Conflicts Lect 11

Interest analysis

Finally – heart of course

Ct draws distinction between conduct regulating and loss allocating rules

Very important distinction in interest analysis

* Used in NY’s Neumeier rules
* Used in La and Ore choice of law statute
* But also important in normal interest analysis

I am going to approach the distinction very carefully

The distinction is used for tort rules only

A tort rule either creates liability for harm that results from some conduct or it limits or blocks liability

If a conduct regulating rule and

creates liability that means it has liability as a means of discouraging the conduct that caused the harm
example – negligence liability (in its deterrence function)

If a conduct regulating rule and

blocks liability that means it forbids liability as a means of permitting people to engage freely in the harm-causing conduct
example – no liability for looking at me funny even if it hurts my feelings

The interest analyst will say that for conduct regulating rules the interested state is the state where the harm or the wrongful conduct occurred

Loss allocating rules

Creates liability and is solely loss-allocating means it has liability not to discourage the conduct that caused the harm – the conduct was rightful – but it has liability for a different reason

example – respondeat superior – liability of employer for torts of employee even though the employer was non-negligent in hiring and monitoring

* Basis is a view about where the loss should rest not a claim that the employer should have acted differently

Blocks liability and is solely loss-allocating means it blocks liability not to give people freedom to engage in the conduct that caused the harm – the conduct was wrongful – but it blocks liability for a different reason
example?

Charitable immunity barring liability against a charity for causes of action concerning negligent hiring and monitoring

Not saying charities should be free to negligently hire and monitor employees

But blocks liability for a different reason – view about appropriate compensation, for example

NOTE: loss allocating rules really come in two flavors

For some the purpose is really about loss allocation, that is, about appropriate compensation between the parties

Then usually the interest analyst will claim that the domicile of a party is relevant

* Domicile of the plaintiff if it is a loss allocating rule that creates liability
* Domicile of the defendant if it is a loss allocating rule that blocks liability
* But it helps when P and D are both from the state with the loss-allocating rule

But some “loss-allocating” rules are about encouraging or discouraging a certain type of conduct

* Eg charitable immunity might be about encouraging charitable activities
* Then domicile might not be relevant for the interest analyst but something else – where the relevant conduct at issue occurred or should occur
* But it is still different from normal conduct regulating rules because the conduct at issue is not the conduct that caused the plaintiff’s harem
* So the state of the harm or of the conduct that caused the harm will not necessarily be interested in its loss-allocating rule applying

NOTE: some laws are both conduct regulating and loss allocating, eg negligence liability

Assume that a jurisdiction does not have a cause of action for tortious interference of contract
that too is both conduct-regulating and loss-allocating

Compensation is inappropriate and people should be free to engage in the harm-causing conduct

***Abogados v. AT&T (9th Cir. 2000)***in Jalisco (a Mexican state), a NY corp interferes in contract of Mexican co.
Mexican co. in federal court in Cal. sues under NY law, which has a cause of action for tortious interference of contract
Jaliscan law does not

Court gets it right

* Is NY interested in its tortious interference of contract law applying
* No –
	+ Not interested in law in its conduct regulating function applying because neither the harm nor the wrongful conduct occurred in NY
	+ Not interested in its law in its loss allocating function applying because there is no NY plaintiff to be compensated
* Is Jalisco interested in its lack of a cause of action for tortious interference of contract law applying?
	+ Not interested in its law in its loss allocating function applying because there is no Jaliscan D to protect from inappropriate liability
	+ But court recognized that Jalisco was interested in its absence of a cause of action in its conduct regulating function applying because the conduct at issue was in Jalisco
	+ Jaliscan lawmakers think that people, even non-Jaliscans, should be free to interfere with contracts in Jalisco
1. Schultz v Boy Scouts
	1. Ps domiciled in NJ
		1. (parent) and two boys (one who committed suicide)
		2. Molested by Franciscan brother who was also scoutmaster
	2. Suing Ds in NY
		1. Boy Scouts
			1. NJ domicile at time
			2. now Texas
		2. and Franciscans
			1. Ohio domicile
		3. Molestation in NY
		4. And afterward in NJ
	3. NJ has charitable immunity
	4. Tex, NY do not
	5. Ohio does not in this case (negl hiring/supervision)
	6. Does charitable immunity apply?
	7. Start with Boy Scouts
	8. Ct draws distinction between conduct regulating and loss allocating rules
		1. Conduct reg – place of wrongdoing (harm or wrongful conduct)
		2. Loss allocating – domicile of parties (esp if they have a common domicile)
		3. Example of Conduct regulating?
			1. standard of care
		4. Why is charitable imm loss allocating?
			1. not saying charities should get away with negligent hiring
			2. post-event remedial rule about allocating loss
			3. what is purpose of char imm?
				1. really about encouraging charities in state?
			4. If so, is the domicile of parties relevant?

