1. Schultz v Boy Scouts
   1. Ps domiciled in NJ
      1. (parent) and two boys (one who committed suicide)
      2. Molested by Franciscan brother who was also scoutmaster
   2. Suing Ds in NY
      1. Boy Scouts
         1. NJ domicile at time
         2. now Texas
      2. and Franciscans
         1. Ohio domicile
      3. Molestation in NY
      4. And afterward in NJ
   3. NJ has charitable immunity
   4. Tex, NY do not
   5. Ohio does not in this case (negl hiring)
   6. Does charitable immunity apply?
   7. Start with Boy Scouts
   8. Ct draws distinction between conduct regulating and loss allocating rules
      1. Conduct reg – place of wrongdoing (harm or wrongful conduct)
      2. Loss allocating – domicile of parties (esp if they have a common domicile)
      3. Example of Conduct regulating?
         1. standard of care
      4. Why is charitable imm loss allocating?
         1. not saying charities should get away with negligent hiring
         2. post-event remedial rule about allocating loss
         3. what is purpose of char imm?
            1. not related to activities at all?
            2. really about encouraging charities in state?
         4. If so, is the domicile of parties relevant?

- assume the Schultz’s are domiciled in NY  
- the Boy Scouts are domiciled in TX  
- but the scout camp is always in NJ, where the molestation occurs

No NJ interest?

NJ interest still applies because charitable activities there?

* + - * 1. notice not really about domicile of parties
        2. but instead fact that tort arose out of NJ charity activities
      1. what is relevant charity toward NJersians, so what is relevant is whether the recipients of the charity in connection with the activity are largely NJersians?

What are reasons for NY law to apply?

Here, the opinion gets weird.

* “The three reasons most often urged in support of applying the law of the forum-locus in cases such as this are: (1) to protect medical creditors who provided services to injured parties in the locus State, (2) to prevent injured tort victims from becoming public wards in the locus State and (3) the deterrent effect application of locus law has on future tort-feasors in the locus State.”

They can’t argue for compensation, bc not NYers.. options 1 and 2 are sort of bizarre, 3 is a real one.’

1. claims that these first two interests are suspect anyway bc they mandate the application of the law justifying greater recovery, whether or not NY law
2. *The first two reasons share common weaknesses. First, in the abstract, neither reason necessarily requires application of the locus jurisdiction's law, but rather invariably mandates application of the law of the jurisdiction that would either allow recovery or allow the greater recovery. They are subject to criticism, therefore, as being biased in favor of recovery.*

This is a mistake

In interest analysis you are trying to figure out scope of a state’s law by looking to purposes of that law… for that state…

**So only look at NY interests, it is incoherent to apply NY interests to other state’s laws**

BUT – Green said earlier in Babcock that Ontario was interested in NY law applying because ontarioans got hurt in Ontario.

Ontario isn’t interested in its guest statutes applying, bc fraud will be felt in NY

Ontario really wanted normal tort law applying for reasons of deterrence

Ontario is really interested in normal tort law applying, minus its guest statute

NY is also interested bcz it wants to compensate the New Yorkers

Ontario has deterrence interest concerning Ontario accidents

What they are really saying at the end is that NY’s nonimmunity rule (absence of immunity) is loss-allocating

*Finally, although it is conceivable that application of New York's law in this case would have some deterrent effect on future tortious conduct in this State, New York's deterrent interest is considerably less because none of the parties is a resident and the rule in conflict is loss-allocating rather than conduct-regulating.*

This footnote has to be completely wrong… it would turn all conduct-regulating rules into loss-allocating rules whenever conflict with some loss-allocating rules (e.g. qualified immunity)

Right way is – 1 rule is conduct regulating (NY tort), and 1 is loss allocating (NJ immunity)

So it looks like a true conflict between NY’s deterrence interest and NJ’s loss allocation interest

But how strong is NY’s deterrence interest?

