Conflicts of Law Outline

I. CHOICE OF LAW

- **A. INTRODUCTION**
  - **1. Choice of Law issues arise when the laws of more than one jurisdiction arguably apply to a dispute.**
  - **2. Terminology**
    - **Forum:** The state in which the lawsuit is filed.
    - **Forum Law:** The law of the state where the lawsuit is filed.
    - **Foreign Law:** The law of a jurisdiction other than the forum state.
  - **3. Choice of Law in Federal Court:** In a federal case, apply the choice of law rules of the state where the court sits.
    - This is known as the **Klaxon Rule**.
    - **Exception:** If the case was transferred from a federal court in another state, apply the choice of law rules of the original court.
- **B. GENERAL APPROACHES TO CHOICE OF LAW**
  - **1. Traditional Approach (First Restatement)**
    - **Focus:** Where the legally significant event that created the right occurred.
    - **Process:**
      - Identify the legally significant event.
      - Determine where that event occurred.
      - Apply the law of that place.
    - **Example:** A car accident occurs in State A. A lawsuit is filed in State B. The traditional approach would apply the law of State A because that is where the accident occurred.
  - **2. Governmental Interest Analysis**
    - **Focus:** Which state has the greatest interest in applying its law to the dispute.
    - **Process:**
      - Identify the policies behind the competing state laws.
      - Determine which states have a legitimate interest in applying their laws.
      - If only one state has an interest, apply that state's law. This is a "**false conflict**."
      - If more than one state has an interest, this is a "**true conflict**." The court will usually apply the law of the forum state.
      - If no state has an interest, apply the law of the forum state.
    - **Types of Laws:**
      - **Conduct-Regulating Laws:** Laws designed to regulate conduct.
      - **Loss-Shifting Laws:** Laws that determine who can or cannot be liable.
  - **3. Most Significant Relationship Test (Second Restatement)**
    - **Focus:** Which state has the most significant relationship to the issue.
    - **Process:**

        - Consider seven guiding principles to determine the state with the most significant relationship.
        - Consider the connecting factors related to the specific legal issue.
        - Apply the law of the state with the most significant relationship.
    - **Guiding Principles:**
        - Promoting the relevant policies of the forum and other interested states.
        - Protecting justified expectations.
        - Advancing certainty, uniformity, predictability, and simplicity.
    - **Tie Breaker:** If no state has a more significant relationship, courts apply forum law.
- **C. SPECIAL ISSUES**
    - **1. Depecage:** The application of different states' laws to different issues in the same case.
    - **2. Renvoi:** When the court applies the whole law of another state, including that state's choice of law rules.
        - **Accepting the Renvoi:** Applying the other state's choice of law rules.
        - **Rejecting the Renvoi:** Ignoring the other state's choice of law rules and applying the other state's substantive law directly.
        - **Generally Rejected:** Except for issues involving property rights in land, courts generally reject renvoi.
- **D. DEFENSES AGAINST APPLICATION OF FOREIGN LAW**
    - **1. Procedural vs. Substantive:** Forum law always governs procedural issues.
        - **Substantive Laws:** Regulate behavior outside of court.
        - **Procedural Laws:** Regulate behavior inside court.
    - **2. Public Policy Exception:** Courts may refuse to apply foreign law that violates the forum's strong public policy.
        - **Narrow Defense:** Applies only to egregious violations.
        - **Not Applicable to Defenses:** Can only be used to reject a foreign cause of action, not a foreign defense.
    - **3. Penal Law Exception:** Courts will not enforce the penal laws of another state.
        - **Penal Laws:** Laws that punish an offense against the public.
        - **Tax Laws:** Not considered penal laws.
- **E. CONSTITUTIONAL LIMITATIONS**
    - **1. Due Process:** Choice of law must not be arbitrary or fundamentally unfair.
        - **Requirement:** The state must have significant contacts with the dispute to apply its law.
    - **2. Full Faith and Credit:** A state must recognize and enforce the judgments of other states.
        - **Limitations:**
            - Must be a final judgment.
            - Must be on the merits.
            - Rendering court must have had proper jurisdiction.
        - **No Public Policy Exception:** States cannot refuse to enforce other states' judgments based on public policy.
        - **Last in Time Rule:** If there are conflicting judgments, the most recent judgment prevails.

