Conflicts Lect 1

What is this course about?

1. Law dealing with the fact that there are a number of jurisdictions of relatively equal level
   1. Really three issues
      1. PJ
         1. A Californian hits an Oregonian in California
         2. The Oregonian sues Californian in Oregon Ct
         3. When can this Oregon Ct assert adjudicative power over the Californian
         4. You did this in CivPro
      2. Choice of law
         1. should this Oreg ct use Oreg or Calif law?
         2. In this case, easy: Calif battery law
         3. But not always easy
         4. what statute of limitations should it use ?
         5. What atty client privilege law?
      3. recognition of foreign judgments
         1. Say the Oreg ct comes to a judgment for Oregonian
         2. Oregonian goes to Calif, to sue on j
            1. When will Cal ct recognize it?
   2. Note – two main elements to each of these three subjects –const’l and sub-const’l
      1. PJ
         1. what const’l limits are there on PJ?
            1. 14th A due process
            2. Restrictive – most of what you learn in Civ Pro is that
         2. Sub-const’l - what does a state or fed gov’t decide to do within those limits?
            1. eg long-arm statutes
      2. choice of law
         1. const’l limits under due process and Full Faith and Credit (FF&C) are much less
         2. what a state decides to do within those limits is great – so most law we learn is subconst’l (esp state) law
      3. recognition of foreign js
         1. cont’l limits very restrictive under FF&C
         2. so that will be all of what we learn
2. *Most* of course is on choice of law (some on recogn of foreign js)
   1. most on sub-const’l aspects of choice of law
3. Very unusual law
   1. William L. Prosser, Interstate Publication, 51 Mich. L. Rev. 959, 971 (1953).
      1. "The realm of the conflict of laws is a dismal swamp, filled with quaking quagmires, and inhabited by learned but eccentric professors who theorize about mysterious matters in a strange and incomprehensible jargon. The ordinary court, or lawyer, is quite lost when engulfed and entangled in it."
   2. Kim Roosevelt (recent Mich L Rev article) begins
      1. Choice of law is a mess.
   3. William Reynolds (U Maryland)
      1. Choice of law today, both the theory and practice of it, is universally said to be a disaster. The agreement on that proposition, among all branches of the profession, is nearly universal.
   4. Joseph William Singer
      1. confusing morass
   5. WHY dismal swamp
      1. Variety of doctrines
      2. Professors theories are the law
      3. Also very vague – no hard and fast rules
         1. closest is 1st Rest, but that breaks down
      4. more of a *method* than a body of law
4. Conflicts is important
5. You can run circles around your opponents and the court if you know it
   1. They will be trying to find out *the law*, when you know it is just a bag of arguments
6. Also if you take conflicts you will recognize conflicts problems when others won’t

We will start out with state law on choice of law – will do for around 2 months

Traditional Choice of Law Approach

1. Reigning theory of choice of law from late 19th cent to mid 20th cent
   1. Expressed in 1st Restatement (1934)
   2. Also still the law in some states (incl Va)
      1. Eg 1st Rest approach for torts still law in
         1. AL, Ga, Kans, Md NM, NC, SC, Va, WVa
2. **Ala Gt So RR co v Carroll case Ala SCT (1892)**
   1. Ala P, brakeman for RR, injured in Miss
   2. 2 trains uncoupled in run betw Ala and Miss
   3. due to negl inspection by P’s co-employees in Ala
   4. Miss still had fellow-servant rule
   5. Ala had an employer liability statute allowing recovery
3. Ct argued that no cause of action arose until harm in Miss, so Miss law applies, barring recovery
   1. § 386. Liability To Servant For Tort Of Fellow Servant

The law of the place of wrong determines whether a master is liable in tort to a servant for a wrong caused by a fellow servant.

Theory of exclusive spheres of lawmaking power (a theory of *legislative jurisdiction*) stands behind this

Story: [E]very nation possesses an exclusive sovereignty and jurisdiction within its own territory. The direct consequence of this rule is, that the laws of every state affect, and bind directly all property, whether real or personal, within its territory; and all persons, who are residents within it, whether natural born subjects, or aliens; and also all contracts made, and acts done within it….  
Another maxim…is that no state or nation can, by its laws, directly affect, or bind property out of its own territory, or bind persons not resident therein, whether they are natural born subjects, or others.

