NY’s approach – Neumeier rules

* Cooney v Osgood Machinery
	+ Accident in Missouri
	+ Cooney (MO) injured by machinery owned by Mueller (MO)
	+ Machinery manufactured by Hill Acme
	+ Sold in NY through Osgood (NY) to a Buffalo co that later sold it to Mueller
	+ Cooney received workers comp from Mueller
	+ Brought NY products liab action against Osgood
	+ Osgood impleaded Mueller & Hill Acme
		- Contribution
	+ Under MO law, if you’ve paid workers comp you are freed of other obligations, incl 3rd party contrib. actions
	+ Mueller liable for contribution under NY law
* ct looks to Neumeier rules
	+ 1st check if conduct reg or loss allocating
		- Here loss allocating
		- Is that so
			* what would happen if no contrib.?
			* NO deterrence. esp for less solvent party
			* the rule allowing for joint and several liab is loss allocating
			* contrib. returns some conduct regulation?
	+ assume loss allocating
	+ if common domicile, then use 1st rule (claimed to be the rule used in the Schultz case for Boy Scouts)
		- *Under the first Neumeier rule, when the driver-host and passenger-guest share a common domicile, that law should control*
		- remember problem in Schultz
			* not clear that other state where harm occurs (NY in Schultz) might not have conduct regulating interest
				+ should be understood as a true conflict, so why necessarily apply loss allocating rule of common domicile
			* also, not clear that domicile is the criterion for loss allocating rule, especially for those “loss-allocating” rules that are actually indirectly conduct regulating
	+ 2nd rule True conflict
		- P’s home state would allow him to win
		- D’s home state would allow D to win
		- Then use place of injury
		- Eg
			* P was guest of D
			* P is from NY (no guest statute)
			* D is from Ontario (guest statute)
			* if accident was in NY, then P wins
			* accident in Ontario, then D wins
			* place of injury tilts the balance
		- That’s true here
			* makes some sense if one counts interests (NY has one – loss, and Ontario has 2)
		- So MO
	+ 3rd neither true – other split dom cases, use law of place of wrong
	+ *Unprovided for cases*
	+ *Or true conflicts when injury occurs in neither party’s home state*
		- use law of place of wrong, unless using another rule will advance relevant subst law purposes without impairing smooth working order of multistate system or creating great uncertainty for litigants

Guest (Ontario) sues Host (NY)
Accident in Ontario – use Ontario (this is wrong, bc will use guest statute) – unprovided-for

Guest (Michigan) sues Host (NY)
Accident in Ontario (ditto)

This is the Franciscans in Schultz

* + - * NJ law harms the NJ P
			* Ohio law harms the Ohio D
			* choose place of injury (NY)
			* except in Schulz court concluded that using NJ law would help NJ policy of encouraging charitable activities
			* and won’t harm NY deterrence so much
	+ Guest (NY) sues Host (Michigan)
	Accident in Ontario
	+ Problem wrt 2nd Neumeier rule here
		- What is the relevant injury?
		- Cooney’s?
			* he isn’t the real P here
			* NOT like Schultz
		- Osgood’s loss that is source of impleader against Mueller?
			* that is, having to pay compensation to Cooney
			* that’s in NY
		- general point
			* this is not a guest statute concerning a P and a D
			* it is law concerning impleaders
			* no reason to think these formulae are going to work
* Mess
	+ Ct also used interest analysis
	+ Mo has interest the functioning of its workers comp scheme
		- Ensure but also limit amount employers pay
	+ NY has interest in allowing person who pays total amount under joint and several liab to receive contrib.
	+ Irreconcilable
	+ Place of injury would make some sense to break tie
	+ But usually bc it gives rise to another interest of that state
		- and both parties associated with that state
	+ NOT so here
		- Osgood has no relation to MO
* What to do? Court says…
	+ Mueller really thought that there would be protection
	+ Surprise to be liable
	+ Not so for Osgood
		- One reason is NY law at time of sale did not allow full contrib.
		- Another is that they must know that there would be other reasons no contrib. possible
			* insolvent joint tortfeasor
			* no poss of PJ

on the other hand – no strict liab at time of sale either…

Here is problem: NY wants joint and several liability BUT only with possibility of contrib.

