Lect. 7

Statute of Limitations

* 1. 1st Rest rule (incl currently in VA) is that stat lims are procedural for conflicts purposes

§ 603. Statute Of Limitations Of Forum

If action is barred by the statute of limitations of the forum, no action can be maintained though action is not barred in the state where the cause of action arose.

§ 604. Foreign Statute Of Limitations

If action is not barred by the statute of limitations of the forum, an action can be maintained, though action is barred in the state where the cause of action arose.

* 1. BUT an exception
     1. Built in or specificity test (Davis v Mills)
        1. Stat lims will be substantive if one specifically directed to the created right
     2. arises in statutory causes of action
        1. the common law ones seemed to precede the limitations
     3. best when the limitation was written in the same section or at least same statute as cause of action

1. § 605. Time Limitations On Cause Of Action
2. If by the law of the state which has created a right of action, it is made a condition of the right that it shall expire after a certain period of limitation has elapsed, no action begun after the period has elapsed can be maintained in any state.  
     
   that means the forum’s proc stat lims and the other jurisdictions subst stat lims can conflict

Suit in NY on Mass cause of action, 1.5 year wait  
1) Mass. 2 yr. subst., NY 1 yr. proc. - dismissed  
 - preclusive effect of dismissal? w/o prej  
2) Mass. 1 yr. subst., NY 2 yr. proc. - dismissed  
 - preclusive effect of dismissal? w/ prej  
3) Mass. 2 yr. proc., NY 1 yr. proc. dismissed  
 - preclusive effect of dismissal? w/o prej  
4) Mass. 2 yr. subst., NY 1 yr. subst. not dismissed -   
5) Mass. 2 yr. proc., NY 1 yr. subst. not dismissed (apparently could be brought a million years later in a New York court – that is why jurisdictions have fall back proc stat lims)

* 1. Bournias v Atlantic Maritime Co Ltd. (2d cir 1955) is an example
     1. Admiralty action (libelant)
     2. Panamanian seaman suing shipping co under Panamanian Labor Code
     3. Should Panamanian 1 yr stat lims apply?
     4. Ct concluded NO
        1. Panamanian Labor Code is big
        2. and stat lims applies to almost all actions under it
        3. is that plausible?
           1. this is a civil law country
  2. Why can’t the built in test apply to a common law right?

*Two other approaches to the problem were suggested in our opinion in Wood & Selick, Inc….First, that the foreign law might be examined to see if the defense possessed the attributes which the forum would classify as "procedural" or "substantive"; that is, for example, whether the defense need be pleaded, as a "substantive" period of limitations need not be in this country.*

[I checked – this does indeed look to whether the plaintiff must plead that the stat lims has been satisfied. This doesn’t make a good deal of sense–after all affirmative defenses like contributory negligence are also substantive, even though the defendant has to plead and prove them.

*Second, the foreign law might be examined to see if the operation of limitation completely extinguished the right, in which case limitation would be regarded as "substantive."*

How would this happen? Here’s a scenario:

assume that there has been a judgment in your favor  
you wait to sue on the judgment beyond the stat lims if you had not sued  
but you are within the time to renew the judgment  
if they won’t allow you to renew the stat lims is part of the right…

*Still other tests are suggested by Goodwin v. Townsend — namely, whether the foreign limitation is regarded as "procedural" or "substantive" by the courts of the foreign state concerned, and possibly whether the limitation is cast in language commonly regarded as "procedural."*

Generally you must speculate about whether a state thinks its SOL is substantive or procedural. Their courts have no reason to answer the question unless it is certified to the state SCt. That is because there is no appeal from, say, a NY state court system when entertaining a PA action to the PA SCt. Same problem in fed ct. No appeal from the federal court system when entertaining a PA action to the PA SCt.

The state’s courts will not answer the question

Eg a NY court is trying to determine whether a Mass 2 year stat lims for wrongful death is subst or proc – looks at the following cases…  
  
Mass ct applies Mass 2 year stat lims to Mass wrongful death action?

* No way to tell, could be either
* What about if the dismissal is with prejudice?
* One problem is the courts commonly don’t say what the preclusive effect is when they dismissed on statute of limitations grounds – that is faced by the court of another jurisdiction when the plaintiff tries to sue again there.
* In addition, courts sometimes dismiss with preclusive effect even though the dismissal is on the basis of their procedural statute of limitations

Mass ct applies Mass 2 year stat lims to CT wrongful death action with 3-year stat lims?

* Means it is procedural but still could also be substantive
* This is not just speculative–courts do find this to be true
* Mass ct refuses to apply Mass 2 year stat lims to NH wrongful death action with 1-year stat lims?  
  The court could simply have determined that the New Hampshire limitation was substantive
* Mass ct refuses to apply Mass 2 year stat lims to CT wrongful death action with 3-year stat lims?
* Does this definitely show it is substantive?
* - no because it could still be solely procedural for Mass actions only – don’t know that the Mass ct wants a NY ct to use the 2 yr limitations period

how about using the way that Mass cts treat other jurisdictions’ statutes of limitations…?

assume that Mass courts read all sister state limitations periods as procedural  
  
a New York court is trying to determine whether a Mass 2 year stat lims for wrongful death is substantive or procedural

One might think that this gives us evidence that Massachusetts thinks that its own limitation is procedural

On the other hand, if the court tries to scrupulously determine what other jurisdictions think, rather than using a generalized approach, its judgments about other jurisdictions will not tell us what it thinks about its own limitations period.

The substance procedure problem can extend far beyond stat lims

The Pa SCt holds, in a case on appeal from Pa state courts, that a property owner has only a duty not to be reckless to a trespasser.  
  
