Domicile

A lawsuit, brought in West Virginia, is attempting to determine whether White domiciliary of West Virginia or Pennsylvania.

White lived in West Virginia until he was convicted of a federal crime in West Virginia and sent to prison in Pennsylvania.

There he died.

Under the law of Pennsylvania, prisoners have the domicile they had before imprisoned, since Pennsylvania follows the approach that a person cannot acquire a domicil of choice by any act done under legal or physical compulsion.

Under West Virginia law White is domiciled in Pennsylvania, since he intended to remain in that state after release. How should the West Virginia court decide?

§ 10. Domicil By What Law Determined

1. **A question of domicil as between the state of the forum and another state is determined by the law of the forum.**

distinguish

residence

Residence requires some time, but domicile can be immediate

But no real concern about intent

nationality

Can be US national domiciled in France

habitual residence

Hague Conf on Private Int’l Law

* Like domicile but requires more time there

Other rules

Validity of marriage

Valid if complied with law where celebrated

So if domiciliaries of state A are married in state B according to laws of state B it is valid even in state A

As we will see, is taken back to a great extent concerning validating marriages that are OK in state of domicile

BUT consider converse -

Two domiciliaries of Massachusetts of the same sex enter into a marriage in Virginia, which does not allow for same-sex marriages.  Would the marriage be recognized in Massachusetts under 1st Rest.

NO

§ 122. Requirements Of State Of Celebration

**A marriage is invalid everywhere if any mandatory requirement of the marriage law of the state in which the marriage is celebrated is not complied with.**

But place of celebration rule taken back

Taken back by 132 – don’t let domiciliaries escape law of domicile if strong public policy

§ 132. Marriage Declared Void By Law Of Domicil

A marriage which is against the law of the state of domicil of either party, though the requirements of the law of the state of celebration have been complied with, will be invalid everywhere in the following cases:

(a) polygamous marriage,

(b) incestuous marriage between persons so closely related that their marriage is contrary to a strong public policy of the domicil,

(c) marriage between persons of different races where such marriages are at the domicil regarded as odious,

(d) marriage of a domiciliary which a statute at the domicil makes void even though celebrated in another state.

1. also 2nd Rest 283(2)
2. **(2) A** **marriage which satisfies the requirements of the state where the** **marriage was contracted will everywhere be recognized as valid unless it violates the strong** **public policy of another state which had the most significant relationship to the spouses and the** **marriage at the time of the** **marriage.**

A same sex couple domiciled in Virginia get married in Massachusetts. Assuming that a Massachusetts court uses the 1st Rest., will it recognize the marriage? No – will apply law of state of domicile.

Compare:

Contrast Uniform Marriage Evasion Act:

This is Massachusetts’s 1913 Act:  
  
No marriage shall be contracted in this commonwealth by a party residing and intending to continue to reside in another jurisdiction if such marriage would be void if contracted in such other jurisdiction, and every marriage contracted in this commonwealth in violation hereof shall be null and void.

This is even stronger – doesn’t have to be strong public policy of domicile

Also…

134

**If any effect of a marriage created by the law of one state is deemed by the courts of another state sufficiently offensive to the policy of the latter state, the latter state will refuse to give that effect to the marriage.**

* X and Y, an interracial couple, are married in Illinois, which allows such marriages. Both are domiciled in Illinois. Will they be allowed to cohabit if they are visiting Mississippi, which prohibits such marriages?

NO

1. Other rules
   1. Corporate law – in its internal affairs – law of state of incorporation
      1. This might even be constitutionally obligated bc it is so important to have only one law apply
   2. But other issues about corp are determined by normal category of law it is
      1. property, K tort
      2. Corp incorped in state A, by law of state A a corp is not liable for the torts of its agents
      3. Agent of Corp commits tort in state B where corps are liable
      4. Corp is liable

problems of characterization

* must be faced by cts using 1st Restatement
* **Must always characterize**
* **BUT characterization can be used to become an escape device**
* **Became a kind of nascent interest analysis**