This is the same theory that brought you Pennoyer on PJ

A court has sole adjudicative power over persons and property within its borders

but here the wrongful act was in Alabama – why does Mississippi law apply?

There is no tort until the harm

* “Up to the time this train passed out of Alabama no injury had resulted. For all that occurred in Alabama, therefore, no cause of action whatever arose. The fact which created the right to sue, the injury, without which confessedly no action would lie anywhere, transpired in the state of Mississippi. It was in that state, therefore, necessarily that the cause of action, if any, arose; and whether a cause of action arose and existed at all, or not, must in all reason be determined by the law which obtained at the time and place when and where the fact which is relied on to justify a recovery transpired.”

If there was some law that focused just on negligent acts then Alabama law could apply

Notice that the place of contracting determines the existence of a contract and the scope of contractual duties

So plaintiff tried to argue the suit was under the contract:

[The plaintiff’s] theory is that the employers' liability act became a part of this contract, that the duties and liabilities which it prescribes became contractual duties and liabilities, or duties and liabilities springing out of the contract, and that these duties attended upon the execution whenever its performance was required, in Mississippi as well as in Alabama, and that the liability prescribed for a failure to perform any of such duties attached upon such failure and consequent injury wherever it occurred, and was enforceable here, because imposed by an Alabama contract…

Characterization – e.g. tort or contract? is a big issue in the 1st Restatement

Court rejects argument

The law is not concerned with the contractual stipulations, except in so far as to determine from them that the relation upon which it is to operate exists. Finding this relation the statute imposes certain duties and liabilities on the parties to it wholly regardless of the stipulations of the contract as to the rights of the parties under it, and, it may be, in the teeth of such stipulations.

Green wonders whether this is enough – sometimes a plaintiff will bring a contract action under a provision that is a compelled part of a contract

In 1928, the Alabama legislature amended the statute to specify that it applied to out-of-state injuries as long as the employment contract was formed in Alabama.  
  
Isn’t the statute void?

Casts into doubt the theory of exclusive spheres of lawmaking power

But perhaps this could be read as a law that focusses on the act of contracting – which is in Alabama

Two Alabamans get in fight in Ala  
P sues in Mississippi

PJ I due to D’s property in Miss  
does the Mississippi state court have the power to apply Mississippi law?

the problem is that if Mississippi was legally obligated to use Alabama law, then that would violate the theory of personal jurisdiction – Mississippi has *sole adjudicative power* over persons and property in Mississippi

* So the territorial theory of lawmaking power and the territorial theory of adjudicative power seem in conflict

Story concluded that the Mississippi court could use any legal standard it wanted – it did not have to use Alabama law

* Whether it chose to do so was a question of comity (did Ala cts respect Miss law? was using Ala law important to the expectations of the parties?, etc.)
* Does that mean the theory of legislative jurisdiction was useless? No – Mississippi could show comity for Ala law only if there was an Ala law and that was so only if Ala had legislative jurisdiction

The same point was true of the recognition of foreign judgments

Court of A with PJ issues a valid judgment, does a court of B with PJ have to recognize it? No, because the court of B has exclusive adjudicative power over persons and property within its borders. It recognizes A’s judgment only out of comity.

Does that mean the territorial theory of PJ is useless? No . First of all the court of B must have PJ or it can’t be in a position to show comity – it can’t issue a binding judgment at all. Second – B can’t show comity for A’s judgment unless A has a judgment and that is so only if A had PJ.

Beale’s vested rights theory is similar to Story’s – the same territorial theories of legislative and adjudicative jurisdiction – also the same position that the forum with PJ does not have to recognize valid laws and judgments of other jurisdictions BUT now the reason why it should recognize them, at its discretion, is not comity (which suggests that if they don’t recognize yours you shouldn’t recognize theirs) but the legal rights themselves.

Beale: Law being a general rule to govern future transactions, its method of creating rights is to provide that upon the happening of a certain event a right shall accrue. The creation of a right is therefore conditioned upon the happening of an event.... When a right has been created by law, this right itself becomes a fact.... A right having been created by the appropriate law, the recognition of its existence should follow everywhere. Thus, an act valid where done cannot be called into question anywhere.

Every sovereign must recognize the fact of vested rights, but that does not mean they are legally obligated to give them effect within their borders. They can refuse to do so for reasons of public policy for example