‘The law of the forum is material only as setting a limit of policy beyond which such obligations will not be enforced there‘ (Cuba R. R. Co. v. Crosby, supra, 478). Sometimes, we refuse to act where all the parties are non-residents. That restriction need not detain us: in this case all are residents. If aid is to be withheld here, it must be because the cause of action in its nature offends our sense of justice or menaces the public welfare.