1. 2nd Rest
   1. Many states follow 2nd Rest
   2. But often hard to tell whether it is really the 2nd Rest or interest analysis
   3. Comes up with presumptive rules
   4. § 146. Personal Injuries  
        
      In an action for a personal injury, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the occurrence and the parties, in which event the local law of the other state will be applied.
   5. This is like a 1st Rest jur-selecting rule
      1. Indeed often just is the 1st Rest approach
   6. BUT then allows for departure if other state has most sign rel
      1. General principles in section 6
      2. § 6. Choice-Of-Law Principles  
         (1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.
      3. (2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include  
         (a) the needs of the interstate and international systems,  
         (b) the relevant policies of the forum,  
         (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,  
         (d) the protection of justified expectations,  
         (e) the basic policies underlying the particular field of law,  
         (f) certainty, predictability and uniformity of result, and  
         (g) ease in the determination and application of the law to be applied.
      4. Also spec concerns for spec classes
         1. section 145 torts
         2. § 145. The General Principle  
            (1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.  
            (2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:  
            (a) the place where the injury occurred,  
            (b) the place where the conduct causing the injury occurred,  
            (c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and  
            (d) the place where the relationship, if any, between the parties is centered.

sounds like Dym and Tooker v Lopez

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

1. to give you a feel, I’ve provided a good deal of the 2nd Rest
   1. for Proc, torts Ks, property
   2. some you’ve already had
   3. also gives feel for vagueness
      1. example 145 criteria w/ presumption of law of place of injury for
         1. standard of care
         2. § law on causation
         3. contributory fault
      2. simple 145 criteria w/o presumption for
         1. survival of actions
         2. charitable immunity
         3. intra-family immunity
         4. measure of damages
         5. contribution and indemnification among joint tortfeasors
         6. vicarious liability

Sometimes doesn’t have presumptions but says how it is likely to turn out

1. EG 156
   * + 1. whether conduct is a tort is usually law of state where injury occurred
       2. § 156. Tortious Character Of Conduct  
          (1) The law selected by application of the rule of § 145 determines whether the actor's conduct was tortious.  
          (2) The applicable law will usually be the local law of the state where the injury occurred.
          1. Intrafamily immunity
          2. § 169. Intra-Family Immunity  
             (1) The law selected by application of the rule of § 145 determines whether one member of a family is immune from tort liability to another member of the family.  
             (2) The applicable law will usually be the local law of the state of the parties' domicil.
2. If this is interest analysis, why is there more than just the policies of states?
   1. Also has methods for resolving true conflicts
      1. So (probably) NOT Currie
3. Problems
   1. Categorization
   2. Presumptions tend to be ignored
   3. Better to have distinction betw false conflicts and resol of true conflicts
   4. Really has no theory of what makes state most interested
      1. No story of how much each factor matters
4. 1st example of 2nd Rest - torts
   1. Phillips v Gen Motors Corp
      1. Mont 2000
      2. 1985 Chevy (GM) pickup sold in NC
      3. Darrell Byrd bought it from NC Co in NC while he was domiciled in NC
      4. Moved to Mont
      5. D Byrd Driving w/ family from home in Mont to NC
      6. Accident in Kansas
         1. tanks explode
      7. Darrell, and 2 other family members died
      8. One son lived, Samuel – now domiciled in NC
      9. Suit by guardian of son and repr of estates of the three dead
      10. Against Gen Motors
      11. Product liab
      12. Which law applies
          1. KS – more pro def
             1. OK if in accordance with regs applying to manufacture at time
             2. No liab if product is, basically, old
             3. Comparative fault
             4. Limit on damages

