

CONFLICT OF LAWS

On the Bar:

- Conflicts problem can show up in a torts questions, so if you get a torts questions, see if there is a conflicts issue.
- Easy to spot - examiners will give you a fact pattern with multi-state involvement and then they tell you the actual other law of that state.
- Conflict does not concern situation where one state statute conflicts with another state statute.
 - o It only involves conflicting laws of different states who are involved in litigation.
 - o I.e., tort happens in state A, suit is in state B.

1) Recognition and enforcement of judgments

- a) Issue: facts show a judgment rendered in another state or country outside of NY. Should that judgment be recognized and enforced by NY courts?
- b) Definition
 - i) **Rendering state** = state handing down the judgment.
 - ii) **Recognizing state** = state called upon to recognize and enforce the judgment.
- c) Classic hypo for this topic: M lived on her farm in NY. She took a temporary job in TX and rented her farm to a friend. While in TX, she borrowed money from a bank. When she failed to pay the loan when due, the bank properly sued M in TX courts and received a judgment against M in the amount of the unpaid loan. The bank is now attempting to enforce that judgment in NY and force a sale of M's NY property to satisfy that judgment. Can the bank do it?
 - i) Yes.
- d) Judgment rendered in a **sister state court**
 - i) Entitled to full faith and credit if:
 - (1) Judgment must meet **full faith and credit requirements**, and
 - (2) **No valid defenses** apply.
 - ii) **Full faith and credit requirements**
 - (1) **Valid jurisdiction in the rendering court** over both the parties and the subject matter of the litigation.
 - (a) Look to the rendering state law to determine valid jx.
 - (2) Judgment was **final**.
 - (a) Modifiable judgment
 - (i) Not a final judgment and gets no full faith and credit, but it will usually still be enforced under principles of comity.
 - (ii) Remember these modifiable judgments:
 - 1. Future alimony
 - 2. Future child support

(b) Judgments for amounts already accrued and in arrears are considered final judgments.

(c) Example: J and M were married in NY and moved to NJ where they lived for 15 years. They had 1 child, C. M obtained a divorce from J in NJ and as part of the divorce was awarded \$3k/month in alimony and \$500/month in child support. J never paid any alimony or child support and moved back to NY 1 year after the divorce. M returned to NY and now seeks to have the divorce decree enforced in NY against J. Is the NJ judgment final as to the alimony and child support?

(i) Yes, but only for the 1 year accrued but not paid. You can't enforce judgment for future alimony or child support.

(3) Judgment must have been rendered on the merits.

(a) Judgments that are not really on the merits but considered to be so for purposes of full faith and credit:

(i) Default judgments

(ii) Consent judgments

1. Parties in both of these situations had the opportunity to go to a judgment on the merits, so they are considered so here.

(b) Example: R and S, MI residents, were driving in PA when their car went off the road and struck a tree. S, passenger in R's car, sued R in PA. PA court dismissed the action since PA 2-year statute of limitations in tort had run out. S then sued R in MI where their 3-year statute of limitations had not yet run. R sought to have the PA judgment given full faith and credit by the MI court. Is the PA judgment dismissing S' cause of action entitled to full faith and credit by the MI courts?

(i) No, because PA judgment was not on the merits. It was merely on a procedural issue – statute of limitations.

iii) **Defenses**

(1) Most attempted defenses do not work but you must talk about them if they appear in the facts.

(2) Valid defenses

(a) Penal judgment - courts will not enforce this kind of judgment.

(i) A penal judgment is one rendered for an offense against the public. Winner must be the government, not a private person or entity.

(ii) I.e., criminal sanction or civil fine.

(iii) Example: E, VT resident, sued a NY corp. in VT for gross negligence in sale of flammable PJs. At trial it was shown that the company knew their PJs are flammable and the company suppressed reports of their dangerous products. Jury awarded E \$125k in damages for medical expenses and \$87mill for punitive damages. When E seeks to have the NY courts recognize and enforce the VT judgment the defendant asserts that the \$87mill in punitives is a penal judgment and for this reason is not entitled to full faith and credit. Is this a good defense?

