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outline of Conflict of Laws

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175
 176 1) Obtaining jurisdiction (require, **basis for jurisdiction,**
 177 **competent court, and procedural due process**
 178 a) State Court competence
 179 i) Obligation for states to provide a form
 180 (1) If there is no real public policy reasons in a state for
 181 not hearing a case, the state must hear it, and it
 182 can't write its law to exclude extraterritorial actions¹
 183 (2) Judicial jurisdiction a.k.a. adjudicatory jurisdiction
 184 (a) Jurisdiction of the court (note two definitions,
 185 whether there is power to render a judgement
 186 and whether there is power of the court to
 187 entertain the case)
 188 (b) State may apply its own local law when the
 189 issue is within the scope of its regulatory power²
 190 subject to constitutional limits
 191 (i) Due process
 192 (ii) Full faith and credit
 193 (c) Law of the forum will determine the jurisdiction
 194 of the court to hear evidence and fashion a
 195 remedy³
 196 (d) Law of the forum might also preclude remedies
 197 based on due to relations between parties
 198 disabilities⁴ (a public policy issue)
 199 ii) Substantive jurisdiction of the federal courts
 200 (1) Rules of Decision act: laws of the several states,
 201 except where the constitution treaties, etc. shall be
 202 regarded as rules of decision in trials of common
 203 law⁵
 204 (a) Equitable decisions are binding as well⁶
 205 (b) Note: there is a difference between what is
 206 substantive for Erie purposes and what is
 207 substantive for conflict of laws purposes⁷

¹ Hughes

² Restatement 2nd § 24

³ Mertz

⁴ Mertz

⁵ Erie

⁶ Guaranty Trust

208
 209 (i) Erie: Uniformity⁸
 210 (ii) Full faith and credit: delimit spheres of
 211 legislative competence⁹
 212 1. If current conditions render it desirable
 213 that forum states no longer treat a
 214 particular issue as procedural for
 215 conflicts purposes than those states can
 216 adopt a rule to that effect, or congress
 can handle it¹⁰¹¹

⁷ Sun Oil

⁸ Sun Oil

⁹ Sun Oil

¹⁰ Sun Oil

¹¹

STATE RULE	FEDERAL RULE	IF NO RULES OF DECISION ACT	WITH RULES OF DECISION ACT
<i>State rule protecting a substantive right.</i>	Federal rule protecting a substantive interest.	Where there is conflict here, the federal courts have no right to impinge in state rules.	The federal court will have to apply state law – must then apply state created substantive rights.
	Federal rule protecting a procedural interest.	Where there is conflict here, the federal courts can apply their own rules.	

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(c) There is no power for Congress to create a federal substantive common law of non-federal issues¹² (for example nothing constitutional that prevents people from acting in an area)

(d) Constitutional question arises where one party may rely on a certain law, and the rules of decision sneak in another law

(2) In areas which are federalized, Congress has upheld federal power

(a) Admiralty: Jurisdiction because ship was related to controversy, and there is often no other forum

(b) Suits between states

(3) Outdated: Outcome determinative test. Now, if there is a true conflict under the RDA, FRCP will apply

(a) To tell if a federal statute creates a substantive right, the test is whether or not there is a substantial likelihood of a change in outcome¹³, but that change in outcome may be present everywhere.

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(i) RDA might overwhelm statutes which tell courts sitting in equity to apply traditional equity rules¹⁴

(ii) Balancing test of Byrd: As a general rule, the **preference for state law** must be balanced against the **deprivation of federal rights** to accompany application of state law, a test which is separate from, and intended to augment, the “outcome-determinative” test of York.

1. If there is no substantive right involved it is something that the federal courts simply just have a preference for, in making litigation go smoothly.¹⁵
 - a. It might be that absent an RDA, the court could inquire as to whether a given procedural thing was still part of the substantive right (for example jury trial)
 - b. But since congress has the power to create federal courts, it probably has the power to construct procedural rules
 - i. Assumption is that just because there is the RDA that Congress didn't mean to abridge a state created right
2. In the absence of a federal rule, the federal court could still apply state grounds
3. Courts can look at the actual rights involved to see if there is no conflict¹⁶

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State rule protecting a state procedural interest.	Federal rule protecting a substantive interest.	There is never any right for a federal court to apply its rule in this case.	Here, the federal courts might still apply federal law pursuant to Byrd balancing.
	Federal rule protecting a procedural interest.	Where there is conflict here, the federal courts can apply their own rules.	

¹² Eerie
¹³ Guaranty Trust

14 Guaranty Trust
15 Walker
16

269 (iii) Preference for state law is not binding if its
 270 application would deprive one party of a
 271 strongly protected federal right¹⁷
 272 (iv) Potential changes in outcome must be
 273 balanced against a hindering of the federal
 274 courts from enforcing state substantive
 275 rights.¹⁸
 276 (b) **must look carefully to see if there is a direct**
 277 **collision**¹⁹ -- under today's rules FRCP will
 278 apply

Facts	Whether a federal court should use state procedure in determining whether or not an action is commenced, or a statute of limitations is tolled.
Holding	The federal court should use state procedure, partially because there is no federal definition of when a statute is tolled, only when an action is commenced, so there is no real conflict

¹⁷ Byrd
¹⁸

Name	Hanna	Page	602
Procedure	Diversity action		
Facts	Service conformed to federal rules. Would have been fatal error in service if served under state rules.		
Holding	Federal rules of service would control, as it would alter the ability of the federal courts to enforce state-created rights under the REA. Even though this is outcome determinative, is a trusim, as just about everything might be.		

¹⁹ Stewart Organization

279 (c) court must look to what the actual substantive
 280 right is (for example the right to have a court
 281 review jury awards)
 282 (i) Must look at the procedural power of the
 283 courts (including to review judgements, etc.),
 284 because a court determines that under the
 285 RDA a court determines that there is a state
 286 substantive right involved, than it is not
 287 procedural.²⁰
 288 (ii) Hence, Federal Appellate courts or similar
 289 will be afforded the same review as state
 290 procedures grant²¹
 291 (d) Rules governing what defenses are recognized
 292 are considered to be substantive -- and if
 293 someone loses because a cause of action is
 294 unavailable, they cannot go to the federal court,
 295 and be given that cause of action (as the merits
 296 of the case and the procedure are passed on.)²²
 297 (i) Substance v. procedure: can be used to
 298 recharacterize the issue²³
 299 (ii) Burden of proof:
 300 1. Can look at things in terms of whether it
 301 is a question of efficiency or violating the
 302 interests of the other states -- including
 303 where the BOP lies with an issue
 304 a. Is choice of law in an area normally
 305 considered substantive or
 306 procedural²⁴
 307 b. Burden of proof can be an issue of
 308 judicial efficiency
 309 c. State conflicts rules will apply in
 310 federal courts²⁵

²⁰ Gasparini
²¹ Gasparini
²² Angel
²³ Grant
²⁴ Harland in Bourmias
²⁵ Klaxton

- 311 “does the other state have a
 312 “substantive interest” in having certain
 313 rights – the forum doesn’t care, and it
 314 can make its own determination about
 315 whether or not the evidence is too state
 316 a. if the evidence is to assure one
 317 party as to whether one particular
 318 party can be free of limitation at a
 319 given time
 320 3. problems with the forum never applying
 321 its own procedural rules
 322 4. will need look at the reasons for burden
 323 shifting
 324 a. It has been held that switching the
 325 burden of proof does not change
 326 any fundamental rights²⁶
 327 (1) Will not apply different rules so there is not
 328 forum shopping across the courthouse square²⁷
 329 (2) It may be an open question as to whether state
 330 conflicts rules embody a federal right or not.²⁸
 331 (3) It is still constitutional for the SC under the RDA
 332 to promulgate choice of law rules for all courts.
 333 (a) H&W argue that prospect of different federal
 334 law is disruptive²⁹
 335 (4) Federal common law choice of law rules favor
 336 the most significant relationship test³⁰
 337 (5) Change of venue
 338 (a) Should apply the original law³¹
 339 ii) Federal common law in areas requiring uniformity: must
 340 decide to what extent congress was delegating the
 341 treatment of the underlying issue to state law, as most of
 342 these things are legal creations of congress

²⁶ Levy

²⁷ Bullington

²⁸ Klaxton

²⁹ hart and Weschler

³⁰ Liu

³¹ Van Dusen

- 343 (1) Federal common law might completely trump state
 344 law in an area if state law would, even if parallel
 345 interfere with the enforcement of it³²
 346 (2) In areas bordering on the federal government, the
 347 federal courts can create a federal common law,
 348 rather than relying on state choice of law rules³³, but
 349 in areas where the federal interest is only in the
 350 creation of paper, and it doesn’t subject the
 351 government to a difference in liability or the
 352 potential, purely local substantive laws will apply³⁴
 353 (a) Economic relationship can be somewhat indirect
 354 for a federal common law to attach³⁵

³² Penn v. Nelson

³³

<i>Name</i>	Clearfield Trust	<i>Page</i>	621
<i>Facts</i>	Endorsement forgery problem of a check issued by the federal government. Difference in the way it would be handled under federal and state law.		
<i>Holding</i>	Negotiable instruments issued by the federal government are governed under a federal common law. Applying state law rules would subject the federal government to uncertainty.		

³⁴ Bank of America

³⁵

<i>Name</i>	Boyle, 630
<i>Facts</i>	Son killed in helicopter crash under government contract. Defendant claims should be adjudicated under federal law
<i>Holding</i>	Even an indirect drain on treasury should be treated as one, and the citizenry will ultimately have to bear the cost of tort liability

355 (3) Foreign relations and questions on ongoing
 356 executive branch activity create an area for federal
 357 common law³⁶
 358 (a) But note: Parties must plead foreign law, and it
 359 is not an exception to say that there is no foreign
 360 law³⁷
 361 b) Basis for jurisdiction
 362 i) The old view placed the jurisdiction issue as based on
 363 territoriality³⁸, but later it depending on minimum
 364 contacts³⁹
 365 (1) Even with minimum contacts, the concepts of fair
 366 play, as well as the state being able to fulfill its
 367 interests other ways might countervail⁴⁰
 368 (2) *In rem* jurisdiction still requires minimum contacts⁴¹
 369 must be fair and a reasonable forum⁴²
 370 (a) *In rem*
 371 (i) over immovables, due process is similar to a
 372 "forum non" over an immovable.
 373 (ii) Chattles: require more than just present
 374 (iii) Intangibles: whether the certificate is
 375 physically the right depends on the state that
 376 issued the chattel⁴³
 377 (b) Quasi in rem: where the claimant has no claim
 378 against the specific property as in *in rem* but is
 379 only subjecting the owner's interest in the

Dissent

Court should defer to congress as to whether or not contractors are covered under federal law. Congress should do something so that it can know which body it should apply.

