1. **Traditional choice-of-law approach:**
2. Legislative jurisdiction is defined territorially
   1. But actually, in the end all choice of law is defined territorially
3. A multistate transaction can be localized within a particular territory
   1. By a triggering event
   2. Place of harm with respect to torts, etc.
4. Once the localizing event occurs a vested right is created that can be taken to any jurisdiction, which must recognize its existence, although it need not give it domestic effect (eg because of public policy of forum)
5. **Torts:  
    *place of the harm (but really, place of the wrong—a completed wrong)***

Problems:

1. Identifying place of the harm – (harm stretching out over a number of states)
2. Circularity (what is harm is itself a legal question)
   1. Must presume a certain amount of harm to figure out what the law is, and to determine the place of the harm
   2. Use this place’s law to figure out what is compensable
3. Characterization
   1. You can take a certain COA and re-characterize it as another COA.
   2. This is a big temptation in the first rst because everything is determined by the characterization.
   3. Not just a tricky escape device; really have to do it to accurately apply the first rst.
4. Frustrating reasonable expectations of parties
   1. Concerning what law would apply.
   2. Fortuitous where the harm occurred.
5. Frustrating state interests

Aiden’s problem

P takes poison voluntarily in Alabama, has fear there, and never suffers harm  
Alabama recognizes fear as a compensable harm

Just because there is no compensable harm under the common law can’t mean that there is no harm to determine which jurisdiction’s law applies – must be Ala law

Can ignore because there is no choice of law problem

Now…

P takes poison voluntarily in Mississippi, has fear in Alabama, and never suffers (physical) harm

P takes poison voluntarily in Alabama, has fear in Mississippi, and never suffers (physical) harm  
Alabama recognizes fear as a compensable harm; Mississippi doesn’t

Again, there is no harm under the common law to determine what law applies, but now there is a choice of law problem

Green thinks it must be that the law of the place of the fear applies, although it is hard to see how to work this out under the 1st Rest.

1. **Contracts**

Contracts

* Miliken v. Pratt
  + FACTS: K (guaranty) between seller (Maine) and wife (Mass) of buyer (on behalf of husband). Signed by defendant and sent by husband in Mass. to the seller in Maine. Forum is Mass., but at the time of contracting Mass. did not allow married women to make such a K whereas Maine did.
  + What law applies: Law of the place of contracting = Maine
    - Signed in Mass., mailed in Mass., but K in Maine?
      * Under the Mailbox Rule acceptance is consummated when mailed
      * In this case, the acceptance of the unilateral contract is by performance, thus, wife is offeror and the seller accepts the offer by mailing goods
  + Complicated: law on validity of contract is determined by where K entered into, if there is a contract, which there may not be…
    - * Where acceptance occurred is itself a legal question
        + Possible that Maine would determine that acceptance was in Mass. and wife was acceptor; Mass. may view as unilateral K with acceptance in Maine

By Maine lights, Mass law applies

By Mass lights, Maine law applies

* + - * + Triggering event (place of K) is itself legal, and therefore must know what law applies (at least concerning the place of acceptance) before you can determine what law applies?!

Situation is worse in contracts than in torts because there is much disagreement about the nature of contracts, what constitutes acceptance, etc.

The 1st Rest says 2 things – the forum determines the place of contracting and the general common law does

* The answer is probably that the general common law as interpreted by the forum does

assume that Milliken is litigated in Wisconsin court

under Mass law and Maine law, the contract was consummated when acted upon by the Ps in Maine

but under Wisconsin law the contact was consummated in Mass when guarantee was sent

Wisc court would conclude that Mass law applies…

§ 332. Law Governing Validity of Contract

* The law of the place of contracting determines the validity and effect of a promise with respect to:  
  (a) capacity to make the contract;  
  (b) the necessary form, if any, in which the promise must be made;  
  (c) the mutual assent or consideration, if any, required to make a promise binding;   
  (d) any other requirements for making a promise binding;…
  + All associated issue are determined by the law of the place of the K
* P and D contracted in Maine.
* P sues D for breach, but D argues that the contract is invalid because of a misrepresentation by P made in Massachusetts.
* under Maine law the misrepresentation does not invalidate the K
* under Mass law it does
* is the K invalid?

No

§ 347

* The law of the place of contracting determines whether a promise is void, or voidable for fraud, duress, illegality or mistake or other legal or equitable defense.
* X and D enter into an employment contract in Maine.
* Under the law of Maine, X cannot assign his interest in future wages.
* Under the law of Massachusetts, he may.
* In Massachusetts, X assigns his interest in future wages to P.
* Is the assignment valid?
  + First thought: Yes; MA law applies because an assignment is a separate K made in MA
    - Two Ks: employment K and assignment K
  + But actually, it’s ME law that applies…
    - Really, interpreting the nature of the employment K.
    - ME says w/ respect to the employment K that parts of it aren’t assignable

§ 348

* Whether a right under a contract is capable of being transferred by the owner, is determined by the law of the place of contracting
* X and D enter into an employment contract in Maine.
* Under the law of Maine, D may assign his interest in future wages.
* But in Maine the assignment must be in writing, whereas in Massachusetts, assignment may be done orally.   
  In Massachusetts, X assigns his interests in future wages to P orally.
* Is the assignment valid?
  + Now we’re asking if the assignment K itself is valid; therefore MA

