Conflicts Lect 4

Spent more time on the distinction between choice of law rules that choose another jurisdiction’s law and rules that incorporate another jurisdiction’s legal standards into forum law

The first give lawmaking power over to the other jurisd. The second are assertions of lawmaking power, but the standard of the other jurisd. is used (usually to accommodate the expectations of the parties)

The first are not used by another other fora when determining which law to choose (with one exception, to be discussed later)

e.g.

a Georgian sues her Georgia husband for negligence in Georgia state court in connection with an accident in California

Georgia has spousal immunity and CA does not

a California court, using interest analysis, would apply Georgia law. (Georgia is interested in the marital harmony of Georgians even when the accident is in CA)

The GA choice of law rule (1st Rest) says CA law applies (place of harm)

Does that mean the GA ct will apply GA law because a CA ct would do so?

NO

BUT if it is a rule of incorporation, the forum will use it because it is simply a way of identifying the content of the other jurisdiction’s law

Property – 1st Rest rule is law of the situs

§ 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.

One justification is that it allows for certainty in a title search – always know your own law applies

Green is skeptical – if Iowa ct in in re Barrie had applied Ill law, it would have been expressed in a judgment and that judgment would be recorded, so it would be easy to see in a title search

Also suggestion that situs state most interested in its law applying  
is it most interested in Barrie?

Iowa rule (no valid revocation) has as its purpose worries about fraud – but effects of fraud would be on Illinoisans

Ill rule (valid revocation) has as its purpose is vindicating testator’s intent – and testator is Illinoisan as are the beneficiaries of her intent

So Ill is more interested

Also claim is that the situs rule is clearer – but that is not the case if 1st Rest cts use characterization tricks, misuse public policy exception etc.

and even honest characterization problems occur

* e.g. Massachusetts (but not New Hampshire) has a law preventing wives from contracting with their husbands.
* X (from Massachusetts) enters into a contract in Massachusetts to convey New Hampshire property to her husband.
* What result?
* Contract or property?

Also argument that only the state of situs can adjudicate interests in land, so only that state’s law should apply

actually not so

in personam judgments have to be given effect in situs state under Full Faith and Credit

just not in rem judgments

situs rule is general rule for immovables

Not merely property, but other interests in property incl. leaseholds (which are usually understood as personalty)

Law of state where immovable is located applies

Lex loci rei sitae

More examples of real property

In Illinois A (a domiciliary of Illinois) conveys property located in Iowa to B (a domiciliary of Illinois). A then dies.

Under Illinois law, A’s widow retains a dower in the  property (that is, a life estate in 1/3 of her husband's property that cannot be deprived by any transfer by the husband during his lifetime).

Under the law of Iowa, she does not retain a dower. Does A’s widow retain a dower or not?

No dower

220. Effect Of Conveyance Of Interest In Land

**The effect upon interests in land of a conveyance is determined by the law of the state where the land is.**

§ 237. Effect Of Marriage On Existing Interests In Land

**The effect of marriage upon interests in land owned by a spouse at the time of marriage is determined by the law of the state where the land is.**

What about movable property?

We know that succession and validity of wills is determined by the law of the domicile at death, not law of situs of moveable

Also rights of spouses in one another’s movables is by law of domicile

BUT other rights are by law of situs

Eg formalities of valid conveyance

Law concerning adverse possession

Under Illinois law of adverse possession, one must hold onto personalty for 2 years to acquire title. Under Iowa law of adverse possession, it takes 3 years. After holding onto P's television set in Illinois for two and a half years, D moves with the set to Iowa and is sued by P there. What result?

It’s D’s – this follows from vested rights theory

Where is property located

* Problem of intangibles
  + - * copyright
      * good will in business

also aggregates of movables

* Caveat: The Institute expresses no opinion whether the conveyance of an aggregate unit of movables may not be governed by the law of the place where the various items are aggregated as a unit, or that a conveyance of an aggregate unit made up of a number of units, themselves aggregates, may not be governed by the law of the place where the entire unit is managed so far as such conveyance is not contrary to the public policy of a state in which any constituent unit is.

Also bootstrapping problem – what is real property or personalty is a legal question

According to the law of Illinois the window treatments in a house on Mary Barrie’s property in Iowa are not fixtures and so are personalty, not real property. Under the law of Iowa they are fixtures. An Illinois court, using the First Restatement approach, is trying to determine whether Barrie’s will is valid with respect to the window treatments. What result?

aProblem? Need law to determine applicability of state’s law

208 Whether an interest in a tangible thing is classified as real or personal property is determined by the law of the state where the thing is.