36 Bano National de Cuba
 37 Walton
 38 Pennoyer
 39 Shoe
 40 Asahi
 41 Shaffer
 42 Shoe
 43 Restatement 2nd §§ 64, 303

380 property b4 the court to the satisfaction of a
 381 personal claim. **where the validity of the claim**
 382 **has not been established and the choice of**
 383 **whether or not to defend is an unfair**
 384 **hardship, in rem it is a violation of due**
 385 **process**⁴⁴

(i) *Quasi in rem type 1: quiet title*
 (ii) *Quasi in rem type 2: Shaffer-type attachment of stock*

1. It is violation of due process to force a defendant debtor to elect between default and defense when the claim is not liquidated and when the defendant does not have sufficient contact with the forum to make it reasonable to require the defendant to appear.⁴⁵
2. Present of an insurer is not enough for jurisdiction⁴⁶ -- one needs jurisdiction over the out of state insured
 - a. Liquidated claims
3. where the validity of the claim has not been established and the choice of whether or not to defend is an unfair hardship, in rem it is a violation of due process⁴⁷

(c) *In personam*: If the technical object of the suit is to establish a claim against some particular person, with a judgement which generally, in theory, at least binds his body or to bar some individual claim or objection, so that only certain persons are entitled to be heard in defense, the action is in personam, if, the object is to bar indifferently all who might be minded to make an objection of any sort it is in rem⁴⁸

44 Rush v. Savchuk
 45 Shaffer
 46 Rush
 47 Rush v. Savchuk
 48 Justice Holmes

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- (d) Other requires for in personam
 - (i) Domicile⁴⁹
 - 1. Domicile is usually defined as a party living somewhere, or having no intention to move elsewhere⁵⁰
 - (ii) Nationality
 - (iii) Consent
 - (iv) Location of things within the boundaries of the forum (minimum contacts analysis)⁵¹
- (3) Jurisdiction over a party, once acquired continues throughout all subsequent proceedings which are a part of that original litigation⁵², **note later exceptions for child abuse**
- ii) Some element of predictability must be required to satisfy due process requirements⁵³
- iii) Consent to jurisdiction is allowed⁵⁴
- c) Procedural due process
- 2) Old fashion Choice of law: note there is a difference between rejection on policy grounds of a cause of action and rejection of a defense⁵⁵ (this would leave the cause of action in tact to fight it elsewhere)
- a) Outdated views
 - i) Statutists are defined as basically a problem of statutory interpretation
 - (1) Real is defined as what is within the territory of the jurisdiction
 - (2) Personal is defined as what follows the person where he goes
 - ii) Principle of territoriality (Huber)
 - (1) three maxims

⁴⁹ Millikin
⁵⁰ White
⁵¹ Shoe
⁵² Restatement § 26
⁵³ WWV
⁵⁴ Burger King
⁵⁵ Bradford

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- (a) Law of each state have force within the limits of that government and bind subjects, but not beyond
- (b) All persons within a state are its subjects whether they stay there or not
- (c) Sovereign with comity so that they don't cause prejudice to the power or rights of such governments
 - (i) This has reasons making commerce easier
- (2) "Every action tried here must be tried by the law of England, but the law of England looks to foreign laws."⁵⁶
 - (a) British declared international trade laws to be part of public common law
 - iii) Place of the wrong rule
 - (1) tort
 - (a) The place of the wrong rule is where the last event to make someone liable took place⁵⁷
 - (i) Problem is that this is a realization requirement for negligence
 - 1. Moreover, standards of care differ – and the place of the earlier conduct might have a different standard than where the tort happened -- courts have used the Plaintiff's home state as the place where the harm occurred (maybe it is the Plaintiff's domicile).
 - a. Domicile is usually defined as a party living somewhere, or having no intention to move elsewhere⁵⁸
 - i. Public Policy dictates that bank accounts be according to their location⁵⁹
 - (b) Reputation harm is based on where the place where the harm is communicated (with media

⁵⁶ Holman
⁵⁷ Restatement § 93
⁵⁸ White
⁵⁹ Wyatt

- 479 that is all 50 states) – but should be made as
 480 one action⁶⁰
- 481 (c) Other alternative is the place where the Plaintiff
 482 was when he felt the harm⁶¹
- 483 (2) Contractual claims for enforcement of a Contract
 484 amongst multiple states
- 485 (a) Newer view: Assumption that the parties
 486 contracted with reference to the law which would
 487 uphold the contract will be upheld⁶²
- 488 (b) Place of contracting -- defining: Beale: final act
 489 where contract was done is decided by forum
 490 law (but comment says it is "general law of
 491 contract"⁶³
- 492 (i) Formal contracts: where delivery is made⁶⁴
 493 (ii) Informal unilateral: Where the event takes
 494 place
 495 (iii) Informal bilateral: where the second promise
 496 is made⁶⁵
- 497 1. Acceptance sent from one state to
 498 another -- if it is sent by agent of accept
 499 it is the state where the agent delivers it,
 500 if the acceptant is sent by other means
 501 the place of contracting is the state from
 502 which the acceptance is sent⁶⁶
- 503 (c) Even if the local law would make a contract
 504 unenforceable, so long as enforcement does not
 505 violate public policy. However, courts will look to
 506 their own law to determine exactly what they
 507 which law to look to.⁶⁷
- 508 (d) Probably don't want the law to violate public
 509 policy

⁶⁰ Single Publication Rule of Keeton

⁶¹ Bernsstein

⁶² Pritchard

⁶³ Restatement § 311

⁶⁴ Restatement § 312

⁶⁵ Restatement § 325

⁶⁶ Restatement § 326

⁶⁷ Milken

- 510 (a) Third party beneficiaries can enforce contracts
 511 based on their place of origin, if the state of
 512 origin's interests are great enough (and the
 513 reason for the contract was related to those
 514 interests)⁶⁸

(e) First restatements view

- 515 (i) Law of the place of contracting determines
 516 validity of contract with respect to⁶⁹
- 517 1. Competence⁷⁰
 - 518 2. Form it must be made⁷¹
 - 519 a. (is this include contractual
 520 interpretation)⁷²
 - 521 3. mutual asset⁷³
 - 522 4. requirements for making a promise
 523 binding⁷⁴
 - 524 5. fraud⁷⁵
 - 525 6. nature⁷⁶
 - 526 7. time and where the place was made⁷⁷
 - 527 8. conditional⁷⁸
- 528 (ii) performance
- 529 1. law of place of performance with respect
 530 to⁷⁹
 - 531 a. manner⁸⁰
 - 532 b. time⁸¹

⁶⁸ U-drive

⁶⁹ First restatement 1934

⁷⁰ First restatement 1934

⁷¹ First restatement 1934

⁷² First restatement 1934

⁷³ First restatement 1934

⁷⁴ First restatement 1934

⁷⁵ First restatement 1934

⁷⁶ First restatement 1934

⁷⁷ First restatement 1934

⁷⁸ First restatement 1934

⁷⁹ First restatement 1934

⁸⁰ First restatement 1934

⁸¹ First restatement 1934

534 c. person by who to permanence shall
 535 be made⁸²
 536 d. sufficiency of performance⁸³
 537 i. excuse for non-performance⁸⁴
 538 iv) Dépeçage is defined as different laws to different issues
 539 in the same case is generally disfavored in the common
 540 law
 541 (1) But note: In terms of factual analysis, states will not
 542 second guess another state's as a defense to
 543 contract (for example impossibility). In essence,
 544 impossibility based on a matter of law, will always be
 545 considered to be valid based on the foreign laws.⁸⁵
 546 v) Vested rights: Beale: vested rights over comity⁸⁶
 547 (1) Early cases seemed to look to locality of where the
 548 events occurred not where there was the negligence
 549 or contracts took place (evidence must manifest
 550 itself in a state before that states laws can be
 551 applied)⁸⁷
 552 (2) Still necessary to protect the expectations of the
 553 parties
 554 (a) Choice of law is on the basis of power
 555 (b) People make contracts on the basis of whether
 556 or not they expect the law to be fulfilled
 557 (3) Vested right is defined as when a right it created by
 558 law it becomes a fact
 559 (a) Opposition: (legal realists): local form would
 560 apply its law anyway, regardless of the
 561 reasoning

⁸² First restatement 1934
⁸³ First restatement 1934
⁸⁴ First restatement 1934
⁸⁵ Holzer
⁸⁶ Slater

⁸⁷ Alabama Great Southern RR: injury in Mississippi on a train that started in Alabama (and could have been inspected along the way). Negligence was of coworkers and "fellow servant". Background law was that there can be no recover unless there is no cause of action. Court rejects argument that the contract between Plaintiff and Defendant include the laws at which it was consummated.

562 b) Penal laws and penalties will generally not be applied by the
 563 forum partially because the law of the forum will establish the
 564 jurisdiction that a court has⁸⁸ -- and penal laws can often
 565 create fundamental public policy differences
 566 i) Punitive damages are not considered to be penal and
 567 can be adjudicated by a different forum⁸⁹ -- they do
 568 consist of vested rights
 569 c) Tax laws will not be enforced, but judgements will
 570 d) Under the old views, the ability of courts to recharacterize
 571 disputes, for example characterizing a tort action as a
 572 breach of warranty⁹⁰
 573 i) Substantive: However, many recharacterizations will
 574 actually mean requiring the state to look at the policy
 575 interests effected (for example marriage, traffic safety)⁹¹
 576 **especially to prevent harsh results**
 577 (1) Statutes of limitation may in fact be a part action, as
 578 they are written and enacted in the same code⁹²
 579 (a) Note: uniform conflict of law limitations act
 580 places statute of limitations as substantive
 581 (b) Specificity test for determining of a statutes of
 582 limitations is procedural or substantive
 583 (i) Can look to the intermeshing between a
 584 statute and its procedure, to characterize
 585 something as procedural⁹³
 586 1. Would have to inquire into what
 587 interests of the state are being frustrated
 588 (ii) General rules is that the forum applies its
 589 own statutes of limitations, esp. if the forum
 590 statutes of limitations hasn't expired
 591 (iii) but there is a question of whether or not the
 592 other the other state has a substantive
 593 interest -- lawyers can emphasize
 594 substantive facts

⁸⁸ Mertz
⁸⁹ Loucks
⁹⁰ Levy v. Daniels U-Drive
⁹¹ Haumschild
⁹² Bournias
⁹³ Bournias

595 (c) General rule is that the forum applies its own
596 statute of limitations, that the legislature wouldn't
597 have enacted this claim if it weren't for this
598 statutes of limitations

599 (i) what we have is a variety of claims, and we
600 have an statutes of limitations, and there is
601 no sense that the two were tied together that
602 closely - -another way of saying this, is that
603 if the forum statutes of limitations hasn't
604 expired, unless it thinks that by doing so, it is
605 frustrating some statutes of limitations of
606 some other state - it is doing something that
607 the evidence is too stale once the evidence
608 has expired

609 (2) Law of the forum might also preclude remedies
610 based on due to relations between parties
611 disabilities⁹⁴ (a public policy issue)

612 ii) Procedural: Characterization of a bar against a cause of
613 action can be recharacterized as substantive or
614 procedural⁹⁵

615 (1) Under old rules (first and second restatement):
616 Forum court will determine whether substantive or
617 procedural⁹⁶

⁹⁴ Mertz

⁹⁵

Name	Grant	Page
Procedure	Appeal to Cal App	48
Facts	Difference between AZ law which prohibited survivor suits, and CA law which allowed.	
Holding	Survival relates to what is needed for enforcement of a legal claim, hence it is procedural, and CA wrongful death will apply.	
Dissent	This is the creation of a cause of action, and is really the whimsical creation of what should be uniform rules.	

