1. Leflar – choice influencing considerations
   1. Wanted to replace 1st Rest rules not with another set of rules but with set of flexible choice-influencing considerations
   2. Note – these really are for resolving true conflicts
      1. Aim for
         1. predictability of results
         2. maintenance of interstate and int’l legal orders
         3. simplification of judicial task
         4. advancement of forum interest
         5. choosing better rule of law
      2. most interesting is idea of better law
         1. Minn & Wisc for tort and contract
         2. NH RI and Ark for tort only
      3. Sometimes better law becomes simply forum law
      4. Sometimes it tempers forum law, eg when law is obsolete
2. Example – Milkovich v Saari
   1. Two Ontario domiciliaries left from Ontario to shop in Duluth Minn
   2. Accident in Minn
   3. P (guest) sues D
   4. Ontario has guest statute (only gross negl)
   5. Minn does not
   6. Starts out by mentioning another NY case
      1. Kell v Henderson
      2. Accident in NY involving Ontario P and D
      3. NY law applied (1966)
      4. Does that seem a problem from persp of Schulz and Tooker?
         1. shared domicile and loss-allocating, then law of domicile
      5. BUT is possible that came out this way bc true conflict and so law of dom was applied
   7. Minn ct uses choice influencing considerations
      1. Notice does not first determine whether there is a true conflict
         1. but clear that Ont is interested
            1. conseq of fraud in Ont
         2. and ct makes clear that Minn is
            1. wants deterrence
      2. 1st predictability (for parties)
         1. NA bc negligence
            1. Not like contract
            2. I disagree
      3. Maintenance of interstate and internal order
         1. OK as long as choose law with a subst connection
      4. Simplification of judicial task
         1. ok bc either law can be applied (when is this applicable? – procedure)
            1. isn’t q whether the choice of law task is simpler?
      5. So q is last two
         1. forum interest
         2. and better law
         3. Minn has interest as “justice administering state”
            1. What does this sound like

publ policy exception

or better law

* + - * 1. Says contrary to our own concept of fairness and equity
      1. should say interested bc wants Minn roads safe
      2. also appeals to medical costs in Minn
      3. guest statutes are too vague and over-and under inclusive
    1. Ontario residents may think Ontario law is better
    2. Dissent – really forum law

1. Jepson Case
   1. MinnSCt 1994
   2. Jepson’s ND business had bought ins policy from D
   3. He was domiciled in Minn
   4. Bought through Minn agency for Jepson, his wife and two ND corps
   5. Covered seven vehicles, 6 registered in ND, one in Ind
   6. Policy charged ND rates (Minn rates higher)
   7. Injured in Ariz while passenger in car
   8. Wants stacked coverage
   9. Not allowed under ND law
   10. Not now allowd under Minn law, but was allowed at t of accident
2. Use choice influencing considerations
   * 1. 1st predictability (for parties)
        1. tort aspect not relevant
           1. I disagree
        2. important bc of K
           1. need to know what was bargained for
           2. ND argued for bc state where K was issued and place of insured property
           3. Minn argued for bc sold through Minn agency, Jepsons resided in Minn and drove care there
        3. important
           1. rates were ND rates

policy named a ND address and cars registered in ND

* + - * 1. maybe Minn law if accident is in Minn, but not so here
    1. Maintenance of interstate and internal order
       1. appl of Minn law manifest disrespect for ND sov
       2. appealing to fact that P was in fact forum shopping
       3. weighs in favor of ND law
       4. usually simply say OK as long as a connection
    2. Simplification of judicial task
       - 1. ok bc either law can be applied
         2. really about procedure
    3. forum interest
       1. Does not speak of Minn has interest as “justice administering state”
          1. Even if Minn interest, other matters come into play
    4. Better law?
       1. can’t always say forum law
       2. or sep standard would be meaningless
       3. here not clear which is best
    5. decide for ND law

1. Much skepticism about better law approach
   1. Even more intrusive than comp impairment
      1. At least that takes policies as you find them
   2. But perhaps a different approach
      1. Thinking of choice of law as choosing on the basis of interests
      2. Assume that they apply and if true conflict need to resolve
      3. Makes better law look bad
      4. BUT why not say more like gap
      5. Really no state has expressed interest
      6. Nothing applies
         1. BUT no reason to dismiss
         2. like a common law case
      7. this is Juenger
         1. think of Millikan v Pratt
         2. if Mass was not thinking of Mass women entering into Ks with out of staters
         3. and Maine was not thinking of Maine company’s entering into women with out of staters
         4. then free to make up whatever you want
         5. But draw on the relevant principles in your state’s or both states’ laws

