1. Reconciling true conflicts
   1. Biggest debate
   2. Currie, use forum law
      1. A forum court is beholden to its own sovereign
2. Lilienthal v kaufman
   1. Ore (1964)
   2. Kaufman (Ore) went to Cal
   3. Entered into an agreement w/ P for joint venture
   4. Kaufman executed in Cal two promissory notes
   5. P demanded payment on notes
   6. D declared spendthrift under Ore law
   7. No such law in Cal
   8. How does ct analyze?
      1. Traditional Choice of law approaches would say Cal law applies
         1. Place of K
         2. place of perf
         3. rule of validation
   9. *Thus far all signs have pointed to applying the law of California and holding the contract enforceable. There is, however, an obstacle to cross before this end can be logically reached. In Olshen v. Kaufman, supra, we decided that the law of Oregon, at least as applied to persons domiciled in Oregon contracting in Oregon for performance in Oregon, is that spendthrifts' contracts are voidable. Are the choice-of-law principles of conflict of laws so superior that they overcome this principle of Oregon law?*
      1. confused
      2. really should be saying:
         1. Cal law applies bc Cal has interest
         2. Question now is whether Ore law applies
         3. look to Ore interests
         4. ct concludes that ore has interest in protecting Ore spendthrifts
      3. Does not seem to matter to the Oregon court whether oregon’s interest is stronger than California’s or not
   10. Concurrence
       1. Agrees,
       2. *To distinguish the Olshen case* [on all Oregon case in which the spendthrift law was applied to disadvantage an Oregonian on the other side of the contract ] *it would be necessary to assume that although the legislature intended to protect the interest of the spendthrift, his family and the county when local creditors were harmed, the same protection was not intended where the transaction adversely affected foreign creditors. I see no basis for making that assumption. There is no reason to believe that our legislature intended to protect California creditors to a greater extent than our own.*
       3. Why protect Cal expectations when Or expectations aren’t
       4. Is that true?
          1. might Oregon recognize that the problems of expectations are worse when there is a Californian on the other side of the contract and the contract was entered into in California?
          2. There may in fact be a reason to protect Californians more than Oregonians
3. not many states use a forum law approach in true conflicts (Mich & Ky)

7) What if this case was brought in Nevada? What would Currie say?

* + 1. Dismiss on forum non convenience grounds
    2. Or use more enlighten and humane law

If

why didn’t the Californian sue in CA in Lilienthal? A California Court would likely have applied California law

Forum shopping, in combination with the application of forum law in true conflicts (assuming the forum is interested) will in fact result in a simple pro plaintiff rule. The law favoring liability will always be chosen, because the plaintiff will always choose a forum with pro plaintiff law that is interested.

* Maybe that’s not so bad?
* The law favoring the plaintiff tends to be the more basic background law
* The law favoring the defendant is deviant law
* If maybe it is better in a conflict between background and deviant law to favor the background law
* After all, both jurisdictions have the background law