618

§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.

(2) Where there is no such directive, the factors relevant to the choice of the applicable rule 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, the protection of justified expectations,
- (d) the basic policies underlying the particular field of law,
- (e) ease in the determination and application of the law to be applied.

a. §6, explained. The reference to the general principles of §6 provides the court with a list of considerations to guide it in determining the state with the most significant relationship to the issue. These principles, which are not listed in order of priority, are:

- (1) the needs of the interstate and international legal systems;
- (2) the forum's policies;
- (3) the policies of other states and those states' interest in the application of their law to the issue;
- (4) protection of party expectations;
- (5) the policy underlying the particular field of law;
- (6) certainty, predictability and uniformity of result; the relative ease of determining and applying a law.

(a) Procedure

- (i) Whether something is procedural or substantive
- (ii) Proceeding rules
- (iii) Judge or jury
- (iv) Burdens and presumptions
- (v) Credibility of witnesses
- (vi) Admissibility of evidence
- (vii) Statute of limitations

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619

1. If an action is barred by the statute of limitations of the forum, no action can be maintained, though action is not barred in state where the cause of action arose
2. If an action is not barred by the statute of limitations of the forum, an action can be maintained, though action in barred in state where the cause of action arose
3. Note: uniform conflict of law limitations act places statute of limitations as substantive
4. Limitations on amount recoverable

620

(b) substance

- (i) time limitations on cause of action

621

e) conflict between conflicts (renvoi)

- i) Restatement's Statutory places to use renvoi

622

(1) Areas

- (a) When the objective of the particular choice of law rule is that the forum reach the same result on the very facts involved as would the courts of another state subject to consideration of practicality and feasibility⁹⁷
- (b) When the state of the forum has no substantial relationship to the particular issue or the parties

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(2) Subject matters

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⁹⁷ 2nd Res 8(2) and (3)

- 652 (a) Validity and effect of transfer of an interest in
653 land⁹⁸
- 654 (i) Land is subject to recording systems
- 655 (b) Validity and effect of transfer of an interest in
656 chattels⁹⁹
- 657 (c) Succession to interest in movables¹⁰⁰
- 658 (d) Rights of creditors against goods sold
- 659 (e) Law applicable to leased goods covered by
660 certificate of title¹⁰¹
- 661 (f) Bank deposits¹⁰²
- 662 (g) Perfection provisions¹⁰³
- 663 ii) Terminology of characterization of foreign law (problems
664 that renvoi brings up)
- 665 (1) Remission: had the action been commenced there,
666 it would have been referred to the forum
- 667 (2) Transmission: Foreign conflicts rule might refer to
668 another jurisdiction
- 669 iii) Types of law
- 670 (1) "whole law" is defined as the law that the state would
671 apply to the multistate case actually presented by its
672 own choice of law rules (one reference)¹⁰⁴ (though
673 some people say that Schneiderman misinterpreted
674 Swiss choice of law)
- 675 (a) often requires a more through understanding of
676 foreign law
- 677 (2) "internal law" is defined as the law that would be
678 applied if there were not multistate contacts
- 679 iv) Types of renvoi:
- 680 (1) **Reject renvoi** (most popular) is defined as looking
681 to the local law of the foreign jurisdiction without
682 looking at the target jurisdictions choice of law rule

⁹⁸ 2nd Res 223

⁹⁹ 2nd Res 245

¹⁰⁰ 2nd Res 263

¹⁰¹ UCC 2a-105

¹⁰² UCC 4-102

¹⁰³ UCC 9-103

¹⁰⁴ Schneiderman's estate

- 683 (a) **Beale**: foreign law should only be called in to
684 handle what is or is not a vested right
- 685 (2) **Partial renvoi** is defined as renvoi with single
686 reference, to look to the whole law of the original
687 state
- 688 (3) **Total renvoi** (sitting and judging): The forum will
689 never use its own connecting factors
- 690 (a) Could be an abdication of sovereignty
- 691 f) But note: In terms of factual analysis, states will not second
692 guess another state's as a defense to contract (for example
693 impossibility). In essence, impossibility based on a matter of
694 law, will always be considered to be valid based on the
695 foreign laws.¹⁰⁵
- 696 3) Modern choice of law – a.k.a. choice of substance: Choice of
697 substance (pervasive question when dealing with rules as to
698 whether a rule which yields a harsh results should be accepted
699 in the name of consistency, or modified, or discarded)
- 700 a) Multiple parties
- 701 i) Although one court might have jurisdiction over all of the
702 parties, it raises a constitutional problem as to whether
703 or not they should all be bound by the same substantive
704 law¹⁰⁶ as they may not have achieved the minimum
705 amount of contact necessary

¹⁰⁵ Holzer

¹⁰⁶

Name	Phillips Petro	Page	288
Procedure	Kansas SC in equity.	Appealed to	SC
Facts	Question of interest rates deriving from pending rate approvals. KS SC held equitable principles apply not only to KS residents contracts related to KS, but others.		
Holding	A court can have jurisdiction over a vast number of issues before it, but cannot automatically apply its own law out of convenience, as it raises constitutional problems.		

- 706 (1) In cases where there is property that it is known that
 707 it can travel, (for example world wide insurance) than
 708 the parties must be prepared for multiple laws¹⁰⁷
 709 (2) It has been held that switching the burden of proof
 710 does not change any fundamental rights¹⁰⁸
 711 (3) Constitutionalizing choice of law might lead to
 712 frustration of purpose
 713 ii) Note: there is a difference between what is substantive
 714 for Erie purposes and what is substantive for conflict of
 715 laws purposes¹⁰⁹

- (4) Eerie: Uniformity¹¹⁰
 (5) Two step process
 (a) Due process
 (i) Unfair surprise
 (ii) Note Phillips Petroleum is the only case in
 which it was found to be constitutionally
 unfair for a court to apply its own law
 (b) Full faith and credit: delimit spheres of
 legislative competence¹¹¹ (so immovables might
 not count)
 (i) If current conditions render it desirable that
 forum states no longer treat a particular
 issue as procedural for conflicts purposes
 than those states can adopt a rule to that
 effect, or congress can handle it¹¹²
 (ii) Creation of a "public act" If there is no real
 public policy reasons in a state for not
 hearing a case, the state must hear it, and it
 can't write its law to exclude extraterritorial
 actions¹¹³
 1. Note: all the parties were residents of
 WI

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Dissent If there is no conflict, there is no constitutional problem.

¹⁰⁷ Clay
¹⁰⁸

Name	Levy	Page
Procedure	SC of Mass	
Facts	Question of whether the burden of proof should be based on one state or the other.	
Holding	Switching the BOP does not alter any fundamental rights. Place of injury rules determines whether a right of action exists, and that the law of the place where the action is brought regulates the remedy and the evidence.	

¹⁰⁹

Name	Sun Oil	Page
Procedure	Appeal of KS SC	
Facts	Multi-state interest rate litigation.	

Holding

- Constitution does not bar application of forum state's statute of limitations for claims that are in substance founded on the substantive law of another state.
- Can still adjudicate.
- It is up to the state how it wishes to characterize and perceive the spheres of legislative competence.

¹¹⁰ Sun Oil
¹¹¹ Sun Oil
¹¹² Sun Oil
¹¹³ Hughes

738 iii) Parties have to deal with multiple jurisdictions: Modern
 739 practice of conducting business throughout the US
 740 required businesses to recognize that there is more than
 741 one law that might apply to the same transaction¹¹⁴
 742 Vesting of rights: full faith and credit and due process
 743 deprivations (defendant unfairly surprised by laws)
 744 i) States create rights, but when they create transitory
 745 causes of action, they can't limit them to just their home
 746 venue (for example change of venue is possible)¹¹⁵
 747 (1) Creation of the right cannot normally be inextricably
 748 be bound with a given court, unless it is impossible
 749 for any other court to fashion those remedies¹¹⁶
 750 (2) Transitory causes of action can be brought
 751 anywhere¹¹⁷
 752 ii) Definitions of constitutional boundaries
 753 (1) Full faith and credit is violated only of the application
 754 of the forum law threatens the federal interests in
 755 national unity by unjustly infringing upon the
 756 legitimate interests of another state¹¹⁸
 757 (a) Full faith and credit protects sovereign interests
 758 from other state's interference
 759 (b) There can be diminimus cases that "threaten no
 760 substantial threat to our constitutional system of
 761 cooperative federalism"¹¹⁹
 762 (c) If there is no real public policy reasons in a state
 763 for not hearing a case, the state must hear it,
 764 and it can't write its law to exclude extraterritorial
 765 actions¹²⁰
 766 (2) Due process
 767 (a) For service process need only avail oneself of
 768 the state¹²¹

114 Watson
 115 TN Coal
 116 TN Coal
 117 TN Coal
 118 Stevens in Allstate
 119 Nevada v. Hall
 120 Hughes
 121 Burnham

769 (3) Privileges and immunities clause:
 770 (a) Vesting of rights in what is considered to be
 771 something necessary to foster national union¹²²
 772 (i) States can limit the privileges they extend to
 773 non-residents on the basis that there is a
 774 rationally related reason why they should
 775 withhold it from someone¹²³
 776 (b) Conflicts with full faith and credit
 777 (i) Interest analysis: a state that is interest in
 778 apply its law because a party is a resident
 779 withholds the protection of that law from a
 780 non resident in the interest in comity
 781 (ii) Traditional choice of law rules, may be
 782 unconstitutional when applied to deny relief
 783 in a case between two local people merely
 784 because a connecting factor occurred
 785 outside the state
 786 (iii) Where the right is created travels with the person due to
 787 full faith and credit
 788 (1) Full faith and credit is limited to the point where "the
 789 court must determine for itself how far the full faith
 790 and credit clause compels the qualification or denial
 791 of rights asserted under the laws of one state, that of
 792 the form, by the statute of another... but there would
 793 seem to be little room for the exercise of that
 794 function when the statute of the forum is the
 795 expression of domestic policy."¹²⁴

122 Piper
 123 Piper
 124

Name	Pacific Employer Ins.	Page	270
Facts	MA employee injured in CA, sued under CA WC law.		
Holding	Full faith and credit does not enable one state to legislate for another, or to project is law across state laws so as to preclude the other from prescribing other laws.		