A NY state court is entertaining a tort action in which a Pa trespasser is suing a Pa property owner for negligence. The cause of action arose in Pa. Is the NY state court bound by the Pa SCt decision…?

We don’t know that the PA SCt wants– never has occasion to say this (unless certified to it)

Same point is true about whether a federal court is bound by the Pa SCt decision

In short, the disagreement expressed in Swift v. Tyson and Erie can be understood as different views about a state law question, namely whether a state SCt wants its decisions to bind federal and sister state courts when entertaining common law cases that arise in the state.

No one knew the answer because the state SCts never had occasion to answer it

BUT reverse Erie is an exception – when a state court entertains a federal action, there is direct appeal to the US SCt

- P sues D in state court under FELA.  
- FELA has a two-year federal statute of limitations  
- The forum state has a three-year procedural statute of limitations  
- P has waited two and a half years to sue  
- Is P barred?  
*Atlantic Coast Line Railroad Co. v. Burnette* (US 1915) (barred)

USSCt has held SOL is substantive and follows COA into state court.

But here’s a puzzle

- P sues D in state court under FELA.  
- FELA has a two-year statute of limitations  
- the forum state has a one-year procedural statute of limitations  
- P has waited one and a half years to sue  
- is P barred?  
- *Engel v. Davenport* (US 1926)

Curiously, the Supreme Court said yes. This seems to be a different type of conclusion than the view that the statute of limitations is bound up with the cause of action. Instead the Supreme Court is saying that the state court should adopt the procedural law of federal courts and take jurisdiction Of the action.

Borrowing statutes

* There are reasons that a forum might use a sister state’s statute of limitations period when entertaining the sister state’s action that does not have to do with the sister state SOL being substantive

E.g. P (Pa) sues D (Pa) in NY state court for a cause of action that arose in Pa.   
The Pa procedural statute of limitation is 2 years.  
P has waited 2 ½ years.  
NY has a 3 year procedural statute of limitations.

Might borrow Pa limitation to keep people from forum shopping…

* Going to NY to get longer SOL

2nd Rest approach to SOLs has a borrowing element to it

2nd Rest - § 142. Statute Of Limitations  
The following § 142 replaces the original §§ 142 and 143:  
Whether a claim will be maintained against the defense of the statute of limitations is determined under the principles stated in § 6. In general, unless the exceptional circumstances of the case make such a result unreasonable:  
(1) The forum will apply its own statute of limitations barring the claim.  
(2) The forum will apply its own statute of limitations permitting the claim unless:  
(a) maintenance of the claim would serve no substantial interest of the forum; and  
(b) the claim would be barred under the statute of limitations of a state having a more significant relationship to the parties and the occurrence.

In effect you will choose the shortest SOL – this is even more unforgiving than a borrowing statute

- but this may be merely an interpretation of sister-state SOL as substantive –

- but such a generic conclusion that sister state SOL is substantive is odd in a modern approach - the whole point of modern interest analysis is to avoid generic answers and to look to the purposes of the particular law at issue

Green thinks it is a bad rule:

What is sometimes called the **twin aims of Erie** is really about a federal court borrowing forum state law to serve federal purposes

Guar. Trust v. York  
  
NY actions brought in federal court in NY  
NY has a SOL of 2 years  
Can federal court use its own common law limitations period (laches)?  
NO  
Does it matter whether the NY stat lims is subst. or procedural?

NO

* The point is not that NY wants its limitations period to be used, but that the federal court borrows it to avoid forum shopping

Notice that what is relevant is forum state law not the law of the state that created the COA

EG

A federal court in NY is entertaining a PA cause of action.  
The PA 3-year stat lims is procedural  
NY has a 2 year procedural stat lims  
Can the federal court use is own common law stat lims?

No – must use NY’s limitations period, even though neither the NY nor the Pa limitation period is substantive

* Much forum state law is borrowed under twin aims of Erie – not just forum state’s SOL

NOW-

RENVOI :

When your choice of law rule says use the law of X that is taken to mean – use the law that X’s courts would

Distinguish désistement – where the fact that the courts of X would not use their own law means that you should not too

Under renvoi if the courts of X would use Y’s law that means use Y’s law

Under désistement if the courts of X would use Y’s law, that means do not use X’s law

* Désistement is more relevant to interest analysis when the fact that X’s courts would not use X’s law is a reason to think X is not interested in its law applying

Renvoi is an escape device

* If you don’t like the law that your choice of law rule points to (say the law of Pa) – look to Pa’s choice of law rules and see if it would chose something other than Pa law for those same facts – if so, mention it to the court
* But more fundamentally renvoi is accepted under the 1st Rest in limited cases

**In re Schneider’s Estate** (1950): normally Swiss court would take jurisdiction of property, but the property has already been sold and the money is sitting before the NY court; *legitime* v. common law testator discretion;

NY choice of law rule is that law of situs for rights in real property in event of death

BUT the rule is not to use situs state law but the law that a situs state court would use

Here ct concludes a Swiss ct would sue NY law so applies NY law

It probably was wrong about that.

Why renvoi for real property?

* The primary reason for its existence lies in the fact that the law-making and law-enforcing agencies of the country in which land is situated have exclusive control over such land. As only the courts of that country are ultimately capable of rendering enforceable judgments affecting the land, the legislative authorities thereof have the exclusive power to promulgate the law which shall regulate its ownership and transfer.…

Should do what they would do because if you don’t they will simply refuse to recognize your judgment

Green: but that’s not an issue here – the $ is in NY

And it usually isn’t an issue when renvoi comes up – if the property had not been sold, the NY court would never have taken jurisdiction of the case…