1. No. Punitive damages are not a public/penal judgment.

(b) Extrinsic fraud (not intrinsic fraud)

(i) Extrinsic fraud is fraud that could not have been dealt with in the earlier trial.

1. Only example to worry about: bribing of a judge.

a. This could not have been dealt with in the earlier trial.

(ii) Intrinsic fraud is fraud that could have been dealt with during the litigation.

1. It is not a good defense to full faith and credit.

2. Example: S lost a case against her brought by a former friend who was injured when S backed her car out of her friend's driveway in CT. Judgment was rendered against S in CT for \$50k. Before judgment was sought to be enforced against S in NY, S obtained evidence that testimony of an eye witness had committed perjury at the request of the plaintiff. When plaintiff seeks to have CT judgment enforced in NY against S, she pleads the defense that the judgment was procured by fraud. Does S win?

a. No, that is an example of intrinsic fraud. This could have been dealt with at the trial by attacking the witness's credibility.

(3) Non-defenses that must be talked about on the exam

(a) Tax judgment – ok and can be enforced.

(b) Judgment is based on a cause of action that violate forum's public policy.

(i) Underlying cause of action is ok in rendering state but not ok if brought in recognizing state.

- (ii) Example: H and S had been married for 5 years when H found B, a divorced socialite who was attracted to H's money. When H left S for B, S sued B in a state that allows alienation of affections as a cause of action. S won a judgment. Now S seeks to have that judgment recognized and enforced in a state that does not allow such suits. Can B defend by claiming that the state's public policy against suits for alienation of affections prevents recognition and enforcement of this judgment?

1. No.

- (c) Mistakes by judge in earlier trial.

- (i) Remedy here would be to appeal the incorrect judgment. It is too late to raise this issue at the recognition of judgments stage.

- (d) Inconsistent judgments

- (i) A later judgment can be enforced even though it is inconsistent with a valid earlier one.

- (ii) Rule: enforce the last judgment in time.

- (iii) Example: Jane sued Jill in State A. State A rendered judgment in Jill's favor. Jane then went to State B with the same cause of action against the same party and State B rendered judgment in Jane's favor. State B did this even though the State A judgment was entitled to full faith and credit. Jane now goes to State C seek to enforce the State B judgment against Jill. Can Jane enforce this judgment in State C?

1. Yes.

2. Note: State B was wrong in proceeding to try the case, but it doesn't matter. State C should enforce. Jane should have appealed State B's decision for lack of full faith and credit of State A's judgment.

- e) Judgment rendered by a **foreign country court**

- i) Can be recognized and enforced if comity test is satisfied:

(1) Jurisdiction must have been proper, and

(2) Fair procedures must have been used in the foreign country proceeding.

(a) This is really just talking about due process.

- ii) To determine whether the foreign country judgment meets this test, use the recognizing state's law and that state's ideas of due process – were there enough contacts with the litigation or the parties to make jurisdiction fair.

- f) Special situation: **family law judgments**
- i) Recognition and enforcement of family law judgments involves consideration of jx, both subject matter and personal.
 - ii) **Divorce**
 - (1) Valid divorce requires proper subject matter jx.
 - (a) This requires that 1 of the 2 spouses be domiciled in the state rendering the divorce.
 - (2) Types of divorce
 - (a) Ex parte divorce – only 1 of the spouses is validly domiciled where the divorce is granted.
 - (i) Example: L and J are married and live in NY. L wants out so she moves to NV and obtains a valid domicile there and she gets a divorce. J was neither domiciled in NV nor subject to personal jx there.
 - 1. Does she have an ex parte divorce?
 - a. Yes.
 - 2. Is it valid?
 - a. Yes. All you need is for 1 spouse to be domiciled where the divorce is granted.
 - (b) Bi-lateral divorce – 1 of the spouses is validly domiciled where the divorce is granted and both spouses are subject to personal jx there.
 - (i) Example: L and J are married and live in NY. L wants out so she moves to NV and obtains a valid domicile there. J is upset and wants her to come back to NY. He goes to NV to talk to her in person. When he meets her, she serves him with divorce papers.
 - 1. Is this a bi-lateral divorce?
 - a. Yes.
 - 2. Is it valid?
 - a. Yes. Valid jx over both parties because J was physically present in NV when served.