Characterization

* Tort/contract
* Levy v Daniel’s U-Drive Auto Renting Co

Conn SCt 1928

* + Daniels rented a car to Sack in Conn
  + While driving in Mass, Sack (with Maginn, another driver) negligently injured Levy, a passenger in Sack’s car
  + Conn statute held auto lessors liable for damage caused by lessee
  + Mass had no such statute – would have to show their negligence
  + Lex loci deliciti would argue for Mass law
* Ct characterized as contract, not tort
  + So Conn law applied
* what are reasons why it would make sense to have Conn law apply? – Doing interest analysis
  + Purpose of Conn statute (which is to encourage lessors to lease to careful drivers and to allow compensation to those hurt by those leasing cars) is relevant here
    - because leasing occurred in Conn and Conn P to compensate (will discuss this interest analysis move later)
    - Mass thinks it’s inappropriate to hold someone who leases a car responsible for damage unless he isnegligent
    - But Massachusetts is not interested in imposing this view of justice on Connecticuters
* What is driving characterization
  + hidden interest analysis
  + here is an example of how is does the other way – court reads case as tort
  + Venuto v Robinson (3d Cir 1941)
  + Robinson agreed in NC to lease his equipment to Ross Motor Lines and to take load for Ross from NC to NE
  + Robinson had accident in NJ
  + Venuto sues Robinson and Ross in NJ
    - NJ law allowed for derivative liability
    - NC law did not
    - One purpose of NJ is to compensate Ps – interested when it is a NJ P
    - So characterized as tort
* BUT does the characterization of the action as contractual make sense?
  + Was this part of the K
  + Ct says statute did not create liability – it imposes liability only on condition of entering into lease K
    - That was true in Carroll too – K is condition for tort liab.
  + How can it be contractual when the P is not party to the K
    - 3rd party beneficiary?
    - that's why court speaks of “direct, sole, and exclusive benefit” of P
    - contractual characterization could cause problems in other areas – for example statutes limitations – would have to be longer contract SOL
    - - Assume that the contract between Daniels and Sack had by chance been entered into in Massachusetts rather than Conn. But the facts of the case were otherwise the same
      * Would have to say Conn law does not apply
* also does it really help characterizing as contract, what about competing Mass law, is that contract too? – can’t be

1. Haumschild v Continental Cas Co. (Wisc SCt 1959)
   1. Ms Haumschild sued former husband and his insurer
   2. Due to Cal auto accident that occurred when they were married
   3. Both domiciled in Wisc
   4. Trial ct dismissed bc Cal law applied
      1. Place of wrong
      2. Cal had interspousal immunity
   5. Wisc SCt reversed
      1. Overturning past Wisc SCt decision (Buckeye v Buckeye)
      2. Characterized as family law subject to law of domicile
      3. Why good idea? Interest analysis
         1. Purpose of interspousal immunity - there to prevent family discord  
            other purpose?
            1. Avoiding fraud against insurance companies due to collusive suits between husband and wife
         2. Either way California is not interested
            1. No CA couple’s marital harmony at issue
            2. Fraud would not be felt in CA
         3. What are purposes of Wisconsin’s law?
            1. Deterrence of negligence by husbands toward wives
            2. Compensation of wives harmed by husband’s negligence
            3. Wisconsin is interested, especially concerning the compensatory purpose – there is a Wisconsiner to compensate

* Court recharacterized tort case as one concerning marital relations in order to get Wisc law to apply
* Another argument, which the court rejected, was renvoi. Because a California court would have applied Wisc law, the plaintiff argued that the 1st Rest rule of using Calif law included Calif’s choice-of-law rules, which would mean using Wisc law

But this is contrary to the 1st Rst. With a few exceptions, it applies the laws of another state not which laws that state’s courts would apply. Generally won’t apply another state’s conflicts/choice of law rules

Distinction between renvoi and desistement

Renvoi – if your rules says apply the law of state X, that means apply whichever law X’s courts would apply. Borrow their conflicts resolution

Desistement – Don’t apply a state’s law if they wouldn’t apply their own law – does not mean you necessarily apply the law that their courts would apply

Desistement can be considered relevant to interest analysis – a state might be considered interested in its law applying only if its courts would apply its law