* but didn’t anticipate that contrib. would be barred by law of another state
* what would NY want here
* liability of Osgood only for its part
* in this case need a completely different rule to best serve state interests

Edwards v. Erie Coach Lines Co. (NY 2011)

Charter bus carrying members of Ontario women’s hockey team plowed into tractor trailer

Bus driver employer and leasor of bus are Ontario domiciliaries

Ps are all injured and deceased passengers (Ontario)

Tractor trailer driver his employer and company that hired trailer (trailer Ds) are Pa domiciliaries

Ontario caps nonecon damages

NY has no such cap

PA law? Pa Ds didn’t point to it

Probably no cap

Trailer Ds 10% liable and bus Ds 90%

Neumeier rules

* for bus Ds
* 1st Rule – common domicile concerning loss allocating rule
* So cap
* Criticism again – isn’t this really a true conflict
	+ doesn’t place of harm have a conduct regulating interest?
	+ NY would want full liability for adequate deterrence?
* For Pa Ds it is an unprovided for case – 3rd rule
* P’s burdens them and Ds burdens them
* so use law of place of harm unless blah,blah,blah…
* D’s don’t appeal to Pa law so must apply NY

Is it a problem that we have a possibility of the trailer Ds paying more even though only 10% liable?

Dissent

* do together under 3rd rule NY
1. Dépeçage
	1. Using the law of different states to handle different issues
	2. Even 1st Rest does it
		1. Law for validity and for damages concerning contract
		2. Or obviously procedure v substance
	3. Interest analysis should do it a lot
		1. Look at each laws individually to see if they apply
	4. So why should there be a problem?
	5. Use Cavers imaginary case
		1. Adams (NY dom) is member of NY Org
		2. Enrolled in nature program
		3. Truck takes him to Mass
		4. Breaks down
		5. Farmer with unregistered truck offers to take them rest of way
		6. Truck hits Adams, but not negligent
		7. Mass law, driver unlicensed car is outlaw – liab w/o fault
		8. NY requires negl
		9. Mass has charitable imm
		10. NY does not
	6. SO looks like no liab under either NY or Mass law
		1. NY bc no strict liab
		2. Mass bc char imm
	7. Does that mean no liab?
		1. Could have depecage
			1. NY law on char imm
			2. Mass law on negl
		2. Why have such a conclusion ?
		3. Char imm is loss allocating issue and law of place of domiciles is NY
		4. Law on strict liab is conduct regulating and activity is in NY
			1. NOTE: If we read NY absence of strict liab as loss-allocating the case is a true conflict
	8. Weird – action allowed that would not be allowed if purely domestic to wither state
		1. Is that bad?
	9. Remember Marie v Garrison
		1. MO contract, suit in NY, both states had statutes of fraud
		2. NY stat frauds not applicable bc substantive
		3. MO stat frauds not applicable bc procedural
		4. so action allowed
			1. is that wrong?
			2. no
			3. allowed under MO subst law
			4. and under NY proc law
	10. so what’s wrong here in Knickerbocker case?
		1. Currie argues oddly…
			1. Mass deters operation of unlicensed vehicles
				1. BUT not for charities
				2. so no Mass policy of deterrence to enforce
			2. Currie: “While Massachusetts has a policy of deterring the operation of unlicensed vehicles, it does not extend that policy to charities…. While New York has a policy of requiring compensation for its injured residents, it has no policy of imposing liability in the absence of negligence. To impose liability on this New York corporation, which has been free from fault, simply in order to carry out a nonexistent Massachusetts policy of deterrence, seems to me to be entirely unjustified….”
			3. Cavers’s Response
				1. Currie is wrong
				2. Mass deterrence policy is not limited by whether the defendant is a charity
				3. the purpose of charitable immunity is separate
				4. the laws are not connected
2. but what if laws are connected
	1. consider Maryland Cas v Jacek
	2. DNJ 1957
	3. Suit by MD insurer for declaratory judgment concerning liab under auto ins policy
	4. Issued in NJ to NJ domiciliary
	5. D had driven car with wife in NY
	6. Accident
	7. NJ – spousal immunity
		1. BUT insurer liable for any successful suit against insured
	8. NY, abolished spousal imm
		1. BUT if spouse is successfully sued, insurer not liable
	9. All NJ law, insurer not liab
	10. All NY law, insurer not liab
	11. Ct used 1st Rest
		1. Insurance contract –
			1. NJ - full liab
		2. Tort – spousal imm
			1. NY - no limit
	12. Does this make sense?
		1. NO NY tort and insurance contract law belong together
		2. both NY and NJ are worried about fraud
		3. NY solves problem by making insurer not liable
			1. needs that to allow spousal immunity
		4. NJ solves the problem by having spousal immunity
			1. that’s why it can allow full liability of insurer
		5. cannot have NY law on spousal immunity with NJ law on ins contract
3. What does this sound like?
	1. Problem of Cooney v Osgood
	2. NY ties joint and several liability to availability of contribution action
	3. Can’t have NY joint and several liability against NY company by MO employee, but apply MO law to prohibit contrib. action against MO employer – need to go together
4. Idea that depecage works only when you don’t split laws that are tailored to one another
	1. Will that be a problem if you use interest analysis?
	2. How would Jacek work out under interest analysis?
	3. Spousal immunity and contract both under NJ law