796 (2) people get certain property rights from a
 797 relationship, which are defined based on where the
 798 contract was entered into. For a form to apply its
 799 own limitations that would materially alter the terms
 800 of that contract would be unconstitutional.¹²⁵ – and
 801 public policy of a state does not trump constitution
 802 (a) Determining whether the property began
 803 (i) Significance of contacts¹²⁶
 804 1. In fact the place of the wrong may be
 805 only a very small part of the number of
 806 the contacts¹²⁷

125

Name	Dick	Page	258
Procedure	Appeal to SC of Texas ruling.		
Facts	Mexican insurance contract, which had a contractual statute of limitations was brought in TX, which had a mandatory lower limit on statute of limitations.		
Holding	Contracts created a vested right in property, in the place where created. To alter the terms of the contract, would be an unconstitutional deprivation of property.		

126

Name	Allstate	Page	278
Procedure	Appeal from MN court.		
Facts	Accident in WI, MN law decided to apply MN law, as the better law.		
Holding	Once a minimum contact analysis is satisfied, one can decide whether the state interests are valid or not, to begin the test of whether something is, or is not a "better law."		
Dissent	Should take into account the expectations of the parties as well.		

807 (ii) Note: if there is no conflict, there is no need
 808 for a constitutional inquiry¹²⁸
 809 (b) **Defenses and full faith and credit:** If the right
 810 was created in a state, than the court must apply
 811 the right (together with its defenses) of that state
 812 -- so long as not obnoxious¹²⁹
 813 (i) In terms of factual analysis, states will not
 814 second guess another state's as a defense
 815 to contract (for example impossibility). In
 816 essence, impossibility based on a matter of
 817 law, will always be considered to be valid
 818 based on the foreign laws.¹³⁰

127 Babcock

128 Dissent in Shutts

129

Name	Bradford	Page	265
Procedure	Appeal of NH court to SC		
Facts	Injury of VT resident/employee in NH. Suit in NH. NH allowed choice of workmen's comp or damages, but VT only comp.		
Holding	NH court must apply VT law, so as to allow Def to assert defenses that were created. Full faith and credit requires carrying PI's rights between states.		

130

Name	Holzer	Page	74
Procedure	New York Court		
Facts	Contact between two Germans, one of which became disabled by German anti-Jew laws		
Holding	Sovereign states will respect foreign state's laws but, no matter how offensive, in that they will respect the defenses based on impossibility of a foreign state's law.		

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819 1. Public policy, can, in a perverse way be
 820 used to strike a defense
 821 2. Foreign law usually needs to be plead
 822 State's interests and legislative jurisdiction:
 823 **Balancing test** : Rigid application of full
 824 faith and credit would require all defenses
 825 that are covered in a valid contract in one
 826 state to be valid in all of them, however,
 827 because courts are created by state
 828 legislatures, they can take into account their
 829 individual state's interests¹³¹ (but an
 830 interested state can always apply its own
 831 law notwithstanding the interests of the other
 832 state)¹³²
 833 1. Valid interest: A state may not have the
 834 required machinery to give the remedy
 835 that another state affords¹³³
 836 a. Creation of the right cannot normally
 837 be inextricably be bound with a
 838 given court, unless it is impossible
 839 for any other court to fashion those
 840 remedies¹³⁴

131

Name	AK Packers	Page	267
Procedure	CA SC appealed to US SC.		
Facts	Contract for WC coverage under AK law, however CA law gives jurisdiction to its own commission.		
Holding	State need not apply foreign law if its own interests override. State's interests can override the need to give complete credence to a contract which selects under whose jurisdiction it wishes to be covered.		

132 Pacific Employers
 133 Pacific Employer's Insurance Company
 134 TN Coal

841 2. Weighing of interests: state of tort might
 842 have an interest (could burden
 843 institutions),¹³⁵ however even if they
 844 don't burden institutions may cover
 845 them, as may place of contracting.
 846 a. **Exception**: In one case it was held
 847 that the law of the place of
 848 incorporation of a fraternal benefits
 849 association has the greater interest
 850 because these cases require
 851 uniformity, and these associations
 852 are good¹³⁶
 853 b. Some cases have held that one
 854 state cannot selectively apply the
 855 law of another¹³⁷
 856 c. Assumption that the parties
 857 contracted with reference to the law
 858 which would uphold the contract will
 859 be upheld¹³⁸
 860 3. Burden: one who challenges the rights
 861 bears the burdens of showing why the
 862 other interests should be superior¹³⁹
 863 (iii) A state's statutes cannot reach out to hold
 864 other contracts invalid, or barred by statute
 865 of limitations.¹⁴⁰
 866 (c) Courts are constitutionally obligated to apply
 867 their own law, and the **creation of a property**
 868 **right** and potential vested property rights should
 869 be protected by the place in which the property
 870 right existed (in this case, where the party
 871 resided)¹⁴¹

135 Carroll
 136 Order of Commercial Travelers
 137 Pearson
 138 Pritchard
 139 Alaska Packers
 140 Hartford Acc and Indem. Co.
 141

872 iv) Parties can chose their rights (UCC allows parties to
 873 choose to the "extent" permitted by law)¹⁴² otherwise
 874 UCC seems to use the most significant relationship
 875 formula, the so called party autonomy
 876 (1) Assumption that the parties contracted with
 877 reference to the law which would uphold the contract
 878 will be upheld¹⁴³
 879 (2) Choice of law will be respected if the issues to be
 880 decided is one that the parties could have chosen, of
 881 if it is not one that the parties could have decided the
 882 law to be applied, it can still be applied if there it is
 883 policy offensive or if there is no contacts¹⁴⁴ -- **note:**
 884 **has to be a fundamental policy reason**¹⁴⁵

885 (a) For example if a notion is foreign to the local
 886 law, it will not be considered fatal to the choice
 887 of law
 888 (3) In modification of contracts, it may be assumed that
 889 the parties intended the set of laws of the initial
 890 contract to apply, so long as it is a bona fide choice
 891 of law¹⁴⁶
 892 (4) Bank account will probably have a choice of law as
 893 the location, also to comport with public policy
 894 (a) Public Policy dictates that bank accounts be
 895 according to their location¹⁴⁷
 896 (5) Wills v. Inter vivos
 897 (a) Wills may include a choice of law clause, but
 898 only to the extent that their bequests are inter
 899 vivos¹⁴⁸ usually, the place of the state of the
 900 marital domicile should control¹⁴⁹

Procedure	MO ruling appealed to SC
Facts	MO residents took out a policy from a NY insurance company, and breached. Question of whether forfeiture allowed.
Holding	NY law is to be applied because there is a vested property right in both parties and MO's law inhibits freedom to contract.
Dissent	There might not have been sufficient contacts under MO law.

142 UCC 1-105(2)
 143

Name	Pritchard	Page	96
Procedure	LA SC to US SC		
Facts	Parties contracted in NY for a surety bond that would be upheld in LA.		
Holding	LA can apply its own law, as it seems that they intended LA law to apply.		

144 Restatement 2nd § 187
 145 Siegelman

901 v)
 902 (1) Borrowing statutes is defined as forum to dismiss
 903 claims under foreign statute of limitations in
 904 "appropriate circumstances"
 905 (2) Tolling statutes is defined as tolling of statute of
 906 limitations when defendant is out of the reach of
 907 service -- questions remain as to when something
 908 runs and whose presence in what state begins the
 909 tolling
 910 vi) Defenses and full faith and credit: defenses will be
 911 judged in the same way the underlying issue is judged
 912 (1) Although one court might have jurisdiction over all of
 913 the parties, it raises a constitutional problem as to
 914 whether or not they should all be bound by the same
 915 substantive law¹⁵⁰ as they may not have achieved
 916 the minimum amount of contact necessary
 917 (2) Modern practice of conducting business throughout
 918 the US required businesses to recognize that there

¹⁴⁶ Siegelman
¹⁴⁷ Wyatt
¹⁴⁸ Estate of Clark
¹⁴⁹ Estate of Clark
¹⁵⁰ Shutts

919 is more than one law that might apply to the same
 920 transaction¹⁵¹

921 (3) Many states have borrowing statutes which will
 922 mandate the acceptance of the statute of limitations.

923 Interest Analysis: Currie's three step process procedure
 924 helps insure that a law will not be applied to a problem
 925 unless applying the law would achieve a policy goal sought
 926 by the sovereign which promulgated the law: Currie's
 927 analysis is only followed in CA, HI, MA and NJ directly

928 v) Determine what the issue is
 929 vi) Determine both jurisdiction's policies (driving force)

930 (1) Did the legislature intend to protect foreign elements
 931 or just domestic?

932 (a) **does a policy point towards contacts in**
 933 **another state?**

934 (i) For example insurance fraud points to a
 935 place where a car is garaged and registered

936 (b) Is the statute one of risk dividing or regulation

937 (i) **Risk-dividing (loss allocating)**

938 1. Neumeir Rules: the place of the injury
 939 will apply if the parties are from different
 940 states¹⁵² -- will also apply in contribution
 941 cases

942 (ii) **Conduct regulating** is defined as rules
 943 designed to protect anyone within the
 944 borders of the state

945 (2) Ask which state's interests will be served by
 946 enforcing the rule of law.

947 **False Conflicts:** if the policy of only one state would be
 948 served, than we have a false conflict. False conflicts
 949 should be resolved by applying the law of the only
 950 interested state.¹⁵³

951 (1) For example, if the purpose of the statute is to
 952 prevent fraudulent claims, but there are no potential
 953 fraudulent claims involved, the law of the foreign
 954 forum can be applied

151 Watson
 152 Neumeir,
 153 Tooker

955 (2) Respecting loss allocation is persuasive¹⁵⁴
 956 True Conflicts:

957 (1) Should re-examine the laws of each state: it may be
 958 possible to avoid the conflict through a more
 959 moderate or relaxed interpretation¹⁵⁵

960 (a) Types of interest analysis
 961 (b) Argument against states balancing the
 962 respective merits of each other's interests
 963 (Court's should do that in a democracy (the
 964 legislature should)

965 (i) Would lead to forum shopping
 966 (ii) Court will ask, in evaluating the principles
 967 whether or not the statute was meant to
 968 override competing principles

969 (c) Most significant relationship test is the modern
 970 trend and seems to be a handy way to resolve
 971 these issues¹⁵⁶ (and would allow people to rely
 972 on the laws in which the transaction was
 973 initiated) -- this will include statute of frauds
 974 issues

975 (i) Presumption that the state where services
 976 are to be performed is the state with the
 977 most significant relation¹⁵⁷

978 (ii) Domicile can outweigh place of injury¹⁵⁸

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154

Name	Schultz v. BSA	Page	159
Procedure	New York State Court of Appeals		
Facts	Sexual assault on a child while in NJ, on an outing sponsored by New York Charities. NJ recognizes charitable immunity, but NY does not.		
Holding	NJ interests would be advanced, as would its interest in loss allocation		

155 See Bernkrant or Lilenthal
 156 Bernkrant
 157 Wood Bros.
 158 Bryant

1015 (a) If the interest in the own law should not be
 1016 advanced, than there is no reason that the court
 1017 should apply its own law¹⁶²
 1018 (b) Problem with ruling that something is unprovided
 1019 for is that there may be a stare decisis effect
 1020 Currie's solution is to apply own law
 1021 Better law approach: raises the issues of 1) hope
 1022 appropriate and 2) is it correct way to look at what judges
 1023 have done
 1024 i) Leflar's Criteria of result¹⁶³
 1025 (1) Predictability of results¹⁶⁴
 1026 (2) Maintenance of interstate and international order¹⁶⁵
 1027 (similar to "better law" approach)
 1028 (3) Simplification of judicial task¹⁶⁶
 1029 (4) Advancement of forum's government interest¹⁶⁷
 1030 (similar to comparative impairment)
 1031 (a) Dym test¹⁶⁸
 1032 (i) Isolate issue¹⁶⁹
 1033 (ii) Identify the conflict¹⁷⁰
 1034 (iii) Examine the contacts to see which has a
 1035 superior connection, and thus would have a
 1036 superior interest¹⁷¹
 1037 (b) Currie's test
 1038 (i) Identify the policy behind each state's law
 1039 after looking at how it applies to the issue.
 1040 (ii) Determine which state's policy would be
 1041 best advanced the law's application.

