Conflicts Lect 11

Interest analysis

Finally – heart of course

It is false conflicts that motivate the move from 1st Rest to interest analysis

1. 1st case to make the change
	1. Babcock v Jackson
		1. NY P – guest in car w/ NY D-host
		2. Crashed into stone wall in Ontario
		3. Question of application of Ontario guest statute
		4. Guest statute exists…
			1. to prevent collusion between guest and host to defraud host’s insurer
		5. Ontario interested only of Ontario host
		6. So Ont not interested
		7. NY is interested in its guest-host negligence liability rule applying
			1. Purposes…?
				1. Deterrence of negligent hosts

Not interested because negligence occurred in Ont

* + - * 1. Compensation to guests harmed by negligent hosts

Interested because there is a NY guest deserving compensation

* 1. Dym v Gordon
		1. P and D both NY domiciliaries
		2. BUT taking courses at U of Colo
		3. Collision with another vehicle (from Kansas) in Colo
		4. Colo has guest statute
		5. NY has host liability for negligence to guest
		6. How not like babcock?
			1. another non NY party in accident
			2. relationship started in Colo
		7. Also new theory of guest statutes
			1. make ungrateful guests later in priority
			2. Colo interested bc the guest host relationship is a Colorado one
		8. So true conflict, bc NY interest as well
			1. wants recovery for NY guest

nevertheless NY ct applied Colo law

* + 1. Is this a permissible conclusion given it is a true conflict?
			1. should choose NY law…?

Tooker v Lopez

1. Marcia Lopez (NY) crashed car (overturned after trying to pass other car)
2. Killed guest in car, Catharine Tooker (NY)
3. And injured Susan Silk (Michigan)
4. All at Mich State
5. Action by Tooker’s father for wrongful death
6. Mich has guest statute
7. What makes it like Babcock?
8. no other side of accident (seems relevant)
9. What makes it like Dym?

parties residing in Mich, even though domiciled in NY

1. Court applies NY law

how to get out of Dym?

reinterprets guest statute

* + - * 1. Guest statutes can’t be about priority with respect to ungrateful guests
				2. can’t be, if it allows guest to sue host only if host is reckless

if you satisfy higher standard, then are not later in line

if you don’t satisfy standard you are not later in line, you don’t get anything

* + - * 1. ct argues that case is really about higher burden of proof because of worries of fraud
1. Green: maybe the priority argument doesn’t work but might still be about ungratefulness of guests
2. Purpose is view that guest is biting the hand that feeds him
3. Compensation is inappropriate
4. unless relationship is really abused (when the host is reckless)
5. that would suggest Mich is interested, because guest host relation is centered in Mich
6. More fundamentally the question of the purpose of a guest statute must be answered on a statute by statute basis

Purposes of CO guest statute could be different from Mich’s and Ont’s

1. But let’s assume that Mich guest statute is about fraud
	1. What suggests that NY is the interested state concerning fraud?
	2. Domicile of host may not be relevant
		1. It may be where the car is registered

Or where insurer is incorporated

where insurer has most customers

Ct draws distinction between conduct regulating and loss allocating rules

Very important distinction in interest analysis

* Used in NY’s Neumeier rules
* Used in La and Ore choice of law statute
* But also important in normal interest analysis

I am going to approach the distinction very carefully

The distinction is used for tort rules only

A tort rule either creates liability for harm that results from some conduct or it limits or blocks liability

If a conduct regulating rule and

creates liability that means it has liability as a means of discouraging the conduct that caused the harm
example – negligence liability (in its deterrence function)

If a conduct regulating rule and

blocks liability that means it forbids liability as a means of permitting people to engage freely in the harm-causing conduct
example – no liability for looking at me funny even if it hurts my feelings

The interest analyst will say that for conduct regulating rules the interested state is the state where the harm or the wrongful conduct occurred

Loss allocating rules

Creates liability and is solely loss-allocating means it has liability not to discourage the conduct that caused the harm – the conduct was rightful – but it has liability for a different reason

example – respondeat superior – liability of employer for torts of employee even though the employer was non-negligent in hiring and monitoring

* Basis is a view about where the loss should rest not a claim that the employer should have acted differently

Blocks liability and is solely loss-allocating means it blocks liability not to give people freedom to engage in the conduct that caused the harm – the conduct was wrongful – but it blocks liability for a different reason
example?

Charitable immunity barring liability against a charity for causes of action concerning negligent hiring and monitoring

Not saying charities should be free to negligently hire and monitor employees

But blocks liability for a different reason – view about appropriate compensation, for example

NOTE: loss allocating rules really come in two flavors

For some the purpose is really about loss allocation, that is, about appropriate compensation between the parties

Then usually the interest analyst will claim that the domicile of a party is relevant

* Domicile of the plaintiff if it is a loss allocating rule that creates liability
* Domicile of the defendant if it is a loss allocating rule that blocks liability
* But it helps when P and D are both from the state with the loss-allocating rule

But some “loss-allocating” rules are about encouraging or discouraging a certain type of conduct

* Eg charitable immunity might be about encouraging charitable activities
* Then domicile might not be relevant for the interest analyst but something else – where the relevant conduct at issue occurred or should occur
* But it is still different from normal conduct regulating rules because the conduct at issue is not the conduct that caused the plaintiff’s harem
* So the state of the harm or of the conduct that caused the harm will not necessarily be interested in its loss-allocating rule applying

NOTE: some laws are both conduct regulating and loss allocating, eg negligence liability

Assume that a jurisdiction does not have a cause of action for tortious interference of contract
that too is both conduct-regulating and loss-allocating

Compensation is inappropriate and people should be free to engage in the harm-causing conduct

***Abogados v. AT&T (9th Cir. 2000)***in Jalisco (a Mexican state), a NY corp interferes in contract of Mexican co.
Mexican co. in federal court in Cal. sues under NY law, which has a cause of action for tortious interference of contract
Jaliscan law does not

Court gets it right

* Is NY interested in its tortious interference of contract law applying
* No –
	+ Not interested in law in its conduct regulating function applying because neither the harm nor the wrongful conduct occurred in NY
	+ Not interested in its law in its loss allocating function applying because there is no NY plaintiff to be compensated
* Is Jalisco interested in its lack of a cause of action for tortious interference of contract law applying?
	+ Not interested in its law in its loss allocating function applying because there is no Jaliscan D to protect from inappropriate liability
	+ But court recognized that Jalisco was interested in its absence of a cause of action in its conduct regulating function applying because the conduct at issue was in Jalisco
	+ Jaliscan lawmakers think that people, even non-Jaliscans, should be free to interfere with contracts in Jalisco