Comp, punitive

* + - 1. Mont more pro-P
      2. Michigan unclear
      3. NC – negl liab only
  1. No Mont choice of law rules on tort (!!)
  2. Had chosen 2nd Rest for contracts
  3. Uses 2nd Rest here too
  4. So presumption is?
     1. KS law
  5. Unless another state has most sign rel
     1. Notice ct really drops presumption and simply launches into most sign rel inquiry
     2. Starts out w/ section 6 considerations
     3. Notice that only interests of states plays any role
     4. Needs of interstate and int’l legal system?
        1. response
           1. simply choose most sign rel
           2. since that helps coop
           3. The first factor we must consider under § 6(2) is the needs of the interstate and international system. Restatement (Second) § 6(2)(a).
           4. On the facts of this case, this factor does not point toward the importance of applying any particular state's law. Rather, this factor supports the application of the Restatement approach, namely the law of the state with the most significant relationship to an issue. We believe the Restatement approach fosters harmonious relationship between states by respecting the substantive law of other states when those states have a greater interest in the determination of a particular issue litigated in a foreign jurisdiction. The Restatement approach is preferable, in our view, to the traditional lex loci rule which applies the law of the place of the accident which may be fortuitous in tort actions.
        2. HUH?
           1. Can’t be what they meant
           2. Otherwise no reas to include
        3. must be sep consid
           1. like what?
           2. Forum shopping worries?
           3. also choose state with greatest interest
     5. justified expectations?
        + 1. No real expectations for GM here
     6. basic policies underlying field of law
     7. We must also consider the relevant contacts in regard to the basic policies underlying the particular field of law. This factor is of particular importance in situations where the policies of the interested states are largely the same but there are nevertheless minor differences between their relevant local law rules. In such instances, there is good reason for the court to apply the local law of the state which will best achieve the basic policy, or policies, underlying the particular field of law involved.

This is not a case in which the policies of interested states are basically the same except for minor differences in their local rules. For example, although under Kansas and Montana law, manufacturers of defective products are strictly liable for injuries, North Carolina law does not permit strict liability in tort in product liability actions. Instead, it appears that the various interested states have reached different conclusions concerning the right level of compensation and deterrence for injuries caused by defective products. Therefore, we need go no further in addressing this contact.

* + - * 1. applicable when small variations
        2. then arg for law that best fosters shared policies
        3. NA here bc very different laws
        4. REALLY? missed opportunity
        5. Eg NC has negl not strict liab
        6. So – important as between Mont and Kansas, which both have strict liab
    1. certainty, predictability, uniformity - ease
       - 1. place of wrong would not help
         2. really conclusory
    2. Next are policies of forum and of other interested states
       1. this is interest analysis
       2. basically finding the most interested state
       3. claims it is Mont
          1. place of injury?

KS law?

KS product liab law is about stopping harm to KS residents from defective prod’s

or stopping harm from prods manuf in KS

not harm to non-kansans from non-kas products

true for standard of care

how can this be true for pro manufacturer policies??

although still no KS manufact

plausible?

danger in KS from accidents?

what about wrt limit on damages

there bc worried about liab ins

using another state’s law won’t affect KS liab ins here

what about comp fault?

after all, P’s negl could have been in KS

simply uses same arg – not about harm to non-Kansans from product not sold or made in KS

* + - * 1. place of conduct?

NC Pro-D

interest in its law applying?

not briefed

response?

The fact that the Byrds purchased the truck in North Carolina while residing there indicates that one of the purposes of North Carolina product liability law-the regulation of products sold within its borders-might be implicated by the facts of this case. However, we think it significant that a North Carolina court would not apply North Carolina law to these facts, even if the Byrds had remained in North Carolina; North Carolina still adheres to the traditional place of injury rule in tort cases. On the facts of this case, a North Carolina court would apply the law of Kansas because they still adhere to the “vested rights” theory that any right created by an injury is solely a product of the law of the territory in which that injury occurred. Accordingly, the scope of North Carolina product liability law does not include causes of action for products purchased in North Carolina by North Carolina residents which cause injury outside of North Carolina. This belies the significance of North Carolina's interest in having its law applied.

NC is 1st Rest state!

Using renvoi like arg in interest analysis

Michigan

not briefed

Michigan courts have not applied their law under such circumstances

Renvoi again

worry of race to the bottom if manuf state’s law applied

* + - * 1. resid of parties

mont interested in Montana ps

even if post-accident change of domicile

esp when due to accident itself

what about NC?

once again, NC not interested by of choice of law rules

* + - * 1. place where rel betw parties is centered

NA

Casual purchase

* 1. So *Montana law*
     1. Finally, does the public policy exception apply
        1. claims no public policy exception around bc of interest analysis
        2. For choice of law purposes, the public policy of a state is simply the rules, as expressed in its legislative enactments and judicial decisions, that it uses to decide controversies. The purpose of a choice of law rule is to resolve conflicts between competing policies. Considerations of public policy are expressly subsumed within the most significant relationship approach. In order to determine which state has the more significant relationship, the public policies of all interested states must be considered. A “public policy” exception to the most significant relationship test would be redundant.
        3. NOT so
           1. True public policy exception was for a long time a screen for interest analysis
           2. Eg law of place of harm seemed bad bc forum state had interest in its law applying so PPE used
           3. That’s gone – and good riddance
           4. BUT still can have PPE, when no interest