NY’s approach – Neumeier rules

* Cooney v Osgood Machinery
  + Accident in Missouri
  + Cooney (MO) injured by machinery owned by Mueller (MO)
  + Machinery manufactured by Hill Acme
  + Sold in NY through Osgood (NY) to a Buffalo co that later sold it to Mueller
  + Cooney received workers comp from Mueller
  + Brought NY products liab action against Osgood
  + Osgood impleaded Mueller & Hill Acme
    - Contribution
  + Under MO law, if you’ve paid workers comp you are freed of other obligations, incl 3rd party contrib. actions
  + Mueller liable for contribution under NY law
* ct looks to Neumeier rules
  + 1st check if conduct reg or loss allocating
    - Here loss allocating
    - Is that so
      * what would happen if no contrib.?
      * NO deterrence. esp for less solvent party
      * the rule allowing for joint and several liab is loss allocating
      * contrib. returns some conduct regulation?
  + assume loss allocating
  + if common domicile, then use 1st rule (claimed to be the rule used in the Schultz case for Boy Scouts)
    - *Under the first Neumeier rule, when the driver-host and passenger-guest share a common domicile, that law should control*
    - remember problem in Schultz
      * not clear that other state where harm occurs (NY in Schultz) might not have conduct regulating interest
        + should be understood as a true conflict, so why necessarily apply loss allocating rule of common domicile
      * also, not clear that domicile is the criterion for loss allocating rule, especially for those “loss-allocating” rules that are actually indirectly conduct regulating
  + 2nd rule True conflict
    - P’s home state would allow him to win
    - D’s home state would allow D to win
    - Then use place of injury
    - Eg
      * P was guest of D
      * P is from NY (no guest statute)
      * D is from Ontario (guest statute)
      * if accident was in NY, then P wins
      * accident in Ontario, then D wins
      * place of injury tilts the balance
    - That’s true here
      * makes some sense if one counts interests (NY has one – loss, and Ontario has 2)
    - So MO
  + 3rd neither true – other split dom cases, use law of place of wrong
  + *Unprovided for cases*
  + *Or true conflicts when injury occurs in neither party’s home state*
    - use law of place of wrong, unless using another rule will advance relevant subst law purposes without impairing smooth working order of multistate system or creating great uncertainty for litigants

Guest (Ontario) sues Host (NY)  
Accident in Ontario – use Ontario (this is wrong, bc will use guest statute) – unprovided-for  
  
Guest (Michigan) sues Host (NY)  
Accident in Ontario (ditto)

This is the Franciscans in Schultz

* + - * NJ law harms the NJ P
      * Ohio law harms the Ohio D
      * choose place of injury (NY)
      * except in Schulz court concluded that using NJ law would help NJ policy of encouraging charitable activities
      * and won’t harm NY deterrence so much
  + Guest (NY) sues Host (Michigan)  
    Accident in Ontario
  + Problem wrt 2nd Neumeier rule here
    - What is the relevant injury?
    - Cooney’s?
      * he isn’t the real P here
      * NOT like Schultz
    - Osgood’s loss that is source of impleader against Mueller?
      * that is, having to pay compensation to Cooney
      * that’s in NY
    - general point
      * this is not a guest statute concerning a P and a D
      * it is law concerning impleaders
      * no reason to think these formulae are going to work
* Mess
  + Ct also used interest analysis
  + Mo has interest the functioning of its workers comp scheme
    - Ensure but also limit amount employers pay
  + NY has interest in allowing person who pays total amount under joint and several liab to receive contrib.
  + Irreconcilable
  + Place of injury would make some sense to break tie
  + But usually bc it gives rise to another interest of that state
    - and both parties associated with that state
  + NOT so here
    - Osgood has no relation to MO
* What to do? Court says…
  + Mueller really thought that there would be protection
  + Surprise to be liable
  + Not so for Osgood
    - One reason is NY law at time of sale did not allow full contrib.
    - Another is that they must know that there would be other reasons no contrib. possible
      * insolvent joint tortfeasor
      * no poss of PJ

on the other hand – no strict liab at time of sale either…

Here is problem: NY wants joint and several liability BUT only with possibility of contrib.

* but didn’t anticipate that contrib. would be barred by law of another state
* what would NY want here
* liability of Osgood only for its part
* in this case need a completely different rule to best serve state interests

Edwards v. Erie Coach Lines Co. (NY 2011)

Charter bus carrying members of Ontario women’s hockey team plowed into tractor trailer

Bus driver employer and leasor of bus are Ontario domiciliaries

Ps are all injured and deceased passengers (Ontario)

Tractor trailer driver his employer and company that hired trailer (trailer Ds) are Pa domiciliaries

Ontario caps nonecon damages

NY has no such cap

PA law? Pa Ds didn’t point to it

Probably no cap

Trailer Ds 10% liable and bus Ds 90%

Neumeier rules

* for bus Ds
* 1st Rule – common domicile concerning loss allocating rule
* So cap
* Criticism again – isn’t this really a true conflict
  + doesn’t place of harm have a conduct regulating interest?
  + NY would want full liability for adequate deterrence?
* For Pa Ds it is an unprovided for case – 3rd rule
* P’s burdens them and Ds burdens them
* so use law of place of harm unless blah,blah,blah…
* D’s don’t appeal to Pa law so must apply NY

Is it a problem that we have a possibility of the trailer Ds paying more even though only 10% liable?

Dissent

* do together under 3rd rule NY