- **3. Privileges and Immunities Clause:** Prevents states from discriminating against citizens of other states.

II. SPECIFIC AREAS OF LAW

- **A. TORTS**
  - **1. Traditional Approach:** Apply the law of the place where the injury occurred.
  - **2. Governmental Interest Analysis:** Apply the law of the state with the most significant interest in the outcome.
  - **3. Second Restatement:** Apply the law of the state with the most significant relationship to the occurrence and the parties.
    - **Consider these contacts:**
      - Place of injury.
      - Place where the conduct causing injury occurred.
      - Domicile, residence, or place of business of the parties.
      - Place where the relationship between the parties is centered.
    - **Presumption:** The law of the place of injury will usually be applied, but can be overcome.
    - **Multiple States:** If the injury occurs in multiple states, apply the law of the plaintiff's domicile if the injury also occurred there.
- **B. CONTRACTS**
  - **1. Choice of Law Clause:** If the contract contains a valid and enforceable choice of law clause, that clause will govern.
    - **Exception:** Validity of a contract cannot be resolved solely by the choice of law provision.
  - **2. Validity of a Contract:**
    - **Second Restatement:** Parties can choose the law governing validity if:
      - The chosen state has a substantial relationship to the parties or the transaction; or
      - There is some other reasonable basis for the choice.
    - **Public Policy Exception:** Courts may ignore the choice of law provision if it would violate a fundamental policy of the state with the most significant relationship to the issue.
  - **3. Traditional Approach:** The law of the place of contracting governs issues of contract formation, interpretation, and validity.
    - **Place of Contracting:** Where the last act necessary to make the contract binding occurred.
    - **Performance Issues:** Governed by the law of the place of performance.
  - **4. Second Restatement:** Determine the state with the most significant relationship to the contract.
    - **Consider these contacts:**
      - Place of contracting, negotiation, and performance.
      - Location of the subject matter of the contract.
      - Domicile, residence, place of incorporation, or place of business of the parties.

        - **Presumption:** If the location of negotiation and performance are the same, the law of that state applies.
- **C. PROPERTY**
    - **1. Types of Property**
        - **Real Property (Immovables):** Land and interests in land.
        - **Personal Property (Movables):** All property other than land.
            - **Tangible:** Property that can be touched (e.g., cars, furniture).
            - **Intangible:** Property that cannot be touched (e.g., stocks, patents).
    - **2. Real Property:** All three approaches generally apply the law of the situs (where the property is located).
        - **Second Restatement:** Still considers seven guiding principles, with a strong presumption in favor of the law of the situs.
        - **Land Incidental to a Contract:** If the land is merely incidental to the contract, apply the contracts approach.
    - **3. Personal Property:**
        - **Tangible Property:**
            - **UCC:** Apply the UCC, which allows parties to choose the applicable law.
            - **No UCC:** First and Second Restatement apply the law of the situs at the time of the transaction.
        - **Intangible Property:**
            - **First Restatement:** Law of the state where the property was created.
            - **Second Restatement:** Considers the seven guiding factors.
    - **4. Succession of Property at Death:**
        - **Immovable Property:** Law of the situs.
        - **Movable Property:** Law of the decedent's domicile at the time of death.
        - **Choice of Law Clause:** Many states will enforce a choice of law clause in a will or trust.
        - **Validity:** If a will or trust is valid under the law where it was made, courts generally enforce it.
- **D. CORPORATIONS**
    - **1. Internal Affairs:** Governed by the law of the state of incorporation.
    - **2. External Relations:** Governed by the choice of law rules of the area of law involved.
        - **Second Restatement Contacts:** Place of incorporation and principal place of business.
- **E. FAMILY LAW**
    - **1. Marriage**
        - **Traditional Approach:** Valid where celebrated, unless it violates a strong public policy of the domicile of either party.
        - **First Restatement:** Distinguishes between validity and incidents of marriage.
            - **Validity:** Governed by the law of the place of celebration.
            - **Incidents:** Determined by the law of the place where they are sought to be exercised.
        - **Second Restatement:** Valid where celebrated, unless it violates the public policy of the state with the most significant relationship to the parties at the time of marriage.

