Contracts

**choice-of-law clauses in contracts…?**

**Nothing in 1st Rest – we will discuss in connection with the 2nd Rest.**

1. **Property**

***In re Barrie’s Estate*** (Iowa 1949)

Facts:

* What counts as revocation of a will?
* Before the Iowa Court (previously litigated in Illinois)
* Parties domiciled in Illinois (all of them)
* Decedent wrote and attempted to revoke will in Illinois
* Illinois court and Illinois law determining validity of will of what is movables and Illinois real property
* Looks like previous judgment purported to apply to all property.
	1. Why not binding upon Iowa court? Full Faith and Credit?
	2. Crude exception to not so iron-clad rule. Real property is the exception. Situs state courts can ignore prior judgments by other states that purport to act in rem on real property in the situs.
* Differences in laws: how the will can be voided
	1. IL: you can just write void (therefore will is invalid and IL property and personalty go in intestate succession)
	2. IA: must be witnessed by two persons or destroyed (concern for fraud)

Iowa court applies Iowa law – situs rule

§ 250. Revocation Of Will Of Land

* The effectiveness of an intended revocation of a will of an interest in land is determined by the law of the state where the land is.

But doesn’t this statute answer the case?

§ 633.49 (IA Statute)

* “A last will and testament executed without this state in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state, provided that such last will and testament is in writing and subscribed by the testator.”

No - in derogation of the common law, so read narrowly. Not about revocation.

This statute is curious anyway –

is Sec. 633.49 a choice-of-law rule, like the rule – “the law of the testator’s domicile at death applies to the validity of a will”

an Iowa choice of law rule that chooses another jurisdiction’s law is really saying that the other jurisdiction has power – it’s not iowa’s baby

But Sec. 633.49 is different. It is an attempt to legally regulate wills, but because people often assume that the law of their location or their domicile applies, this law incorporates those standards to protect their expectations. Not a choice of law rule at all.

This becomes important for other courts

imagine that an Illinois court was deciding the case according to Iowa law

would it take Sec. 633.49 into account?

If it was a choice of law rule, the general view is no

BUT if it incorporated other states standards into Iowa law, yes –

This Illinois court might use Illinois standards because Iowa law incorporated them

Situs state’s law determines a lot of other stuff, e.g. Dower, etc.

Exercise 1:

* Husband dies intestate in Illinois
* Husband owns land in Iowa and Nebraska
* Under Iowa law, wife gets all property of husband
* Under Nebraska law, wife gets ½ - rest goes to children
* Who gets what?
	+ Wife gets everything in IA and half of what’s in NE

**Immovables:**

* Distinction drawn in the first rest between movables and immovables
* Immovables include real property, but also some things that are considered personalty, esp leaseholds

why have the lex loci rei sitae approach?

**Early draft of 2nd Restatement:**
First, land and things attached to the land are within the exclusive control of the state in which they are situated, and the officials of that state are the only ones who can lawfully deal with them physically. Since interests in immovables cannot be affected without the consent of the state of the situs, it is natural that the latter’s law should be applied by the courts of other states. The second reason is that immovables are of greatest concern to the state in which they are situated; it is therefore proper that the law of this state should be applied to them. The third reason is to be found in the demands of certainty and convenience…

* First argument: power—no other state can control the property (except other states have some capacity, could issue judgment in personam concerning the property that the situs state would have to respect)

Is it true that the situs state is really the one with the greatest interest in its law applying…?

***Miller v. Lucks*** (Miss. 1948)

Facts:

* A white man and black woman (originally from Mississippi) live in Illinois and eventually marry there.
* The marriage is valid under Illinois, but not Mississippi, law.
* Mississippi does not, in general, recognize interracial marriages even if they are valid under the laws of the state where the marriage was celebrated.
* The woman dies and the husband claims a husband's interest in Mississippi property owned by the wife.
	+ MS SCt concludes they don’t have an interest in their law applying (even though they hate interracial marriage). This could have been done through a will, the fact that the property goes to him is really no skin off their nose.
	+ The situs state just isn’t really interested.

another justification is that it allows for certainty in a title search – always know your own law applies

Green is skeptical – if Iowa ct in in re Barrie had applied Ill law, it would have been expressed in a judgment and that judgment would be recorded, so it would be easy to see in a title search

Also suggestion that situs state most interested in its law applying
is it most interested in Barrie?