Domicile

White v Tennant

White lived life in WVa on farm

Sold farm and agreed with mother and siblings to occupy 40-acre tract in Pa

Left – made it to Pa house, but wife complained too damp

Dumped off goods

Went to stay with family in Wva

Visited, but never slept in Pa

He died in WVa at manor home

Pa law gives ½ to brothers and sisters

WVa gives all to widow

WVa ct applied Pa law

Domicile = intent to make place your home plus actual presence

§ 15. Domicil Of Choice

**(1) A domicil of choice is a domicil acquired, through the exercise of his own will, by a person who is legally capable of changing his domicil.**

**(2) To acquire a domicil of choice, a person must establish a dwelling-place with the intention of making it his home.**

**(3) The fact of physical presence at a dwelling-place and the intention to make it a home must concur; if they do so, even for a moment, the change of domicil takes place.**

Why should domicile matter for this purpose of law of intestate succession

Really a type of interest analysis

Note – ct says “even when the point of destinitaion is not reached, domicile may shift in itinere, if the abandonment of the old domicile and the setting out for the new, are plainly shown.”

Rare - cases tend to be those of reversion to original domicile (domicile of birth)

vast majority of cases need presence (though not actual dwelling)

Ct gives arg that must be domiciled in Pa house bc not domiciled at old house and not domiciled at mansion house (family house)

But is there another option

Assume that he died in WVa after abandoning his house

Where is he domiciled

In WVa but at no place there

So why can’t we say that here?

A lawsuit, brought in West Virginia, is attempting to determine whether White domiciliary of West Virginia or Pennsylvania.

White lived in West Virginia until he was convicted of a federal crime in West Virginia and sent to prison in Pennsylvania.

There he died.

Under the law of Pennsylvania, prisoners have the domicile they had before imprisoned, since Pennsylvania follows the approach that a person cannot acquire a domicil of choice by any act done under legal or physical compulsion.

Under West Virginia law White is domiciled in Pennsylvania, since he intended to remain in that state after release. How should the West Virginia court decide?

§ 10. Domicil By What Law Determined

1. **A question of domicil as between the state of the forum and another state is determined by the law of the forum.**

distinguish

residence

Residence requires some time, but domicile can be immediate

But no real concern about intent

nationality

Can be US national domiciled in France

habitual residence

Hague Conf on Private Int’l Law

* Like domicile but requires more time there

Other rules

Validity of marriage

Valid if complied with law where celebrated

So if domiciliaries of state A are married in state B according to laws of state B it is valid even in state A

As we will see, is taken back to a great extent concerning validating marriages that are OK in state of domicile

BUT consider converse -

Two domiciliaries of Massachusetts of the same sex enter into a marriage in Virginia, which does not allow for same-sex marriages.  Would the marriage be recognized in Massachusetts under 1st Rest.

NO

§ 122. Requirements Of State Of Celebration

**A marriage is invalid everywhere if any mandatory requirement of the marriage law of the state in which the marriage is celebrated is not complied with.**

But place of celebration rule taken back

Taken back by 132 – don’t let domiciliaries escape law of domicile if strong public policy

§ 132. Marriage Declared Void By Law Of Domicil

A marriage which is against the law of the state of domicil of either party, though the requirements of the law of the state of celebration have been complied with, will be invalid everywhere in the following cases:

(a) polygamous marriage,

(b) incestuous marriage between persons so closely related that their marriage is contrary to a strong public policy of the domicil,

(c) marriage between persons of different races where such marriages are at the domicil regarded as odious,

(d) marriage of a domiciliary which a statute at the domicil makes void even though celebrated in another state.

1. also 2nd Rest 283(2)
2. **(2) A** **marriage which satisfies the requirements of the state where the** **marriage was contracted will everywhere be recognized as valid unless it violates the strong** **public policy of another state which had the most significant relationship to the spouses and the** **marriage at the time of the** **marriage.**

A same sex couple domiciled in Virginia get married in Massachusetts. Assuming that a Massachusetts court uses the 1st Rest., will it recognize the marriage? No – will apply law of state of domicile.

Compare:

Contrast Uniform Marriage Evasion Act:

This is Massachusetts’s 1913 Act:  
  
No marriage shall be contracted in this commonwealth by a party residing and intending to continue to reside in another jurisdiction if such marriage would be void if contracted in such other jurisdiction, and every marriage contracted in this commonwealth in violation hereof shall be null and void.

This is even stronger – doesn’t have to be strong public policy of domicile

Also…

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**If any effect of a marriage created by the law of one state is deemed by the courts of another state sufficiently offensive to the policy of the latter state, the latter state will refuse to give that effect to the marriage.**

* X and Y, an interracial couple, are married in Illinois, which allows such marriages. Both are domiciled in Illinois. Will they be allowed to cohabit if they are visiting Mississippi, which prohibits such marriages?

NO