¹⁶² Erwin
¹⁶³ Milkovich
¹⁶⁴ Milkovich
¹⁶⁵ Milkovich
¹⁶⁶ Milkovich
¹⁶⁷ Milkovich
¹⁶⁸ Dyn
¹⁶⁹ Dyn
¹⁷⁰ Dyn
¹⁷¹ Dyn

979 (iii) Comparative impairment is defined as
 980 question of which state will have its policies
 981 most frustrated
 982 1. Comparative impairment has so far only
 983 been adopted in California. A modification
 984 of the pure interest analysis approach is the
 985 "comparative impairment" approach. It does
 986 weigh and will apply the law of the
 987 jurisdiction whose policies would be more
 988 impaired than those of the other jurisdiction
 989 if its law were not applied.
 990 (2) External objectives
 991 (a) Comparative impairment: *External objective of*
 992 *the state whose value will be least impaired will*
 993 *be should be subordinated to that if its*
 994 *competitor*¹⁵⁹ (DWI case where both states had
 995 an interest)
 996 (i) Or the relative commitment of the state
 997 involved to the law involved¹⁶⁰
 998 (ii) Alternatives
 999 1. One a true conflict has been identified,
 1000 inquiry into whether a state has a
 1001 minimal interest in litigation and then
 1002 determine with specificity the exact
 1003 impact of possible holdings
 1004 (b) If the reinterpretation doesn't solve things, than
 1005 the forum should apply its own law
 1006 (c) Conflicts between two non-forum states should
 1007 be resolved by either
 1008 (i) Applying forum law as it comports with the
 1009 law of one of the interested states
 1010 (ii) Resolving the conflict the way a "supreme
 1011 legislative body" would
 1012 (3) "Unprovided for" is defined as if neither state's policy
 1013 would be advanced by the application of one's own
 1014 law the forum should apply is own law.¹⁶¹

¹⁵⁹ Harrahs
¹⁶⁰ Offshore Rental
¹⁶¹ Erwin

- 1042 (iii) If both state's policies would be advanced
 1043 equally by the application of the law, then
 1044 the court should apply the forum's own law.
 1045 (5) Application of the "better rule of law"¹⁷² (similar to
 1046 comparative impairment)
 1047 e) If there is a diametrically opposed policy, and there is no way
 1048 to resolve the conflict than the law of the forum should be
 1049 applied¹⁷³ -- sometimes operates like vested rights
 1050 (declaration of status of spendthrift)
 1051 i) Status questions are often a question of whether or not
 1052 to uphold the policy of the jurisdiction that made the
 1053 policy
 1054 f) Federal common law in areas requiring uniformity: must
 1055 decide to what extent congress was delegating the treatment
 1056 of the underlying issue to state law, as most of these things
 1057 are legal creations of congress
 1058 i) Federal common law might completely trump state law in
 1059 an area if state law would, even if parallel interfere with
 1060 the enforcement of it¹⁷⁴
 1061 ii) In areas bordering on the federal government, the
 1062 federal courts can create a federal common law, rather
 1063 than relying on state choice of law rules¹⁷⁵, but in areas

¹⁷² Milkovich

¹⁷³ Lilenthal

¹⁷⁴ Penn v. Nelson

¹⁷⁵

Name	Clearfield Trust	Page	621
Facts	Endorsement forgery problem of a check issued by the federal government. Difference in the way it would be handled under federal and state law.		
Holding	Negotiable instruments issued by the federal government are governed under a federal common law. Applying state law rules would subject the federal government to uncertainty.		

1064 where the federal interest is only in the creation of paper,
 1065 and it doesn't subject the government to a difference in
 1066 liability or the potential, purely local substantive laws will
 1067 apply¹⁷⁶
 1068 (4) Economic relationship can be somewhat indirect for
 1069 a federal common law to attach¹⁷⁷
 1070 (iii) Foreign relations and questions on ongoing executive
 1071 branch activity create an area for federal common law¹⁷⁸
 1072 (1) But note: Parties must plead foreign law, and it is not
 1073 an exception to say that there is no foreign law¹⁷⁹
 1074 Federal substantive rights which may be adjudicated by
 1075 the states
 1076 (1) States may not procedurally burden federal
 1077 substantive rights unless there is a neutral door-
 1078 closing policy¹⁸⁰

¹⁷⁶ Bank of America
¹⁷⁷

Name	Boyle, 630
Facts	Son killed in helicopter crash under government contract. Defendant claims should be adjudicated under federal law
Holding	Even an indirect drain on treasury should be treated as one, and the citizenry will ultimately have to bear the cost of tort liability
Dissent	Court should defer to congress as to whether or not contractors are covered under federal law. Congress should do something so that it can know which body it should apply.

¹⁷⁸ Bano National de Cuba

¹⁷⁹ Walton

¹⁸⁰

Name	Testa page 469
Facts	Rhode Island court refused to hear a federal claim for triple damages under the Emergency Price Control Act, but there were similar actions under RI law. There was concurrent jurisdiction.

1079 v) Federal common law and states
 1080 (1) If state procedure (for example jury trial) is
 1081 burdensome of a federal right, than federal
 1082 procedure will govern¹⁸¹
 1083 (2) States with neutral door closing policies will be
 1084 allowed not to hear federal claims¹⁸²
 1085 (3) In federal rights often federal burdens of proof will be
 1086 applied to the states
 1087 (a) Federal procedure for dismissal with or without
 1088 prejudice will be applied to states¹⁸³
 1089 (b) It has been held that switching the burden of
 1090 proof does not change any fundamental rights¹⁸⁴
 1091 b) Cousin to federal common law is *national consensus law*
 1092 (complex litigation)
 1093 i) If this is a classic tort, but the parties are from so many
 1094 domiciles (and did not purposefully avail themselves of
 1095 any forum) than it is possible to apply a national
 1096 consensus law¹⁸⁵
 1097 (1) Note: case settled
 1098 (2) There were not expectation of the parties involved

Holding
 If a similar claim or remedy exists under state law,
 than a state court must hear it.

Name	Dice (illiterate rr worker)
Facts	FELA claim was waived by a release that under state law may have been fraudulently induced.
Holding	Federal Common law will be created, especially when Congress has federalized the area
Dissent	State is under no duty to treat its common law claims differently because there is a similar federal right

182 Douglas
 183 Brown
 184 Levy
 185 Agent Orange

1099 (3) Would reduce litigation costs
 1100 Substantive matters
 1101 g) Wills and probate matters
 1102 i) There is no constitutional requirement to recognize a will
 1103 from another jurisdiction, **but** the uniform probate code
 1104 acknowledges that wills are valid from most states¹⁸⁶
 1105 (1) However, a will does not mean that the reading state
 1106 is obligated to convey property based solely on the
 1107 will
 1108 ii) Will look closely at the foreign state's statutes, so as to
 1109 tell of they apply to both creation and revocation¹⁸⁷
 1110 (1) Will look to foreign law to determine the nature of the
 1111 item in question (real property or not)¹⁸⁸
 1112 (2) Dissent in Barrie: differences between bequests of
 1113 money and property had disappeared
 1114 (3) Parties must plead foreign law, and it is not an
 1115 exception to say that there is no foreign law¹⁸⁹
 1116 a) Child custody is still unclear what would constitute a proper
 1117 basis for jurisdiction¹⁹⁰
 1118 ii) Old view on adoption: could be created by any person
 1119 having custody of the child, by the state of the domicile
 1120 of the adopting parents.¹⁹¹

186 Uniform Probate Code § 2-506
 187 Barrie's estate: foreign court is not obligated to accept validity of will
 188 judged by a foreign state

Name	Barrie's estate	Page	25
Procedure	Will in one state valid in another		
Facts	Will was had "void" written across it, which means void in one state, and is still valid in others.		
Holding	A foreign state cannot probate land in another.		
Dissent	differences between bequests of money and property had disappeared		

189 Walton
 190 May v. Anderson

- 1121 (1) Custody of legitimate child at birth was determined
 1122 by the law of the state where the father domiciled¹⁹²
 1123 (2) Any state into which the child comes might take
 1124 custody from an unfit guardian¹⁹³
 1125 iii) Child custody is in persona, and so personal jurisdiction
 1126 of parents necessary¹⁹⁴
 1127 iv) Child within a state considered to be a res¹⁹⁵
 1128 (1) But, under modern uniform laws, courts will stay
 1129 proceedings in favor of a proceeding in another
 1130 state¹⁹⁶
 1131 (a) State uniform laws do not permit concurrent
 1132 jurisdiction for modification of an award¹⁹⁷
 1133 (1) One of the criteria of the uniform act must be met --
 1134 and there are no equitable grounds for getting
 1135 around it^{198,199}

¹⁹¹ First restatement § 142

¹⁹² First restatement § 144

¹⁹³ First restatement § 148

¹⁹⁴ May v. Anderson

¹⁹⁵ May v. Anderson

¹⁹⁶

<i>Name</i>	Vanneck	<i>Page</i>	524
<i>Procedure</i>	Defendant instituted NY divorce, after PJ institute CT divorce.		
<i>Holding</i>	Court should have split the action, and deferred to the Uniform child custody act, and stayed its proceedings, as another case was going in another rstate.		

¹⁹⁷ Palm

¹⁹⁸

<i>Name</i>	Ben-Y ehoshua	<i>Page</i>	528
<i>Procedure</i>	Foreign divorce proceedings after Husband took the kids while domestic proceedings in process.		
<i>Holding</i>	In adjudicating custody, to establish jurisdiction under the uniform act one of the criteria must be met.		

- 1136 (2) Federal Parental Kidnapping Prevention Act: which
 1137 requires "the appropriate authorities of every state to
 1138 enforce according to its terms and not to modify
 1139 except as provided in the act any child custody
 1140 determination made consistently with **one** of the
 1141 provisions of it act²⁰⁰

(a) The state of the rending court was the home state of the child at the time the proceedings were begun²⁰¹ -- contractual waiver can determine home state²⁰²

(i) The state of the rending court has been the home state for 6 months prior²⁰³

¹⁹⁹

Criteria under uniform act for first state establishing jurisdiction in child custody matters.