* Not that much – the negligent hiring occurred in NJ

We wouldn’t expect negligent hiring elsewhere to cause harm in NY

So this is a strong interest (preventing child molestation), but the interest will not be vindicated very much by applying NY law – interest isn’t realized/furthered to any significant extent

Schultz is a true conflict case

Another factor here is that P was forum-shopping, and thought NY was more likely to apply its law, so NY disliked the forum-shopping

In some respects Schultz is like Kell

Ontario residents

Trip begins and ends in Ontario

Accident in NY

Court applied NY law, not Ontario guest statute

NY has deterrence interest that the ourt favors over Ontaruio’s loss allocation interest

difference is most of the wrongdoing occurred out-of-state, so the balance comes out differently

Neumeier rules – if conduct, look to law of place of harm,

Following rules only apply if you decide rule is loss-allocating

Rule 1: P and D live in same state, apply domicile rule – This is Schultz concerning the Boy Scouts

Franciscans?

* + - * 1. Not common domicile
        2. This brings up the 3rd Neumeier rule
        3. " As to defendant Franciscan Brothers, this action requires an application of the third of the rules set forth in Neumeier because the parties are domiciled in different jurisdictions with conflicting loss-distribution rules and the locus of the tort is New York, a separate jurisdiction. In that situation the law of the place of the tort will normally apply, unless displacing it "'will advance' the relevant substantive law purposes without impairing the smooth working of the multi-state system or producing great uncertainty for litigants'""

Court concludes that using NJ law 'will advance' the relevant substantive law purposes without impairing the smooth working of the multi-state system or producing great uncertainty for litigants'"

Reason is primarily that NY has no significant deterrence interest

Also appeals to Forum-shopping – so want things to turn out the same way regardless of where suit is brought… so NY doesn’t pick its own law to achieve horizontal uniformity and thwart P’s attempt at forum-shopping in this case. They want a uniform rule in which forum is irrelevant.

-note: forum shopping and uniformity is only achieved if the states have the same rule… but at least its forum-neutral, it isn’t a selfish “its me!” explanation of why the forum state’s law should apply, more principled even-handed approach which doesn’t seem as contrary to purposes (perhaps not contrary to true rule) of FF&C clause, treating sister states equally as you treat yourself

So… we are talking about neutral rules – these need not achieve the same outcome, since First Restat. doesn’t care about forum and a true conflicts situation w/o forum have diff outcomes, it just knocks out the “its me!” selfish explanation because then you have a more principled approach

So you could say result is not merely bc it’s the forum and the rule cares what the forum is, but rather that this particular jdxn simply follows different rules and the forum follows its jdxn’s conflicts approach

**Unprovided-for Case**

When you look to purposes of each state’s laws, neither applies because neither state has an interest in its own law applying – neither cares…

* Arizonan and Californian get in accident in Arizona
* Californian dies
* Arizonan sues Californian’s estate
* AZ has no survivorship of actions
* Cal does

AZ: If you die, we won’t let them sue your heirs, bc we want to protect estates (to the detriment of plaintiffs).

Cal is pro-plaintiff

Arizona is pro-defendant

Arizona P, California D

To have an “unprovided-for case” here, you need:

P’s domicile law to benefit D

D’s domicile law to benefit P

Wrongdoing is in P’s domicile (or some third state that prohibits recovery)

Example is Neumeier:

* Ontario guest riding in NYer’s car
* accident in Ontario
* Ontario has guest statute
* NY doesn’t

\*\*However, Kramer doesn’t really think unprovided-for cases exist.

So its not true that No law applies, just that the Ontario guest statute doesn’t apply. Ontario tort law still applies, and its interests are still furthered (deterring Ontario accidents and compensating injured Ontarioans)

But in Arizona and California example, there is a problem with kramer’s arg. There was no survivorship at common law,

So we are beginning to create mythical laws that states might want if they had all their interests furthered…

Like NY’s hypothetical guest statute