Lect 8

Public policy exception

* 1. True public policy exception
		1. This is a jurisdictional theory
		2. The cause of action is so offensive to the forum state that the action is dismissed without prejudice.
		3. This coincides with the vested right theory. Other courts can always take the case
	2. False public policy exception
		1. A veil for interest analysis for 1st restatement jurisdictions.
		2. The 1st restatement jurisdiction does not want to change its choice of law rules, but uses the public policy exception to get around the choice of law provision applicable to the case.
		3. Apply forum law rather than dismissing the case, because forum is interested

**Mertz** (1936):

* 1. NY Wife suing NY husband for damages due to accident in CT
	2. Both from NY
	3. NY law – interspousal immunity
	4. CT not so – interspousal liability
	5. NY ct applied NY law for two reasons
1. capacity of parties to sue/be sued etc. is governed by forum law, e.g. whether husbands can sue wives is procedural;
2. bastardizing the public policy exception – using PP exception as a reason to apply forum law bc forum is interested

if CT law is contrary to the public policy of NY, NY ct really should dismiss the action without prejudice, but instead the NY court applies NY law

 Mertz court says you find public policy in the laws of the state; but obviously you can’t use the public policy exception whenever the forum’s laws are different from a sister state’s

 Under interest analysis, true conflict

NY interested –

NY law’s purposes - worries about fraudulent suit between husband and wife to defraud insurance co – worries about marital harmony

NY interested bc NY insurance contract and bc harmony of NY couple

CT has tort law without immunity bc wants compensation and deterrence

CT interested bc there was negligence to deter in CT (not interested in compensation to NY wife)

**Holzer**: (1938):

* 1. German Jew brings suit for breach of contract against D (which owns Schenker & Co, the employer of P)
	2. Two causes of action
		1. Dismissed in breach of the contract, asks for damages
		2. Provision in contract says that he receives $ if, through no fault of his own, he is unable to fulfill contract
	3. D’s defense
		1. German law required termination, bc he was Jewish
	4. Is this void on ground of public policy?
		1. Ct concludes NO (!!)

How can NY cts think that CT interspousal liability rule is contrary to NY public policy but Nuremberg decrees are not…?

Green:

1st this is not a case where NY has a legitimate interest in applying NY law

* Not like Mertz
* In addition, the pure public policy exception would lead to a dismissal w/o prejudice
	+ This is what the D wants! Won’t help the P

The P needs German law to have a cause of action but doesn’t want a German defense to apply

This is more problematic

Compare - German law requires everyone who is fired for being Jewish to pay for clearing out his office
Deutsche Reichsbahn sues in New York for costs of cleaning out Holzer’s office
Result? Obvious PP exception would apply

Kilberg’s use of PP exception was problematic in the same way that the P’s requested use of the PP exception was in Holzer

Kilberg v N’eastern Airlines
- NY P, Mass D, plane accident in Mass
- Ticket brought in NY
- Mass limit on damages for wrongful death
- Suit in NY
- Court characterizes as procedural
- But also refuses to apply limit on PPE grounds

* P wants the application of Mass law but without a part of Mass law (namely the damages limitation

Argument that if you want Mass law you get all Mass law – same for Holzer

1. Penal laws
	1. Criminal law of another jurisd is not applied
		1. Ct always applies its own criminal law
		2. Choice of law in criminal cases is really answered by jurisdiction
	2. BUT cts used to read the rule that penal law of another jurisd is not applied more broadly
		1. Punitive damages used to be characterized as penal law.
	3. Primarily applies to criminal law now or a civil case for a fine that goes to the state
2. Virginia Cases
	1. [McMillan v. McMillan, 219 Va. 1127 (1979)](http://msgre2.people.wm.edu/McMILLAN.html)
		1. VA couple gets in accident in Tennessee. Wife sues husband. Tennessee has spousal immunity law, whereas VA does not.
		2. Modern jurisdictions would apply the law of the state of the marital domicile.
		3. BUT Va SCt sticks to 1st Rest.
		4. Tries to make modern approaches look worse than they are
		5. Eg Second restatement - § 145. The General Principle
			1. The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.
			2. Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

the place where the injury occurred,

the place where the conduct causing the injury occurred,

the domicil, residence, nationality, place of incorporation and place of business of the parties, and

the place where the relationship, if any, between the parties is centered.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

* + 1. This looks like a lot to take into account, but there is a more specific rule
		2. Section 169 for the second restatement - intra-family immunity -

(1) The law selected by application of the rule of § 145 determines whether one member of a family is immune from tort liability to another member of the family.

The applicable law will usually be the local law of the state of the parties' domicil.