- (c) Consent divorce – both spouses want out of the marriage and go together to get it.
- (i) Example: L and J realize that it is all over. Each wants a quick exit from the marriage and together they fly to Mexico, sign the registry book, get their divorce and fly back to NY.
1. Is this a consent divorce?
 - a. Yes.
 2. Is it valid?
 - a. No because Mexico is not the domicile of either party. There is proper personal jx, though, since they were both in Mexico.

(3) Procedural matters on divorces

(a) Burden of proof

- (i) The attacker bears the burden of proof and can introduce any relevant evidence, even if it came into existence after the divorce was granted.

- (ii) Example: L goes to NV to get a divorce. She takes the steps necessary to show the required intent to have a domicile in NV. Once her divorce is granted, she returns to NY. She is at a party at her friend's in NY and says "I had to say I was domiciled in NV. What a joke, can you imagine actually living there?" If J wants to attack the validity of the NV divorce, can he introduce evidence of this post-divorce conversation to attack L's domicile in NV?
1. Yes. You can use any evidence to attack the underlying divorce.

(b) Any interested person who is not estopped can attack a divorce decree for lack of subject matter jx.

- (i) Interested means someone closely involved in the marriage – not a best friend.
1. Strangers to the marriage cannot attack it.
- (ii) Estoppel situations – plaintiff is estopped in each of these:
1. Where the attacker was subject to personal jx in the earlier proceeding, thus the spouse in a bi-lateral divorce cannot later attack that divorce.

2. Where the attacker may not have been subject to personal jx in the earlier proceeding but the attacker played a meaningful role in granting the divorce.
 - a. Example: L wanted out of the marriage. J as heartbroken but wanted whatever L thought best. He took her to the airport and L went to NV. She obtained a domicile and got a divorce. J now wants to attack the validity of her domicile in NV. Can he do it?
 - i. No, because he is estopped.
3. Persons who are in privity with a party to the divorce.
 - a. This includes children.
4. A spouse who has remarried in reliance on the earlier divorce.
 - a. Example: L went to NV, obtained a valid domicile and an ex parte divorce. J was heartsick for a day and then married his long-time secretary. He quickly realized this was a mistake and tried to get out of marriage number 2 by claiming that the divorce by L was invalid due to lack of proper subject matter jx. Can he do it?
 - i. No, because he is estopped.

iii) **Property awards** – alimony and child support

- (1) Court granting alimony or child support must have personal jx over the spouse whose property rights are in issue.
- (2) Example: L went to NV and obtained an ex parte divorce. The court also awarded her \$5k/month alimony and \$500/month in child support.
 - (a) Is the divorce valid?
 - (i) Yes.
 - (b) Is the alimony award valid?
 - (i) No. There is no personal jx over J (since it says an ex parte divorce)
 - (c) Is the child support award valid?
 - (i) No. There is no personal jx over J.

iv) **Child custody**

- (1) Valid jx for determining child custody lies only in the child's home state.

v) **Family law jx summary**

- (1) For divorce: subject matter jx – valid domicile of at least one party.
- (2) For property awards: personal jx over the spouse whose rights are being determined.
- (3) For child custody: personal jx over the child – child's home state.

