Conflicts Lect 21

**Const’l Restrictions on choice of law**

1. Allstate Ins v Hague – very close case
2. ct’s decision can be justified but not the way court does it
	1. Husband works in Minn, lives in Wisc
	2. Owned three cars – each insured against uninsured motorists
	3. Killed in accident (in Wisc) with unins Wisc drivers
	4. Wife moves to Minn, remarries
	5. Files under ins policies
	6. Does stacking apply?
		1. Minn allows, Wisc does not
	7. Minn Ct uses Leflar to allow stacking
		1. Better law
		2. Also forum interest as a justice administering state
	8. Constitutionality challenged - upheld
	9. Notice no distinction betw FF&C and due process
		1. Except in Stevens concurrence
		2. Footnote 10: “This Court has taken a similar approach in deciding choice of law cases under both the Due Process Clause and the Full Faith and Credit Clause. In each instance, the Court has examined the relevant contacts and resulting interests of the State whose law was applied. Although at one time the Court required a more exacting standard under the Full Faith and Credit Clause than under the Due Process Clause for evaluating the constitutionality of choice of law decisions, see Alaska Packers Assn. v. Industrial Accident Comm'n, 294 U. S. 532, 294 U. S. 549-550 (1935) (interest of State whose law was applied was no less than interest of State whose law was rejected), the Court has since abandoned the weighing of interests requirement.”
	10. Brennan treats them as the same
		1. The lesson from Dick and Yates, which found insufficient forum contacts to apply forum law, and from Alaska Packers, Cardillo, and Clay II, which found adequate contacts to sustain the choice of forum law, is that for a State's substantive law to be selected in a constitutionally permissible manner, that State **must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.**
		2. What are contacts?
			1. member of Minn workforce
				1. commuted to work there
			2. allstate present and doing business in Minn
				1. that’s why there is PJ
			3. post event move to Minn

two concerns – party expectations and state interests

start with party expectations

* + 1. even dissent (Powell) agrees not a problem
		2. allstate agreed will cover accidents outside of Wisc
		3. knew he drove every day to Minn
			1. accident was not while he was driving there though
				1. arguably does not matter because Allstate thinks in the aggregate
			2. also could have included choice of law provision (Stevens)
		4. is large amount of Minn business relevant?
			1. NO
			2. would not think Minn law applies on that basis
			3. large amount of Alaska business too
			4. does not mean allstate can anticipate that Alaska law would apply to this Wisc accident
		5. is post event move relevant?
			1. no – allstate could not anticipate

now state interests

What about fact that Hague was a member of Minn workforce

* + 1. Is that an interest justifying application of Minn law?
			1. majority says yes
			2. Powell (dissent)
				1. How are Minn employment policies fostered by stacking?
				2. they aren’t
	1. Allstate does business in Minn?
		1. Not relevant to this case, otherwise Minn law always applies to any accident
	2. P is a Minn dom?
		1. this does give Minn interest in stacking rule
		2. does not matter (under book’s and Green’s analysis) that it is not relevant for party expectations
			1. notice that Powell says not relevant, but that is because of party expectations

So

 expectations satisfied bc Allstate knew car could have had accident in Minn

 state interests satisfied because of post-event move of P

No role played by fact that Allstate does lots of business in Minn

 - relevant only to PJ

two concerns

Reasonable expectations of parties

Legitimate state interest

due process takes into account both

* applying an unanticipated law is a violation of due process
* but so is the application of the law of a sovereign that does not have power over you

FF&C takes into account only state interests

There will always be due process protection for anyone before the ct – but FF&C is an issue only if sister state law is at issue

What does FF&C add?

- not waivable

- it protects the sister state, not the parties

rare to have it really be unconstional to apply forum law –

if there is so little connection with the forum it will usually dismissed on forum non conveniens grounds

but does happen with nationwide state law class actions

1. Phillips Petr v Shutts
	1. Q of whether Phillips should pay interest on tentative rate hikes to royalty owners of wells when it was not clear that hike would be approved
	2. Class of royalty owners from all over US
	3. Kansas cts allowed use of Kansas law to all claims
	4. Only 1% of leases and 3% of Ps in Kansas
	5. USSCt held unconstitutional under Allstate standard
		1. common fund in Kansas allows application of KS law to all claims…?
			1. Not really there – there only by virtue of litigation
		2. Ps consented to Kansas law?
			1. Not enough –D didn’t consent
			2. We also give little credence to the idea that Kansas law should apply to all claims because the plaintiffs, by failing to opt out, evinced their desire to be bound by Kansas law. Even if one could say that the plaintiffs "consented" to the application of Kansas law by not opting out, plaintiff's desire for forum law is rarely, if ever controlling. In most cases, the plaintiff shows his obvious wish for forum law by filing there.
			3. notice that it could be understood as an election of remedies if the Ps chose a law more favorable to the D
			4. how far can the parties go in consenting to law
				1. distinguish:
				2. P and D consent to the law of a state that has a legitimate interest

that seems OK – no due process worries because the parties consented

and no FF&C worries because the state chosen has a legitimate interest

P and D consent to the law of a state that has no legitimate interest

that could violate FF&C

But could it be understood as a settlement or election of remedies if they are simply consenting to law under which the P gets less?

likewise when the P alone chooses the law of a state that is more favorable to the D and that state lacks a legitimate interest that might be understood as the election of remedies

1. Subseq case – Sun Oil v Wortman
	1. Can ct use Kansas SOL
	2. Ct upheld
		1. Makes sense
			1. What about party expectations?

Everyone knows SOL of forum might be applied

* + - 1. What about state interests
				1. procedural interest
	1. But Scalia – looks at it historically - SOLs were treated as procedural at time adoption of FF&C Clause
		+ 1. Book says questionable decision
				1. KS would not be interested in giving greater amount of time to non-Kansans
				2. Green: Why not? – if tied to views about evidence
			2. In any event the sister state SOLs were not substantive
			3. “Although in certain circumstances standard conflicts law considers a statute of limitations to bar the right, and not just the remedy, petitioner concedes, that (apart from the fact that Kansas does not so regard the out-of-state statutes of limitations at issue here) Texas, Oklahoma, and Louisiana view their own statutes as procedural for choice-of-law purposes, see”
				1. So what is the reason to apply them?
				2. do Kramer & Roosevelt think that TX’s SOL must be applied instead of KS’s even though KS wants its SOL to be applied and TX does not care…?