

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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