5th Lect.

1. Other rules
	1. Corporate law – in its internal affairs – law of state of incorporation
		1. This might even be constitutionally obligated bc it is so important to have only one law apply
	2. But other issues about corp are determined by normal category of law it is
		1. property, K tort
		2. Corp incorped in state A, by law of state A a corp is not liable for the torts of its agents
		3. Agent of Corp commits tort in state B where corps are liable
		4. Corp is liable

problems of characterization

* must be faced by cts using 1st Restatement
* **Must always characterize**
* **BUT characterization can be used to become an escape device**
* **Became a kind of nascent interest analysis**

Characterization

* Tort/contract
* Levy v Daniel’s U-Drive Auto Renting Co

Conn SCt 1928

* + Daniels rented a car to Sack in Conn
	+ While driving in Mass, Sack (with Maginn, another driver) negligently injured Levy, a passenger in Sack’s car
	+ Conn statute held auto lessors liable for damage caused by lessee
	+ Mass had no such statute – would have to show their negligence
	+ Lex loci deliciti would argue for Mass law
* Ct characterized as contract, not tort
	+ So Conn law applied
* what are reasons why it would make sense to have Conn law apply? – Doing interest analysis
	+ Purpose of Conn statute (which is to encourage lessors to lease to careful drivers and to allow compensation to those hurt by those leasing cars) is relevant here
		- because leasing occurred in Conn and Conn P to compensate (will discuss this interest analysis move later)
		- Mass thinks it’s inappropriate to hold someone who leases a car responsible for damage unless he isnegligent
		- But Massachusetts is not interested in imposing this view of justice on Connecticuters
* What is driving characterization
	+ hidden interest analysis
	+ here is an example of how is does the other way – court reads case as tort
	+ Venuto v Robinson (3d Cir 1941)
	+ Robinson agreed in NC to lease his equipment to Ross Motor Lines and to take load for Ross from NC to NE
	+ Robinson had accident in NJ
	+ Venuto sues Robinson and Ross in NJ
		- NJ law allowed for derivative liability
		- NC law did not
		- One purpose of NJ is to compensate Ps – interested when it is a NJ P
		- So characterized as tort
* BUT does the characterization of the action as contractual make sense?
	+ Was this part of the K
	+ Ct says statute did not create liability – it imposes liability only on condition of entering into lease K
		- That was true in Carroll too – K is condition for tort liab.
	+ How can it be contractual when the P is not party to the K
		- 3rd party beneficiary?
		- that's why court speaks of “direct, sole, and exclusive benefit” of P
		- contractual characterization could cause problems in other areas – for example statutes limitations – would have to be longer contract SOL
		- - Assume that the contract between Daniels and Sack had by chance been entered into in Massachusetts rather than Conn. But the facts of the case were otherwise the same
			* Would have to say Conn law does not apply
* also does it really help characterizing as contract, what about competing Mass law, is that contract too?
1. Haumschild v Continental Cas Co. (Wisc SCt 1959)
	1. Ms Haumschild sued former husband and his insurer
	2. Due to Cal auto accident that occurred when they were married
	3. Both domiciled in Wisc
	4. Trial ct dismissed bc Cal law applied
		1. Place of wrong
		2. Cal had interspousal immunity
	5. Wisc SCt reversed
		1. Overturning past Wisc SCt decision (Buckeye v Buckeye)
		2. Characterized as family law subject to law of domicile
		3. Why good idea? Interest analysis
			1. Purpose of interspousal immunity - there to prevent family discord
			other purpose?
				1. Avoiding fraud against insurance companies due to collusive suits between husband and wife
			2. Either way California is not interested
				1. No CA couple’s marital harmony at issue
				2. Fraud would not be felt in CA
			3. What are purposes of Wisconsin’s law?
				1. Deterrence of negligence by husbands toward wives
				2. Compensation of wives harmed by husband’s negligence
				3. Wisconsin is interested, especially concerning the compensatory purpose – there is a Wisconsiner to compensate
* Court recharacterized tort case as one concerning marital relations in order to get Wisc law to apply
* Another argument, which the court rejected, was renvoi. Because a California court would have applied Wisc law, the plaintiff argued that the 1st Rest rule of using Calif law included Calif’s choice-of-law rules, which would mean using Wisc law

But this is contrary to the 1st Rst. With a few exceptions, it applies the laws of another state not which laws that state’s courts would apply. Generally won’t apply another state’s conflicts/choice of law rules

Distinction between renvoi and desistement

Renvoi – if your rules says apply the law of state X, that means apply whichever law X’s courts would apply. Borrow their conflicts resolution

Desistement – Don’t apply a state’s law if they wouldn’t apply their own law – does not mean you necessarily apply the law that their courts would apply

Desistement can be considered relevant to interest analysis – a state might be considered interested in its law applying only if its courts would apply its law

Characterization problems concerning contract/property

Swank v. Hufnagle

Ohio woman secured husband’s debt through promissory note entered into in ohio – backed up by mortgage on Indiana land

* + 1. Ohio allowed woman to be surety for their husbands
		2. Indiana did not

In suit to enforce security interest in Indiana, court characterized as property – Indiana law applied

Burr v. Beckler

* In Florida, Illinois wife guaranteed husband’s debt, backed up by security interest in Illinois property
* Florida had prohibition on wives acting as surety
* Illinois didn’t
* Suit in Illinois to enforce security interest

Here court characterized as contract – Florida law applies

Are these cases compatible with one another? Green – Yes – separate the contract issue from the property issue

In Swank there was a valid obligation under the promissory note, under the law of the place of contracting, but the security interest was not binding because contrary to law of the situs

In Burr there was no valid obligation under the promissory note under the law of the place of contracting, so there was nothing for the property in the situs state to secure

* Thomson v Kyle
* Alabama woman executed promissory note in Ala backed up by mortgage on land in Florida
* Once again wives can’t be surety under Ala law
* They can under Florida law
* Suit in Florida to enforce security interest

FL courts recognize the security interest as established

Green: I have trouble understanding this one. If there is no valid promissory note, how can there by anything to back up with a security interest? This would apparently mean that the plaintiff could go after the security interest but not sue for the obligation under the note.