Iowa rule (no valid revocation) has as its purpose worries about fraud – but effects of fraud would be on Illinoisans

Ill rule (valid revocation) has as its purpose is vindicating testator’s intent – and testator is Illinoisan as are the beneficiaries of her intent

So Ill is more interested

Also claim is that the situs rule is clearer – but that is not the case if 1st Rest cts use characterization tricks, misuse public policy exception etc.

and even honest characterization problems occur

* e.g. Massachusetts (but not New Hampshire) has a law preventing wives from contracting with their husbands.
* X (from Massachusetts) enters into a contract in Massachusetts to convey New Hampshire property to her husband.
* What result?
* Contract or property?

situs rule is general rule for immovables

Not merely property, but other interests in property incl. leaseholds (which are usually understood as personalty)

Law of state where immovable is located applies

Lex loci rei sitae

More examples of real property

 In Illinois A (a domiciliary of Illinois) conveys property located in Iowa to B (a domiciliary of Illinois). A then dies.

Under Illinois law, A’s widow retains a dower in the  property (that is, a life estate in 1/3 of her husband's property that cannot be deprived by any transfer by the husband during his lifetime).

Under the law of Iowa, she does not retain a dower. Does A’s widow retain a dower or not?

No dower

220. Effect Of Conveyance Of Interest In Land

**The effect upon interests in land of a conveyance is determined by the law of the state where the land is.**

§ 237. Effect Of Marriage On Existing Interests In Land

**The effect of marriage upon interests in land owned by a spouse at the time of marriage is determined by the law of the state where the land is.**

What about movable property?

We know that succession and validity of wills is determined by the law of the domicile at death, not law of situs of moveable

Also rights of spouses in one another’s movables is by law of domicile

BUT other rights are by law of situs

Eg formalities of valid conveyance

Law concerning adverse possession

Under Illinois law of adverse possession, one must hold onto personalty for 2 years to acquire title. Under Iowa law of adverse possession, it takes 3 years. After holding onto P's television set in Illinois for two and a half years, D moves with the set to Iowa and is sued by P there. What result?

It’s D’s – this follows from vested rights theory

Where is property located

* Problem of intangibles
	+ - * copyright
			* good will in business

also aggregates of movables

* Caveat: The Institute expresses no opinion whether the conveyance of an aggregate unit of movables may not be governed by the law of the place where the various items are aggregated as a unit, or that a conveyance of an aggregate unit made up of a number of units, themselves aggregates, may not be governed by the law of the place where the entire unit is managed so far as such conveyance is not contrary to the public policy of a state in which any constituent unit is.

Also bootstrapping problem – what is real property or personalty is a legal question

According to the law of Illinois the window treatments in a house on Mary Barrie’s property in Iowa are not fixtures and so are personalty, not real property. Under the law of Iowa they are fixtures. An Illinois court, using the First Restatement approach, is trying to determine whether Barrie’s will is valid with respect to the window treatments. What result?

aProblem? Need law to determine applicability of state’s law

208 Whether an interest in a tangible thing is classified as real or personal property is determined by the law of the state where the thing is.

Domicile

White v Tennant

White lived life in WVa on farm

Sold farm and agreed with mother and siblings to occupy 40-acre tract in Pa

Left – made it to Pa house, but wife complained too damp

Dumped off goods

Went to stay with family in Wva

Visited, but never slept in Pa

He died in WVa at manor home

Pa law gives ½ to brothers and sisters

WVa gives all to widow

WVa ct applied Pa law

Domicile = intent to make place your home plus actual presence

§ 15. Domicil Of Choice

**(1) A domicil of choice is a domicil acquired, through the exercise of his own will, by a person who is legally capable of changing his domicil.**

**(2) To acquire a domicil of choice, a person must establish a dwelling-place with the intention of making it his home.**

**(3) The fact of physical presence at a dwelling-place and the intention to make it a home must concur; if they do so, even for a moment, the change of domicil takes place.**

Why should domicile matter for this purpose of law of intestate succession

Really a type of interest analysis

Note – ct says “even when the point of destinitaion is not reached, domicile may shift in itinere, if the abandonment of the old domicile and the setting out for the new, are plainly shown.”

Rare - cases tend to be those of reversion to original domicile (domicile of birth)

vast majority of cases need presence (though not actual dwelling)

Ct gives arg that must be domiciled in Pa house bc not domiciled at old house and not domiciled at mansion house (family house)

But is there another option

Assume that he died in WVa after abandoning his house

Where is he domiciled

In WVa but at no place there

So why can’t we say that here?