* + 1. Also discusses NY cases to make interest analysis look bad
		2. Babcock v. Jackson (NY 1963) -
			1. NY plaintiff is a guest in a car with a NY driver. Crashed into a stone wall in Ontario
			2. The issue was the application of the Ontario guest statute (says you can't sue the host for negligence) or NY law, which allows for host liability to guest for negligence
			3. NY ct held that Ontario guest statute does not apply.

This is a false conflict. Ontario is not interested in its guest statute applying, and NY is interested in its normal tort law applying

Purpose of guest statute is avoiding fraudulent suits between guest and host

Ontario not interested bc fraud in this case would not be felt in Ont

* + - 1. NY is worried about deterring negligence and compensation.

NY is interested in its law applying bc it would want compensation to a NYer

* + 1. VA SCt then points to Kell v. Henerson (NY Sup. Ct. 1965) to show how arbitrary modern approaches are
			1. Ontario guest and host
			2. Trip begins and ends in Ontario
			3. Accident in NY
			4. Court applied NY law, not Ontario guest statute
			5. Green: this is not arbitrary

Babcock was a false conflict

This is a true conflict. Ontario is interested in its law applying. Ontario statute concerns fraud and the effects of the fraud in this case would be felt in Ont.

NY is also interested. The purpose of NY law is compensation and deterrence

The compensatory interest is not there because there are no NYers to compensate

BUT the deterrence interest is there bc there is a NY accident to deter

* + 1. Also, even if they were inconsistent, these are early cases in NY and Kell is just a lower NY ct decision
		2. VA court sticks with the first restatement – chooses Tenn law – spousal immunity

Green: under interest analysis the VA ct is choosing the law of a state (Tenn) that is not interested and is frustrating VA’s interest in compensation to a Va spouse

Indeed it is worse – it is frustrating TENN’s interest too

Tenn has spousal immunity bc it thinks that compensation and deterrence are not as important as marital harmony and worries about fraud

 In this case the worries about marital harmony and fraud are not implicated bc the couple is not from Tenn

BUT Tenn does have the interest in deterrence of accidents in Tenn

Tenn would therefore want a rule of liability

Give the interests weights

Tenn has spousal immunity bc…

Comp (3) + Deter (2) < Fraud & Marital Harmony (6)

VA has spousal liability bc…

Comp (4) + Deter (2) > Fraud & Marital Harmony (3)

In this case applying Tenn rule of spousal immunity frustrates

Tenn’s deterrence interest (2) and frustrates Va’s compensatory interest (4)

What about NY interest in avoiding fraud and in marital harmony…? (will get to this in my critique of interest analysis)

* 1. [Jones v. R.S. Jones, Inc. 246 Va. 3 (1993)](http://msgre2.people.wm.edu/JONES.html)
		1. Plane crash in florida. It was serviced in VA. Wife of deceased pilot sued the service company. Issue is whether Florida 2 year SOL applies or VA's one year catch-all SOL applies.
		2. Florida's wrongful death statute applies. It is the place of the harm. That much is clear.
		3. Florida's wrongful death statute has its own SOL. Virginia has a procedural SOL applying to any COA before a VA court that does not have a SOL.
		4. VA's wrongful death SOL (which is also two years) is substantive, so it does not apply to this case.
		5. The VA supreme court could have said that the VA SOL is both substantive and procedural, rather than using the one year catch all or trying to apply Florida's SOL provision as substantive. But they did not do this.
		6. The VA supreme court wanted to ensure that the one year catch-all provision did not apply to an action in which both states have a policy of two year SOL in wrongful death cases.
		7. So - Virginia Supreme Court says that Florida's SOL is substantive.
		8. The Florida COA is statutory, but the SOL is not close to the COA in the statute.
		9. But using the Davis v Mills test VASCt says they are bound together.
		10. Says that the FL SOL is bound up with the FL right because the FL SOL clearly refers to FL wrongful death actions.
		11. Green: jibberish
			1. Here is the FL SOL

95.11. Limitations other than for the recovery of real property

Actions other than for recovery of real property shall be commenced as follows:

...

(3) Within four years.--

 (a) An action founded on negligence.

...

(4) Within two years.--

..

 (d) An action for wrongful death.

...

 (g) An action for libel or slander.

(5) Within one year.--

 (a) An action for specific performance of a contract.

...

The FL SOL refers to wrongful death actions generally, not FL wrongful death actions

The VA SCt says…

We think the limitation contained in Fla.Stat.Ann. § 95.11(4)(d) is directed so specifically to the right of action provided by the state's wrongful death act as to warrant saying that the limitation qualifies the right. Indeed, if the limitation is not so directed, one is constrained to ask, to what else could it possibly be pointed? The language, "[a]n action for wrongful death ... shall be commenced ... [w]ithin two years," is, to borrow from Davis v. Mills, "so specific that it hardly can mean anything else [than a qualification upon the newly created liability]."

NO – all procedural SOLs say the same thing, using the court’s reasoning, they would all be substantive