This state (i) is the **home state of the child** at the time of commencement of the proceeding, or (ii) had been the child's home state **within six months before commencement** of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as parent continues to live in this [*#8] state.

"(b) It is in the best interest of the child that a court of this state assume jurisdiction because (i) the child and his parents, or the child and at least one contestant, have a **significant connection** with this state, and (ii) there is available in this state substantial evidence concerning the [*265] **child's present or future care**, protection, training, and personal relationships.

"(d) (l) It appears that **no other state would have jurisdiction** under prerequisites substantially in accordance with paragraphs (a), (b), (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine the custody of the child, and (ii) it is in the best [**#84] interest of the child that this court assume jurisdiction."

²⁰⁰ 28 USC 1739A

²⁰¹ 28 USC 1739A

²⁰² Matter of BBR

²⁰³ 28 USC 1739A

1148 (ii) No other state has jurisdiction²⁰⁴
 1149 (iii) Bests interests of the child require exercise
 1150 of jurisdiction²⁰⁵
 1151 (iv) Child is physically present²⁰⁶ -- at time of
 1152 filing of petition²⁰⁷
 1153 (v) Emergency exists²⁰⁸
 1154 (b) Difference between Federal Act and state act in
 1155 that for continuing jurisdiction in that the federal
 1156 act require that the state remains the residence
 1157 of the child or a contestant -- v. state act is that
 1158 there is continuing jurisdiction so long as one
 1159 parent remains in the state and has contact with
 1160 the child.
 1161 (c) There is not an implied cause of action in
 1162 federal court for child determination²⁰⁹
 1163 v) Old bastard (legitimacy rule): legitimacy of a child at birth
 1164 was determined by the law of the state in which the
 1165 parents whose relationship is in issue is domiciled²¹⁰
 1166 b) Domicile might be a due process issue²¹¹
 1167 i) Domicile is usually defined as a party living somewhere,
 1168 or having no intention to move elsewhere²¹²

204 28 USC 1739A
 205 28 USC 1739A
 206 28 USC 1739A
 207 Matter of BBR
 208 28 USC 1739A
 209 Thompson v. Thompson
 210 First Restatement § 138
 211 Alton
 212

Name	White	Page
Procedure	WVA SC Court	30
Facts	Man had intention of living in one state, but due to circumstances he died in another. Question of how will should be probated.	
Holding	Will should be probated according to law of state where he intended on living (domicile.)	

1169 (1) Public Policy dictates that bank accounts be
 1170 according to their location²¹³
 1171 5) Recognition of Judgements : a state can't pass a statute that
 1172 effectively prohibits the enforcement of judgements against its
 1173 citizens²¹⁴
 1174 a) Offensiveness: full faith and credit clause does not compel "a
 1175 state to substitute the statutes of other states for its own
 1176 statutes dealing with a subject matter concerning which it is
 1177 competent to legislate"²¹⁵ (no "roving" full faith and credit
 1178 "public-policy" objection)²¹⁶
 1179 i) Within action: Some cases have held that one state
 1180 cannot selectively apply the law of another²¹⁷
 1181 (1) In terms of factual analysis, states will not second
 1182 guess another state's as a defense to contract (for
 1183 example impossibility). In essence, impossibility
 1184 based on a matter of law, will always be considered
 1185 to be valid based on the foreign laws.²¹⁸
 1186 ii) By action:
 1187 (1) severability
 1188 (a) divorce decrees are severable, in that the
 1189 offensive (and conflicting) items can be
 1190 removed)²¹⁹

213 Wyatt
 214 Broderick
 215 Pacific Employers Ins. Co quoted in Baker.
 216 Pacific Employers Ins. Co quoted in Baker.
 217 Pearson
 218 Holzer
 219

Name	Estin	Page
Procedure	NY separation decree with payments NV divorce decree, which ended payments.	483

- 1191 (i) support decrees may be different in nature
 1192 (for example contractual actions) from
 1193 divorce
 1194 (ii) but note: In terms of factual analysis, states
 1195 will not second guess another state's as a
 1196 defense to contract (for example
 1197 impossibility). In essence, impossibility
 1198 based on a matter of law, will always be
 1199 considered to be valid based on the foreign
 1200 laws.²²⁰
 1201 (b) a decree that contains an offensive portion can
 1202 be severed, to keep the enforceable parts²²¹
 1203 (i) In terms of factual analysis, states will not
 1204 second guess another state's as a defense
 1205 to contract (for example impossibility). In
 1206 essence, impossibility based on a matter of
 1207 law, will always be considered to be valid
 1208 based on the foreign laws.
 1209 iii) By county: Forum judgements may not be enforced if a
 1210 foreign county's the forum policy is offensive²²²

- 1211 (1) A lack of complete compliance with the 14th
 1212 amendment in a foreign jurisdiction may not be fatal
 1213 to enforcement, but it does come close.²²³ Note:
 1214 ex-parte divorces may violate 14th amendment
 1215 (2) Compete consent to foreign forum as grounds for
 1216 enforcement of judgment, even in view of conflict of
 1217 home state's policy²²⁴
 1218 (3) In terms of factual analysis, states will not second
 1219 guess another state's as a defense to contract (for
 1220 example impossibility). In essence, impossibility

Holding	<ul style="list-style-type: none"> Foreign courts must meet minimum procedural standards even if they are not exactly up to part with 14th amendment. Judgment in persona are valid unless contrary to policy of own law. Judgment in rem may be different.
Dissent	It is for the government and not the courts to decide what judgements are to be given res judicata effect.

223 Hilton
 224

Holding	Offensive finding of NV court severable, and remainder enforceable. NY judgment is actually a property, whereas a divorce is not.
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220 Holzer
 221 Matsushita
 222

Name	Hilton	Page	707
Procedure	Judgment for Plaintiff in France. Plaintiff seek to enforce in New York Federal Court.		

Name	Rosenstiel	Page	517
Procedure	Mexican divorce. Later New York action to annul later marriage on ground that Mexican divorce not valid.		
Holding	New York recognizes Mexican divorces. There was personal appearance in Mexican court.		
Dissent	The court is trying to rewrite the policy of the state to have only one ground for divorce.		

1221 based on a matter of law, will always be considered
 1222 to be valid based on the foreign laws.²²⁵
 1223 iv) By state: states are required to enforce the judgements
 1224 of their sister states (adjudicating causes of actions in a
 1225 different story)²²⁶
 1226 (1) But, comity does not require a state to enforce illegal
 1227 and prohibited contracts when both the contract and
 1228 the acts connected with its performance take place
 1229 in a foreign state.²²⁷

1230 (a) Brennan: look to contacts (forum law can be
 1231 applied)
 1232 (b) Stevens:
 1233 (i) Separate Due process and full faith and
 1234 credit (might create ability for people to get
 1235 out of contracts)
 1236 (ii) Might impede regulation of people
 1237 States do not have to modify their evidentiary rules
 1238 according to other states²²⁸
 1239 (3) States do not have to change their policies

225 Holzer
 226

Name	Fauntleroy	Page	407
Procedure	Arbitration award enforcement		
Facts	Arbitration award sought to be enforced in state court which found the basis for arbitration offensive. Judgment obtained in Missouri. Mississippi SC ruled that full faith and credit not required because of offensiveness.		
Holding	Although cause of actions do not have to be adjudicated by foreign forums, sister state judgments do.		
Dissent	The full faith and credit envisioned by the founding fathers was more like a comity, and there are still public policy issues.		

227

Name	Fauntleroy	Page	407
Procedure	Arbitration award enforcement		
Facts	Arbitration award sought to be enforced in state court which found the basis for arbitration offensive. Judgment obtained in Missouri. Mississippi SC ruled that full faith and credit not required because of offensiveness.		

228

Holding	Although cause of actions do not have to be adjudicated by foreign forums, sister state judgments do.		
Dissent	The full faith and credit envisioned by the founding fathers was more like a comity, and there are still public policy issues.		

Name	Baker	Page	522 US 222
Procedure	Injunction pursuant to settlement agreement in MI court. MO Federal court held that injunction not binding. Circuit court held that it seemed unlikely that MI court would modify anyway. SC reviewed, and said no offense to full faith and credit.		
Facts	Gag agreement (with exception for subpoena) in products liability case.		
Holding	Foreign gag injunction is not enforceable to force someone not to testify. Courts cannot operate to dictate to another court what evidence they can and cannot hear. States are not bound to respect judgements in the same way that other states are.		

1240 (4) States can enforce other states judgements in their
 1241 own way
 1242 (5) A judgment is considered to be property, and unless
 1243 there is a provision to modify it can't be modified²²⁹
 1244 (6) If there is no real public policy reasons in a state for
 1245 not hearing a case, the state must hear it, and it
 1246 can't write its law to exclude extraterritorial actions²³⁰
 1247 Between states (for example actions to quiet title) -- note
 1248 state's interests in background
 1249 (1) First state's judgment will be regarded as res
 1250 judicata²³¹ -- so long as the second state court's can
 1251 inquire into whether the first state properly had
 1252 jurisdiction
 1253 (a) Note: federal preemption can be controlling²³²

1254 (b) If the subject wasn't litigated there is ammunition
 1255 provided for both sides
 1256 (2) Note: for DOMA purposes, marriages are not
 1257 celebrated by the courts and do not constitute
 1258 judgements
 1259 (3) So long as a divorce is not offensive to local ideas of
 1260 service will be acceptable, some argue that Marriage
 1261 is a contract and should be served in the same
 1262 way.²³³ as there may still be a due process violation.
 1263 (a) Child custody is still unclear what would
 1264 constitute a proper basis for jurisdiction²³⁴
 1265 (i) Child custody is in persona, and so personal
 1266 jurisdiction of parents necessary²³⁵
 1267 (ii) Child within a state considered to be a res²³⁶
 1268 1. But, under modern uniform laws, courts
 1269 will stay proceedings in favor of a
 1270 proceeding in another state²³⁷
 1271 a. State uniform laws do not permit
 1272 concurrent jurisdiction for
 1273 modification of an award²³⁸
 1274 2. One of the criteria of the uniform act
 1275 must be met -- and there are no

²²⁹ Estin
²³⁰ Hughes
²³¹

Name	Durfee	Page
Procedure	P prevailed Nebraska court. R filed in Missouri to quiet title. Removed to federal district court because of citizenship. Federal court held the land was R's but refused to render judgment on the ground of the prior action being res judicata. The court of appeals reversed. R appeals.	431
Facts	The river was the boundary between Nebraska and Missouri.	
Holding	Where there is no overriding federal issue to preclude an issue effecting title between states, the decision of the first court will be given res judicata effect.	
Concurrence	It is for the states to decide.	

²³² Durfee

²³³ Williams I (dissent)
²³⁴ May v. Anderson
²³⁵ May v. Anderson
²³⁶ May v. Anderson
²³⁷

Name	Vanneck	Page
Procedure	Defendant instituted NY divorce, after PI institute CT divorce.	524
Holding	Court should have split the action, and deferred to the Uniform child custody act, and stayed its proceedings, as another case was going in another rstate.	