Other ways to solve true conflicts

1. Bernkrant v Fowler (Cal. 1961)
   1. Ps owed D (Granrud) $24K concerning purchase of Nev apt complex
   2. D allegedly made oral promise to Ps (Nev domicile) to forgive debts in his will in exchange for partial payment and refinancing of P’s debt to him
   3. Died – nothing in will
   4. Suit to compel cancellation of debt
   5. Cal statute of frauds barred oral agreements to make provision in will
   6. Nev statute of frauds would prohibit only if real property transaction
      1. But an agreement discharging an obligation secured by real property does not fall under statute
      2. So there is a contract under Nev law
   7. Which law applies?
   8. Look at this from a 1st Rest perspective
      1. If K, place of the K
      2. Anything other possibility?
         1. is it is really a testamentary disposition?
         2. of personalty?
         3. then it is the law of the domicile at time of death
         4. domiciled in Cal at death
   9. but Ct (Traynor) uses interest analysis –
      1. Does Cal have an interest?
         1. what is purpose of Cal law?
         2. protect Cal estates and beneficiaries from fraud
         3. this is a Cal estate
      2. BUT ct says we need to make sure that Cal would really be interested in a case involving multistate contacts
      3. Here a Nev K, perf in Nev, Ps (and maybe decedent) domiciled in Nev at time of K
      4. If decedent domiciled in Nev at time of K, would upset reasonable expectations of Ps to use California law
         1. like People v One 1953 Ford Victoria
            1. automobile mortgaged in TX
            2. moved to Cal by mortgagor
            3. seized in connection with drug trafficking
            4. mortgagee’s interest forfeit under Cal law
            5. Under Cal law there is a duty to investigate mortgagor (who was drug dealer)
            6. Cal law not applied, even though interested
            7. Reason was expectations of the mortgagee
            8. cannot apply Cal law simply because mortgagor moved car to Cal
         2. idea is that expectations of parties put limits (although not const’l limits?) on application of law
      5. BUT even if decedent domiciled in Cal at time of K
         1. Cal’s interest should still be limited by expectations of parties
            1. Cal would have an interest only if decedent remained in Cal
            2. And parties at the time of the contract could not be sure that that would be true
         2. Given the other contacts with Nev, the moderate and restrained interpretation still recommends Nevada law
   10. Currie claimed example of moderate and restrained interp approach is a way of identifying false conflicts
       1. If true conflict then reexamine forum’s interests in the light of the expectations of the parties
   11. How would lilienthal come out in the moderate and restrained interp approach?
       1. Limit Oreg interest on basis of expectations of Cal creditor?
       2. Maybe
2. What’s going on in case?
   1. Why not like Lilienthal
   2. Currie claimed example of moderate and restrained interp approach
      1. If true conflict then reexamine forum’s interests
         1. isn’t this the balancing of state interests that Currie said was wrong?
         2. NO – fact of conflict is itself a fact that a Cal legisl would take into account
      2. Is this a resolution of a true conflict case or is it a false conflict case?
   3. How would lilienthal come out in the moderate and restrained interp approach?
      1. Limit Oreg interest on basis of expectations of Cal creditor?
3. Bernhard v Harrah’s Club
   1. Cal resid (bernhardt) sued Harrah’s Club for damages inflicted by Cal resid intoxicated at D’s establishment in Nevada
   2. Cal has dramshop act
   3. Nev does not
      1. Ct does say that there are criminal penalties
   4. How would this be resolved under 1st Rest
      1. Law of place of harm – Cal
      2. BUT mentioned that even wrt 1st Rest was common to worry about party expectations
   5. Ct uses interest analysis
      1. Cal interests?
         1. compens to Cal P
         2. deterrence of drunk driving in Cal
      2. Nev interests
         1. protect resid tavern keepers from – by nev lights – unfair liab
         2. not proximate causation
      3. true conflict
      4. appeals to Currie moderate and restrained interp
      5. and to Baxter’s comparative impairment
      6. as if they were the same
      7. look at which state would be most impaired if it doesn’t get its law
         1. NOT weighing the worthier interest
         2. really comparing from the persp of each
            1. eg could assume that nev wants drunk driving
            2. and Cal doesn’t
            3. would check to see how much Nev’s goal of drunk driving is impaired compared to Cal’s
         3. uses example of the 1953 Crown Victoria case
            1. Cal interest in enforcement of narcotics laws not that frustrated
            2. Plus not really interested in enforcing against those who could not reasonably be held to comply
         4. Here reas expectations not as sign a problem wrt expectations of tavern keeper bc he *advertised*
            1. Cal has strong regulatory interest
            2. Plus Nev already imposes duty on tavern keepers through crim law
         5. set aside issue of whether Cal civil law is dependent upon Cal crim statute and so no extraterr appl
      8. what about if no advertisement, but is right on border?
         1. sounds like WWvW
4. What is principle of comparative impairment?
   1. Assumption of what would happen if states engaged in negotiation
      1. In a position of rough equals
      2. No one is always going to get appl of its laws in true conflicts
         1. bc diff fora
      3. so each would give up application of its laws in areas where their interests were comparatively less impaired
         1. questionable that there really would be an agreement
            1. why not dig in your heels?
         2. is this norm – what you state should do
         3. or descriptive – what the state’s really would do
            1. problem if it is normative – should a state do this
            2. will legislatures do it (NO)
            3. what’s wrong with balancing
5. Problem: comparing and weighing interests
6. Consider Baxter’s hypos
   1. Resid of Mass, driving truck in CT, causes injury to CT P
   2. D broke speed limit, creates irrebuttable presumption of negl under CT law
   3. Not so under Mass law
   4. How would 1st Rest treat it
      1. Could treat as procedural and so law of forum
      2. Could be treated as appl of standard of care
         1. Law of conduct (think it is latter)
   5. Baxter: Each state has an interest
      1. What is Ct’s interest
         1. Discourage speeding
         2. compens to P
      2. What is Mass’s interest
         1. doesn’t say but considers it a loss distrib law
   6. How to solve?
      * 1. Their loss distrib interests cancel out
        2. And CT’s regulatory interest remains so CT law applies
        3. “If the [Mass] driver causes injury to [a CT] resident while driving in [CT] at a speed in excess of the [CT] speed limit, [CT]'s per se rule should be applied. [CT] has an interest in implementing its regulatory provision, and its interest in the application of its loss-distribution rule offsets [Mass]'s corresponding loss-distribution interest.”
      1. Does that makes sense?
         1. do we know they cancel out
         2. can’t add up interests
         3. what are their weight?
         4. perhaps Mass has super weight
         5. basically count interests because can’t weigh their intensities
      2. Then moves on to case again where P and D are both from Mass
         1. Ct’s regulatory interest will not be impaired significantly if does not apply
         2. after all people aren’t going to change there beh on CT roads
         3. so Mass law applies
         4. “The [CT] regulatory interest will not be impaired significantly if it is subordinated in the comparatively rare instances involving two nonresidents, who are residents of a state or states that reject the per se subrule. Conduct on [CT] highways will not be affected by knowledge of [Mass] residents that the [CT] per se rule will not be applied to them if the person they injure happens to be a co-citizen.”
      3. is that convincing
         1. why not say that Mass’s loss allocating policy will also not be significantly impaired too
         2. difference betw loss allocating and conduct reg?
7. Sometime interests are given less weight bc antequated
   1. Offshore Rental Co. v. Continental Oil Co. (Cal. 1978)
   2. P, Cal corporation, sent VP to La
   3. There VP was injured by negligence of employee of La corporation
   4. Cal law allows suits by a corporation for loss of services of employee
   5. La law does not
      1. Cal SCt assumed true conflict
      2. But Cal law antequated – isn’t this weighing interests?
      3. Besides could have bought key employee ins
      4. And also D in getting insurance would have assumed La law, since could not anticipate corp resid of those agents sent to them