- **2. Marital Property**
  - **Immovable Property:** Law of the situs.
  - **Movable Property:** Law of the state where the couple was domiciled at the time of acquisition.
- **3. Divorce**
  - **Jurisdiction Requirement:** At least one spouse must be domiciled in the state granting the divorce.
  - **Bilateral Divorce:** Personal jurisdiction over both spouses.
    - Entitled to full faith and credit.
  - **Ex Parte Divorce:** Personal jurisdiction over only one spouse.
    - Entitled to full faith and credit for the divorce decree itself.
    - Other orders (property, alimony, etc.) are valid only if the court had personal jurisdiction over both spouses.
  - **Estoppel:** An interested party may challenge the validity of a divorce, except for parties, privies, those remarrying in reliance, or strangers with no standing.
- **4. Child Custody and Support**
  - **UCCJEA:** Governs jurisdiction and enforcement of child custody and support orders.
    - **Exclusive Jurisdiction:** One state has exclusive jurisdiction to make initial custody decisions.
    - **Modification:** Only possible if the original state no longer has jurisdiction or the new state meets the requirements for exclusive jurisdiction.
- **5. Foreign Country Judgments**
  - **Not Subject to Full Faith and Credit:** Enforced under comity.
  - **Comity:** Recognition based on mutual respect among nations.
  - **Uniform Foreign Money Judgment Recognition Act:**
    - Enforces foreign money judgments in the same way as sister state judgments.
    - Does not cover non-money judgments, but they may be enforced under comity.

III. IMPORTANT CONCEPTS TO KNOW FOR THE UBE

- **Domicile**
  - **Definition:** The place where a person has their true, fixed, and permanent home, and to which they intend to return whenever absent.
  - **Importance:** Determines which state's laws apply to certain issues, such as divorce and probate.
  - **Types:**
    - **Domicile by Choice:** Acquired by physical presence in a state and the intent to remain indefinitely.
      - **Proof of Intent:** Owning real estate, voting, paying taxes, banking, vehicle registration.
    - **Domicile by Operation of Law:** Applies to those lacking legal capacity (minors, incompetents).
      - **Minors:** Domicile of custodial parent(s).

        - **Incompetents:** Retain domicile from before incompetency.
    - **Corporations:** Domiciled in the state of incorporation.
    - **Continuity:** Presumed to continue until a new one is acquired.
    - **Change:** Requires physical presence in a new place and intent to make it home.
- **Substance vs. Procedure**
    - **General Rule:** Forum law governs procedural rules, foreign law governs substantive rules.
    - **Statute of Limitations:** Generally procedural.
        - **Exception:** If part of the right, not just the remedy, it's substantive.
    - **Rules of Evidence:** Generally procedural.
        - **Exception:** If outcome determinative, it's substantive.
    - **Burden of Proof:** Generally procedural.
    - **Presumptions:**
        - **Rebuttable:** Procedural.
        - **Conclusive:** Substantive.
    - **Parol Evidence Rule:** Substantive.
    - **Statute of Frauds:** Substantive.
    - **Damages:**
        - **First Restatement:** Procedural.
        - **Second Restatement:** Governed by the law of the state with the most significant relationship.
- **Full Faith and Credit**
    - **Definition:** Constitutional requirement that states must enforce the final judgments of other states.
    - **Requirements for Enforcement:**
        - Final judgment.
        - On the merits.
        - Rendering court had proper jurisdiction.
    - **Defenses:**
        - Lack of jurisdiction in rendering court.
        - Judgment procured by fraud.
        - Judgment not final.
        - Judgment not on the merits.
- **Comity**
    - **Definition:** The principle of recognizing and enforcing the laws and judicial decisions of other countries, based on mutual respect.

Application: Used to enforce judgments from foreign countries that are not subject to the Full Faith and Credit Clause.

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