²³⁸ Palm

1276 equitable grounds for getting around
 1277 it^{239,240}
 1278 a. Federal Parental Kidnapping
 1279 Prevention Act: which requires "the
 1280 appropriate authorities of every
 1281 state to enforce according to its
 1282 terms and not to modify except as
 1283 provided in the act any child custody
 1284 determination made consistently
 1285 with **one** of the provisions of it act²⁴¹
 1286 i. The state of the rendering court
 1287 was the home state of the child
 1288 at the time the proceedings

239

<i>Name</i>	Ben-Yehoshua	<i>Page</i>	528
<i>Procedure</i>	Foreign divorce proceedings after Husband took the kids while domestic proceedings in process.		
<i>Holding</i>	In adjudicating custody, to establish jurisdiction under the uniform act one of the criteria must be met.		

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Criteria under uniform act for first state establishing jurisdiction in child custody matters.

This state (i) is the **home state of the child** at the time of commencement of the proceeding, or (ii) had been the child's home state **within six months before commencement** of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody for **6789A** reasons, and a parent or person acting as parent continues to live in this [*8] state. ²⁴³ Matter of BBR

"(b) It is in the best interest of the child that a court of this state assume jurisdiction because of the child and his parents, or the child and at least one contestant, have a **significant connection** with this state and (ii) there is available in this state substantial evidence concerning the [*265] **child's present or future care**, protection, training, and personal relationships.

"(d) (1) It appears that **no other state would have jurisdiction** under prerequisites substantially of BBR accordance with paragraphs (a), (b), (c), or another state has declined to exercise jurisdiction under the Uniform Act and that this state is the more appropriate forum to determine the custody of the child, and (ii) **the child's best interests** require that this court assume jurisdiction."

²⁴¹ 28 USC 1739A

1289

were begun²⁴² -- contractual waiver can determine home state²⁴³

- ii. The state of the rendering court has been the home state for 6 months prior²⁴⁴
- iii. No other state has jurisdiction²⁴⁵
- iv. Best interests of the child require exercise of jurisdiction²⁴⁶
- v. Child is physically present²⁴⁷ -- at time of filing of petition²⁴⁸
- vi. Emergency exists²⁴⁹
- b. Difference between Federal Act and state act in that for continuing jurisdiction in that the federal act require that the state remains the residence of the child **or** a contestant -- v. state act is that there is continuing jurisdiction so long as one parent remains in the state and has contact with the child.
- c. There is not an implied cause of action in federal court for child determination²⁵⁰

(b) Domicile might be a due process issue²⁵¹
 (4) States can relitigate other's finding of jurisdiction (including domicile)²⁵²

Page 28 of 28
 Of http://case.tm

1316 (a) If there is equal opportunity to litigate the
 1317 jurisdictional issues, jurisdiction cannot be
 1318 relitigated²⁵³, but first state can still respect²⁵⁴
 1319 (b) There may still be states' interests at stake
 1320 (c) Domicile might be a due process issue²⁵⁵ (for
 1321 example in persona divorce)
 1322 State to federal
 1323 (1) Criminal actions preclusive to civil: If an issue is fully
 1324 litigated in state forum, it is preclusive as to later filed
 1325 federal in federal forum²⁵⁶; this seems to support
 1326 Powell

1327 (2) *habeas* restrictions, but this may be because there is
 1328 concurrent state jurisdiction over federal causes of
 1329 action. **Note:** court reserved the question of whether
 1330 or not Plaintiff would have had same result if he
 1331 didn't raise it.
 1332 (a) Exception: The cause of action must have been
 1333 able to have been brought in the first
 1334 proceeding²⁵⁷
 1335 (b) However, the pure fact that a Plaintiff could
 1336 have sought a federal forum does not bar
 1337 recovery
 1338 (3) Guilty pleas are not waivers of an affirmative § 1983
 1339 action²⁵⁸
 1340 (4) State law judgements that go to far (for example
 1341 encroach on federal exclusive jurisdiction) can be
 1342 severed²⁵⁹ -- as well the in rem from in persona²⁶⁰

1327 (a) If there is equal opportunity to litigate the
 1328 jurisdictional issues, jurisdiction cannot be
 1329 relitigated²⁵³, but first state can still respect²⁵⁴
 1330 (b) There may still be states' interests at stake
 1331 (c) Domicile might be a due process issue²⁵⁵ (for
 1332 example in persona divorce)
 1333 State to federal
 1334 (1) Criminal actions preclusive to civil: If an issue is fully
 1335 litigated in state forum, it is preclusive as to later filed
 1336 federal in federal forum²⁵⁶; this seems to support
 1337 Powell

Holding	Court can review other court's assertion of jurisdiction, and hence its review of domicile. Domicile is treated as a jurisdictional fact, but it not an unreviewable finding of fact. Other court's finding of domicile are entitled to presumption of validity, but they can be relitigated.
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253

Name	Sherrer	Page	499
Procedure	MA conflict with FL divorce.		
Facts	FL divorce. Wife filed general appearance. Now seeks review.		
Holding	If parties are afforded a full opportunity to litigate jurisdiction and domicile issues, the finding of domicile is not to be questioned.		
Dissent	But it could still be a sham domicile.		

254 Colby
 255 Alton
 256

Name

Allen v. McCurry (page 463)

Of http://case.

Facts	<ul style="list-style-type: none"> Defendant raised constitutional claims at pretrial suppression hearing, but failed to litigate 5th amendment claim at trial Was barred under <u>Powell</u> from habeas. Suit was against police officers, who wanted to use the state court's partial rejection of Defendant's constitutional rights. Police defendants claimed that he was barred from bringing the claim, since it was partially rejected. McCurry claimed that the unavailability of Habeas prevented the police from raising collateral estoppel as a shield.
Holding	Res judicata will apply even though the earlier court was a state court. There is no reason not to trust the state courts.
Dissent	The defendant is an involuntary litigant in criminal proceedings, and also risks waiving his constitutional claims at trial

257 MArrese
 258 Haring
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- (5) Maurice two-step analysis
 - (a) Does state law indicate preclusive effect²⁶¹
 - (b) Should there be an exception to § 1738²⁶²
- (6) Balancing test of Byrd: As a general rule, the **preference for state law** must be balanced against the **deprivation of federal rights** to accompany application of state law, a test which is separate from, and intended to augment, the “outcome-determinative” test of York.
 - (a) If there is no substantive right involved it is something that the federal courts simply just have a preference for, in making litigation go smoothly.²⁶³
 - (b) In the absence of a federal rule, the federal court could still apply state grounds
- (7) Courts can look at the actual rights involved to see if there is no conflict²⁶⁴

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- vii) Federal v. Federal
 - (1) There is now a way to register judgments in other districts -- 28 USC § 1963, but only for money or property²⁶⁵
- viii) Fraud:
 - (1) Intrinsic (perjury as to the merits)
 - (a) relitigation not allowed
 - (2) Extrinsic (going to the opportunity to appear and defend): relitigation allowed
- ix) penal and government claims
 - (1) taxes, courts cannot refuse to enforce²⁶⁶ but there are lots of elderly cases which old the opposite
 - (a) full faith and credit clause requires the enforcement of tax judgments²⁶⁷
 - (2) Administrative agencies seem restricted in their jurisdiction in that they cannot chose the proper law to apply in the first place, and so there is no res judicata effect²⁶⁸ -- this may be limited to workmen's compensation issues.

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Of http://case.tm

Name	Matsushita	Page	516 US 367
Procedure	Delaware chancery settlement/decreed preclusive and defective.		
Facts	Global release of claims in state court action, apparently included something that was exclusively federal (SEC)		
Holding	Federal court must give judgment state judgment that is defecting (in that it encroaches on federal jurisdiction) full faith and credit. Note: Federal courts should inquire into law of state to see whether it is preclusive.		
Dissent	State court not entitled to full faith and credit unless it satisfies due process of 14 th .		

²⁶⁰ Estin
²⁶¹ Maurice quoted in Matsushita
²⁶² Maurice quoted in Matsushita
²⁶³ Walker
²⁶⁴

Facts	Whether a federal court should use state procedure in determining whether or not an action is commenced, or a statute of limitations is tolled.
Holding	The federal court should use state procedure, partially because there is no federal definition of when a statute is tolled, only when an action is commenced, so there is no real conflict

²⁶⁵ Stoller
²⁶⁶ Milwaukee County
²⁶⁷ Milwaukee County
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(a) Unreviewed determinations of agencies not subject to preclusive effect²⁶⁹

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(b) Note: courts with no real antagonism to a cause of action must provide a form (will look to whether a similar cause of action exists there)²⁷⁰
(3) Workmen's comp claims (private parties) decided by administrative tribunals will not have preclusive effect²⁷¹
(4) determining whether or not something is an judicial type proceeding
(a) if an agency is empowered to adjudicate it is considered to be able to render judicial type judgements
(b) judicially managed arbitrations, that are unappealed are not entitled to state court preclusive effect²⁷²
b) equitable decrees between state courts (restraining jurisdiction) not enforceable²⁷³
c) Long term judgements (for example judgment of one state that may have preclusive effect for years to come on other states actions)
i) It is possible for a divorce judgment to completely preclude further litigation about support issues in another state.²⁷⁴

Facts	Injured workman went to administrative agency to seek relief in VA, than to another administrative agency in DC for same relief. Note: this seems to be a settlement with an administrative agency .
Holding	<ul style="list-style-type: none"> • Full faith and credit stops where one agency is withheld from making the same choice of law decisions that a court would. • Full faith and credit does not preclude one state from issuing another administrative ruling. • Legislature could intend for another state's administrative rulings to be preclusive. • McCartin rule Legislature could intend for is agency's to have extraterritorial jurisdiction. • There was no need litigate in a foreign state another state's law. In fact, the tribunal could only chose one law. • Under a state's interest analysis, no state has a high interest in preventing employers from a foreign state's company from proceeding with caution before going to an administrative tribunal.
Dissent	There indeed was another state's interest at stake.

Name	Univ of TN v. Elliot page 473
Facts	ALJ determination that dismissed state employee not fired discriminatorily. Brought action in federal court to appeal under title 7.
Holding	<ul style="list-style-type: none"> • No § 1738 full faith and credit (§ 1738 was before administrative agencies). • But the possibility of fashioning common law preclusive remedies exists. • § 1983 actions will give preclusive effect to fact-finding by state administrative agencies acting in judicial capacity.