- assume the Schultz’s are domiciled in NY
- the Boy Scouts are domiciled in TX
- but the scout camp is always in NJ, where the molestation occurs

No NJ interest?

NJ interest still applies because charitable activities there?

* + - * 1. notice not really about domicile of parties
				2. but instead fact that tort arose out of NJ charity activities

 What are reasons for NY law to apply?

Here, the opinion gets weird.

* “The three reasons most often urged in support of applying the law of the forum-locus in cases such as this are: (1) to protect medical creditors who provided services to injured parties in the locus State, (2) to prevent injured tort victims from becoming public wards in the locus State and (3) the deterrent effect application of locus law has on future tort-feasors in the locus State.”

They can’t argue for compensation, bc not NYers.. options 1 and 2 are sort of bizarre, 3 is a real one.’

1. claims that these first two interests are suspect anyway bc they mandate the application of the law justifying greater recovery, whether or not NY law
2. *The first two reasons share common weaknesses. First, in the abstract, neither reason necessarily requires application of the locus jurisdiction's law, but rather invariably mandates application of the law of the jurisdiction that would either allow recovery or allow the greater recovery. They are subject to criticism, therefore, as being biased in favor of recovery.*

This is a mistake

 In interest analysis you are trying to figure out scope of a state’s law by looking to purposes of that law… for that state…

 **So only look at NY interests, it is incoherent to apply NY interests to other state’s laws**

What they are really saying at the end is that NY’s nonimmunity rule (absence of immunity) is loss-allocating

*Finally, although it is conceivable that application of New York's law in this case would have some deterrent effect on future tortious conduct in this State, New York's deterrent interest is considerably less because none of the parties is a resident and the rule in conflict is loss-allocating rather than conduct-regulating.*

 This footnote has to be completely wrong… it would turn all conduct-regulating rules into loss-allocating rules whenever conflict with some loss-allocating rules (e.g. qualified immunity)

 Right way is – 1 rule is conduct regulating (NY tort), and 1 is loss allocating (NJ immunity)

So it looks like a true conflict between NY’s deterrence interest and NJ’s loss allocation interest

 But how strong is NY’s deterrence interest?

* Not that much – the negligent hiring occurred in NJ

 We wouldn’t expect negligent hiring elsewhere to cause harm in NY

 So this is a strong interest (preventing child molestation), but the interest will not be vindicated very much by applying NY law – interest isn’t realized/furthered to any significant extent

Schultz is a true conflict case

 Another factor here is that P was forum-shopping, and thought NY was more likely to apply its law, so NY disliked the forum-shopping

In some respects Schultz is like Kell

 Ontario residents

 Trip begins and ends in Ontario

 Accident in NY

 Court applied NY law, not Ontario guest statute

NY has deterrence interest that the ourt favors over Ontaruio’s loss allocation interest

 difference is most of the wrongdoing occurred out-of-state, so the balance comes out differently

Franciscans?

* + - * 1. Not common domicile
				2. This brings up the 3rd Neumeier rule
				3. " As to defendant Franciscan Brothers, this action requires an application of the third of the rules set forth in Neumeier because the parties are domiciled in different jurisdictions with conflicting loss-distribution rules and the locus of the tort is New York, a separate jurisdiction. In that situation the law of the place of the tort will normally apply, unless displacing it "'will advance' the relevant substantive law purposes without impairing the smooth working of the multi-state system or producing great uncertainty for litigants'""

Court concludes that using NJ law 'will advance' the relevant substantive law purposes without impairing the smooth working of the multi-state system or producing great uncertainty for litigants'"

We will discuss this Neumeier rule later

Reason is primarily that NY has no significant deterrence interest

Also appeals to Forum-shopping – so want things to turn out the same way regardless of where suit is brought… so NY doesn’t pick its own law to achieve horizontal uniformity and thwart P’s attempt at forum-shopping in this case. They want a uniform rule in which forum is irrelevant.

 **Unprovided-for Case**

When you look to purposes of each state’s laws, neither applies because neither state has an interest in its own law applying – neither cares…

* Arizonan and Californian get in accident in Arizona
* Californian dies
* Arizonan sues Californian’s estate
* AZ has no survivorship of actions
* Cal does

AZ: If you die, we won’t let them sue your heirs, bc we want to protect estates (to the detriment of plaintiffs).

 Cal is pro-plaintiff

 Arizona is pro-defendant

 Arizona P, California D

To have an “unprovided-for case” here, you need:

 P’s domicile law to benefit D

 D’s domicile law to benefit P

Wrongdoing is in P’s domicile (or some third state that prohibits recovery)

 Example is Neumeier:

* Ontario guest riding in NYer’s car
* accident in Ontario
* Ontario has guest statute
* NY doesn’t