1. Leflar – choice influencing considerations
   1. Wanted to replace 1st Rest rules not with another set of rules but with set of flexible choice-influencing considerations
   2. Note – these really are for resolving true conflicts
      1. Aim for
         1. predictability of results
         2. maintenance of interstate and int’l legal orders
         3. simplification of judicial task
         4. advancement of forum interest
         5. choosing better rule of law
      2. most interesting is idea of better law
         1. Minn & Wisc for tort and contract
         2. NH RI and Ark for tort only
      3. Sometimes better law becomes simply forum law
      4. Sometimes it tempers forum law, eg when law is obsolete
2. Example – Milkovich v Saari
   1. Two Ontario domiciliaries left from Ontario to shop in Duluth Minn
   2. Accident in Minn
   3. P (guest) sues D
   4. Ontario has guest statute (only gross negl)
   5. Minn does not
   6. Starts out by mentioning another NY case
      1. Kell v Henderson
      2. Accident in NY involving Ontario P and D
      3. NY law applied (1966)
      4. Does that seem a problem from persp of Schulz and Tooker?
         1. shared domicile and loss-allocating, then law of domicile
      5. BUT is possible that came out this way bc true conflict and so law of dom was applied
   7. Minn ct uses choice influencing considerations
      1. Notice does not first determine whether there is a true conflict
         1. but clear that Ont is interested
            1. conseq of fraud in Ont
         2. and ct makes clear that Minn is
            1. wants deterrence
      2. 1st predictability (for parties)
         1. NA bc negligence
            1. Not like contract
            2. I disagree
      3. Maintenance of interstate and internal order
         1. OK as long as choose law with a subst connection
      4. Simplification of judicial task
         1. ok bc either law can be applied (when is this applicable? – procedure)
            1. isn’t q whether the choice of law task is simpler?
      5. So q is last two
         1. forum interest
         2. and better law
         3. Minn has interest as “justice administering state”
            1. What does this sound like

publ policy exception

or better law

* + - * 1. Says contrary to our own concept of fairness and equity
      1. should say interested bc wants Minn roads safe
      2. also appeals to medical costs in Minn
      3. guest statutes are too vague and over-and under inclusive
    1. Ontario residents may think Ontario law is better
    2. Dissent – really forum law

1. Jepson Case
   1. MinnSCt 1994
   2. Jepson’s ND business had bought ins policy from D
   3. He was domiciled in Minn
   4. Bought through Minn agency for Jepson, his wife and two ND corps
   5. Covered seven vehicles, 6 registered in ND, one in Ind
   6. Policy charged ND rates (Minn rates higher)
   7. Injured in Ariz while passenger in car
   8. Wants stacked coverage
   9. Not allowed under ND law
   10. Not now allowd under Minn law, but was allowed at t of accident
2. Use choice influencing considerations
   * 1. 1st predictability (for parties)
        1. tort aspect not relevant
           1. I disagree
        2. important bc of K
           1. need to know what was bargained for
           2. ND argued for bc state where K was issued and place of insured property
           3. Minn argued for bc sold through Minn agency, Jepsons resided in Minn and drove care there
        3. important
           1. rates were ND rates

policy named a ND address and cars registered in ND

* + - * 1. maybe Minn law if accident is in Minn, but not so here
    1. Maintenance of interstate and internal order
       1. appl of Minn law manifest disrespect for ND sov
       2. appealing to fact that P was in fact forum shopping
       3. weighs in favor of ND law
       4. usually simply say OK as long as a connection
    2. Simplification of judicial task
       - 1. ok bc either law can be applied
         2. really about procedure
    3. forum interest
       1. Does not speak of Minn has interest as “justice administering state”
          1. Even if Minn interest, other matters come into play
    4. Better law?
       1. can’t always say forum law
       2. or sep standard would be meaningless
       3. here not clear which is best
    5. decide for ND law

1. Much skepticism about better law approach
   1. Even more intrusive than comp impairment
      1. At least that takes policies as you find them