§ 352

* The law of the place of assignment determines the formalities necessary to make an effective assignment of a right under an informal contract.
* In Maine A agrees to sell and B to buy goods to be packed in Massachusetts in the presence of two adults.
* Under Maine law someone is an adult if 18 or over.
* Under Massachusetts’s law the relevant age is 17.
* 17 year olds are used.
* Has the provision been satisfied?
  + Place of performance is used for the details of the manner of performing K.
  + Distinction between *duties* (place of K) and *details* (place of performance).
    - But, it’s really hard to draw these distinctions
  + Obviously, a rule that can be contracted around (K could state must use 18yo)

§ 361

* The law of the place of performance determines the details of the manner of performing the duty imposed by the contract
* **Place of Performance (*pretty much everything to do with Breach)***
  + Manner of performance
  + Time and locality of performance
  + Excuse for non-performance
  + Also right to damages and measure of damages

**choice-of-law clauses in contracts…?**

**Nothing in 1st Rest – we will discuss in connection with the 2nd Rest.**

1. **Property**

***In re Barrie’s Estate*** (Iowa 1949)

Facts:

* What counts as revocation of a will?
* Before the Iowa Court (previously litigated in Illinois)
* Parties domiciled in Illinois (all of them)
* Decedent wrote and attempted to revoke will in Illinois
* Illinois court and Illinois law determining validity of will of what is movables and Illinois real property
* Looks like previous judgment purported to apply to all property.
  1. Why not binding upon Iowa court? Full Faith and Credit?
  2. Crude exception to not so iron-clad rule. Real property is the exception. Situs state courts can ignore prior judgments by other states that purport to act in rem on real property in the situs.
* Differences in laws: how the will can be voided
  1. IL: you can just write void (therefore will is invalid and IL property and personalty go in intestate succession)
  2. IA: must be witnessed by two persons or destroyed (concern for fraud)

Iowa court applies Iowa law – situs rule

§ 250. Revocation Of Will Of Land

* The effectiveness of an intended revocation of a will of an interest in land is determined by the law of the state where the land is.

But doesn’t this statute answer the case?

§ 633.49 (IA Statute)

* “A last will and testament executed without this state in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state, provided that such last will and testament is in writing and subscribed by the testator.”

No - in derogation of the common law, so read narrowly. Not about revocation.

This statute is curious anyway –

is Sec. 633.49 a choice-of-law rule, like the rule – “the law of the testator’s domicile at death applies to the validity of a will”

an Iowa choice of law rule that chooses another jurisdiction’s law is really saying that the other jurisdiction has power – it’s not iowa’s baby

But Sec. 633.49 is different. It is an attempt to legally regulate wills, but because people often assume that the law of their location or their domicile applies, this law incorporates those standards to protect their expectations. Not a choice of law rule at all.

This becomes important for other courts

imagine that an Illinois court was deciding the case according to Iowa law  
  
would it take Sec. 633.49 into account?

If it was a choice of law rule, the general view is no

BUT if it incorporated other states standards into Iowa law, yes –

This Illinois court might use Illinois standards because Iowa law incorporated them

Situs state’s law determines a lot of other stuff, e.g. Dower, etc.

Exercise 1:

* Husband dies intestate in Illinois
* Husband owns land in Iowa and Nebraska
* Under Iowa law, wife gets all property of husband
* Under Nebraska law, wife gets ½ - rest goes to children
* Who gets what?
  + Wife gets everything in IA and half of what’s in NE

**Immovables:**

* Distinction drawn in the first rst between movables and immovables
* Immovables include real property, but also some things that are considered personalty, esp leaseholds

why have the lex loci rei sitae approach?

**Early draft of 2nd Restatement:**  
First, land and things attached to the land are within the exclusive control of the state in which they are situated, and the officials of that state are the only ones who can lawfully deal with them physically. Since interests in immovables cannot be affected without the consent of the state of the situs, it is natural that the latter’s law should be applied by the courts of other states. The second reason is that immovables are of greatest concern to the state in which they are situated; it is therefore proper that the law of this state should be applied to them. The third reason is to be found in the demands of certainty and convenience…

* First argument: power—no other state can control the property (except other states have some capacity, could issue judgment in personam concerning the property that the situs state would have to respect)
* Title searches often cited as relevant for situs approach. Maybe dispositive. Person doing title search knows what law is applying and therefore definitively “who owns this property”

Is it true that the situs state is really the one with the greatest interest in its law applying…?

***Miller v. Lucks*** (Miss. 1948)

Facts:

* A white man and black woman (originally from Mississippi) live in Illinois and eventually marry there.
* The marriage is valid under Illinois, but not Mississippi, law.
* Mississippi does not, in general, recognize interracial marriages even if they are valid under the laws of the state where the marriage was celebrated.
* The woman dies and the husband claims a husband's interest in Mississippi property owned by the wife.
  + MS SCt concludes they don’t have an interest in their law applying (even though they hate interracial marriage). This could have been done through a will, the fact that the property goes to him is really no skin off their nose.
  + The situs state just isn’t really interested.