²⁷⁰ Hughes
²⁷¹ Thomas
²⁷² Dean Witter Reynolds v. Byrd
²⁷³ James
²⁷⁴

(1) Modifiable decrees are relitigatable²⁷⁵

(2) Modified decrees must be recognized²⁷⁶ -- SC hasn't recognized as of yet.

ii) Note: some say that overwhelming forum interests may allow a state to disregard judgements²⁷⁷

iii) Full faith and credit does not require one court to apply the Collateral Estoppel requirements (namely mutuality) of another state's litigation -- meaning that a foreign state's courts can give greater effect to the judgment than a local court might have²⁷⁸

iv) Forum state must have at least as much leeway to disregard judgment as would the rendering state.²⁷⁹

v) (1) A decree that is modifiable relitigatable can be modified in another court²⁸⁰, provided there is personal jurisdiction, and it is done according to the original decision, it is ok.

vi) Declaratory judgements are conclusive as to matter declared by in most states do not stand in the way of further relief²⁸¹

Statutes of limitation: shorter local statutes of limitations do not preclude a court from hearing the case again.²⁸²

Name	Yarborough	Page	411
Procedure	Suit in SC for college funds, after divorce decree and support payments rendered in GA. SC court awarded education money. Appeal to USSC.		
Facts	Divorce decree resulted in support payments to daughter. Question is raised as to whether the common law duty to provide support for a child in one state is barred (discharged) by the payment of support payments by another state.		
Holding	<ul style="list-style-type: none"> • Intention of the court was for finality of judgment. • Divorce decrees are binding on the child, even though the child is not getting divorced. • Courts can acquire complete jurisdiction over a marriage as an incident to their adjudication. • Second forum may relitigate an issue if it has an interest which overrides the notion of giving res judicata effect to the decision of that issue in FL. • Original jurisdiction was only over part of the relationship. 		
Dissent			

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Name	Worthley	Page	450
Procedure	Modifiable "prospectively and retroactively" NJ court was before California court.		

Holding	<ul style="list-style-type: none"> • Decrees subject to modification can be modified by a foreign state's courts. • To modify decrees, it should be in a state that has personal jurisdiction over both parties.
Dissent	Could be confusion when original state wants to modify.

²⁷⁶ *Sistare*

²⁷⁷ Rest. 2nd § 103 comment B -- similar to *Stone* in *Yarborough*

²⁷⁸ *Hart v. American Airlines*

²⁷⁹ *Kovacs*

²⁸⁰ *Worthley*

²⁸¹ § 33

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1424 (1) Revived statute of limitations must be respected by
 1425 foreign courts²⁸³
 1426 vii) There is now a way to register judgments in other
 1427 districts -- 28 USC § 1963, but only for money or
 1428 property²⁸⁴
 1429 d) Full faith doesn't mean that states must adopt practices of
 1430 other states regarding the time manner and mechanisms for
 1431 enforcing judgements²⁸⁵
 1432 e) if a court is incompetent in the first place to hear a case, its
 1433 judgements will not be considered res judicata²⁸⁶
 1434 i) Duty of the state to provide a forum for enforcement
 1435 (1) It might be that there is no duty for a state to provide
 1436 a forum for enforcement of judgements²⁸⁷
 1437 (2) State's can't escape enforcement of jurisdiction by
 1438 denying foreign judgements enforcement by saying
 1439 "courts don't have jurisdiction of cases of a certain
 1440 class outside the state"²⁸⁸
 1441 (a) Statutes of limitation: a plea to limitation is a
 1442 plea to remedy (foreign judgements are
 1443 conclusive on merits)²⁸⁹
 1444 ii) Timing
 1445 (1) Full faith does not require immediate enforcement or
 1446 execution aspects of local judgments²⁹⁰

(2) Difficulty with sequence of injunctions (is one state bound to enforce contempt order against another)
 (3) An action in one state can be entertained if another state bars in²⁹¹
 Defining incompetence for res judicata purposes
 (1) Administrative agencies seem restricted in their jurisdiction in that they cannot chose the proper law to apply in the first place, and so there is no res judicata effect²⁹² -- this may be limited to workmen's compensation issues.

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Facts	Old judgment in CO that was revived. MO did not want to enforce, because it did not have the concept of revival of judgments.
Holding	A foreign restrictive statute of limitations does not bar enforcement in a different court.

²⁸³ Union National Bank
²⁸⁴ Sto;er
²⁸⁵ McElmoyle quoted in Baker
²⁸⁶ Hilton
²⁸⁷ Anglo-American Provisions Company v. Davis Provision Co.
²⁸⁸ Kenney v. Supreme Lodge
²⁸⁹ McElmoyle
²⁹⁰ McElmoyle

²⁹¹ Restatement of Judgment § 19, comment f
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Name	Thomas	Page	422
Facts	Injured workman went to administrative agency to seek relief in VA, than to another administrative agency in DC for same relief. Note: this seems to be a settlement with an administrative agency.		

- 1457 iv) First state's judgment will be regarded as res judicata --
 1458 so long as the second state court's can inquire into
 1459 whether the first state properly had jurisdiction²⁹³
 1460 (1) Still an open question as to whether an executive
 1461 determination (as to concepts of property) by the
 1462 states might undermine a judicial determination
 1463 v) Personal jurisdiction issues: usually the defendant must
 1464 be given a reasonable opportunity to collaterally attack
 1465 vi) Subject Matter Jurisdiction issues

- 1466 (1) Even if the issue was fully litigated, there still may be
 1467 overriding federal issues (for example bankruptcy)
 1468 ²⁹⁴ -- especially, if there was not the opportunity (due
 1469 to sovereign immunity issues) to raise the issue
 1470 earlier
 1471 (2) Doesn't need to be explicit litigation of the issue²⁹⁵
 1472 (3) Last in time rule (restatement): when two actions
 1473 have been decided, it is the later, not the earlier,
 1474 which gets the conclusive effect to a 3rd
 1475 judgement^{296,297}
 1476 (a) One court can always inquire into whether or not
 1477 the earlier court had jurisdiction, and that
 1478 decision can be directly appealed.²⁹⁸
 1479 (b) Interpleader is not a way of relitigating²⁹⁹

Holding	<ul style="list-style-type: none"> • Full faith and credit stops where one agency is withheld from making the same choice of law decisions that a court would. • Full faith and credit does not preclude one state from issuing another administrative ruling. • Legislature could intend for another state's administrative rulings to be preclusive. • <u>McCartin</u> rule Legislature could intend for is agency's to have extraterritorial jurisdiction. • There was no need litigate in a foreign state another state's law. In fact, the tribunal could only chose one law. • Under a state's interest analysis, no state has a high interest in preventing employers from a foreign state's company from proceeding with caution before going to an administrative tribunal.
Dissent	There indeed was another state's interest at stake.

²⁹⁴ Kalb
²⁹⁵ Chikote
²⁹⁶ Restatement 2nd § 15
²⁹⁷ Trinese
²⁹⁸ Trinese
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Name	Trinies	Cite	308 US 66
Procedure	<ul style="list-style-type: none"> • WA probate court determined that stock was Plaintiff's. • Claim in ID court that WA had no jurisdiction. • Interpleader action in federal court. 		
Holding	Interpleader is not a way of relitigating a question of jurisdiction. Second judgment was final, and if the ID court had made an error it should have been appealed to the SC, otherwise it became final. There is no question as to whether or not the ID court could have inquired into the first court's jurisdiction, and that could have been appealed.		
Dissent			

1480 (c) Difficulty with sequence of injunctions (is one
 1481 state bound to enforce contempt order against
 1482 another)
 1483 (4) 2nd Restatement balancing test³⁰⁰: Weighing policy
 1484 underlying the rules of res judicata against the policy
 1485 of prohibiting a court from exceeding the powers
 1486 conferred upon it. Factors to be considered are
 1487 (a) Whether the lack of jurisdiction or competence is
 1488 clear or doubtful³⁰¹
 1489 (b) Whether the determination as to jurisdiction or
 1490 competence depends on questions of facts or of
 1491 law³⁰²
 1492 (c) Whether the court is one of general or of limited
 1493 jurisdiction³⁰³
 1494 (d) Whether the question of jurisdiction or of
 1495 competence was actually litigated³⁰⁴
 1496 (e) The strength of the policy underlying the denial
 1497 of competence³⁰⁵
 1498 (f) Methodology of second restatement § 6 p. 115
 1499 (i) Chose applicable law under jurisdiction
 1500 selecting rule
 1501 (ii) Test against contacts
 1502 1.
 1503 vii) Specific subjects
 1504 (1) Real estate is usually in the exclusive jurisdiction of
 1505 the state in which it resides, often surmounting any
 1506 will or testamentary issues.³⁰⁶

³⁰⁰ Restatement 2nd § 97 comments c and d
³⁰¹ Restatement 2nd § 97 comments c and d
³⁰² Restatement 2nd § 97 comments c and d
³⁰³ Restatement 2nd § 97 comments c and d
³⁰⁴ Restatement 2nd § 97 comments c and d
³⁰⁵ Restatement 2nd § 97 comments c and d
³⁰⁶ Restatement 2nd § 97 comments c and d

Name	Clarke	Page	439
Procedure	SC probate court makes ruling as to will in CT. CT court makes ruling to contrary.		
Facts	Will in SC, property in CT.		

1507 (a) Without in rem jurisdiction over the land, Local
 1508 courts cannot make enforceable equitable
 1509 decrees as to foreign land³⁰⁷, and the granting
 1510 court litigates whether or not they have any
 1511 jurisdiction over local law.
 1512 (b) Correct remedy is an order to convey and a
 1513 contempt order
 1514 (2) Divorce
 1515 (a) Ex-parte divorce is allowed, so long as the other
 1516 spouse is served as to give notice³⁰⁸ -- but

Holding	<ul style="list-style-type: none"> Construction of wills as to disposition of property in a foreign state is not held to be given full faith and credit. Real property is a matter of exclusive jurisdiction for the state courts.
Dissent	

307

Name	Fall	Page	441
Procedure	Divorce awarded foreign state land to one party. State where land was not obligated to enforce the decree.		
Facts	Divorce awarded land in foreign state. Party refused to comply.		
Holding	Local remedy for failure to comply with decree for transfer of foreign land is contempt of court.		
Concurrence	If it was an in persona decree it would be different.		

308

Name	Williams I	Page	475
Procedure	Ex parte divorces granted by NV, after determining that they were domiciles. Later prosecution for bigamy.		

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1517 **decision doesn't deal with whether or not the**
1518 **decree is valid**, as there may still be a due
1519 process violation
1520 (i) Note: parts of a divorce can be severed for
1521 separation support (for example judgments
1522 from divorce)
1523 (ii) Domicile might be a due process issue³⁰⁹
1524 (iii) If both parties consent to ex-parte
1525 jurisdiction it may be considered to be valid
1526 given consent to foreign divorce
1527 proceedings³¹⁰
1528 f) Judgements as to preclusion (for example defense
1529 prohibited)
1530 i) Full faith and credit does not require one court to apply
1531 the Collateral Estoppel requirements (namely mutuality)
1532 of another state's litigation -- meaning that a foreign
1533 state's courts can give greater effect to the judgment
1534 than a local court might have³¹¹
1535 ii) Pendency of appeal and preclusion of litigation
1536 (1) Depends on specific state's law³¹²
1537

Facts	Spouses went to NV to get divorce.
Holding	Constitution only requires that the other spouse be served somehow or other (to give actual notice). No offensiveness of policy.
Dissent	Divorce is more like a contract than a res.

³⁰⁹ Alton
³¹⁰ Rosenstiel
³¹¹ Hart v. American Airlines
³¹² PAine