vi) **Divisible divorce doctrine**

- (1) If a decree has some parts that are good and some bad, you keep the good and ignore the rest.
- (2) Example: L and J lived in CT with their 8-year old M. J had affair and moved out of the CT house with L and moved to NY with his secretary. L decided to get NV divorce and planned to move there with M. She left M temporarily with her sister in CT and went to NV. She rented a house in NV and declared her domicile there. She obtained an ex parte divorce. The court awarded her alimony and child support and granted her sole custody of M. Which of the actions of the NV court are valid?
 - (a) The divorce?
 - (i) Yes
 - (b) Alimony?
 - (i) No. No personal jx over J.
 - (c) Child support?
 - (i) No. No personal jx over J.
 - (d) Child custody?
 - (i) No. NV is not M's home state.

2) **Domicile**

a) How it might appear on the Bar:

- i) Domicile of the decedent is used to choose the law to be applied to determine intestate succession of personal property.

- (1) Example: A died intestate and domiciled in NY. His estate consisted of a brownstone in NY and its collection of paintings and antique furniture. He also owned a home in MA he used for the summer. That had Andy Warhol paintings. What state's law will be used to determine intestate succession to the Warhol paintings in the MA house?
 - (a) NY law.

- ii) Domicile at death determines which state gets estate taxes.

- (1) Example: same facts. Which state can get estate taxes on A's death?
 - (a) NY. That is where A was domiciled at death.

- iii) Domicile of an individual gives subject matter jx for a divorce.

- (1) Example: S was tired of her husband and wanted to marry trainer. She flew to CA by herself, obtained a domicile there and was granted a divorce in CA. Her husband did not go to CA with her and was never in CA. Was her divorce valid?
 - (a) Yes, if there was valid domicile of S in CA.

- iv) Domicile is very important when applying NY choice of law rules.

b) **Domicile of choice**

i) Legal capacity is needed to make a domicile of choice.

- (1) This is not the same as legal capacity to enter into a contract.
- (2) The standard – the ability to fend for yourself.

ii) **Test** to establish domicile of choice:

(1) **Physical presence in that state.**

- (a) This can be for a short time and still satisfy the requirement

(2) **Intent to remain for the foreseeable future**, indefinitely.

- (a) Both of these factors are factual – use factual analysis on the exam.

(3) Example: J leaves NY and moves to NJ where housing is cheaper. He rented an apartment in NJ and took most of his stuff there in a truck.

When he finished loading his belongings into the apartment, he noticed heat has not been turned on. He decided to go back to NY for the night and slept on the floor. During the night a fire swept through the building killing J. Where did J die domiciled?

- (a) NJ.

iii) Conflicts between acts and words on intent

- (1) Actions speak louder than words. When intent is concerned, what you do counts more than what you say.

(2) Example: JD was domiciled in NJ. He moved to a new home in PA.

Because NJ inheritance taxes were lower in NJ than in PA, his lawyer advised him to keep his domicile in NJ and not switch it to PA. To the end of his life, JD asserted that he was domiciled in NJ, but spent almost all of his time in PA. At JD's death, both PA and NJ asserted their rights to inheritance taxes. NJ court found JD to be domiciled at his death in NJ: "he said he was domiciled here." PA found him domiciled in PA: "actions are louder than words." Each state took full inheritance taxes.

- (a) Is this double taxation constitutionally ok?

- (i) Yes. USSC says ok.

- (b) Which approach would NY follow, NJ or PA?

- (i) PA – on exam, follow PA approach.

iv) Person can have only one domicile.

- (1) Means that court can only find you domiciled in one state, but different state courts might conflict.

(2) Once obtained, a domicile of choice is kept until another one is acquired.

(a) Example: after years of trying to make it on Broadway, L decided to go to FL for summer theater. He started hating NY winters. He sold his studio and drove to Miami. When he got to NJ he said “goodbye NY I’ll never be back.” When he crossed into VA, he was in an accident and killed. Where did he die domiciled?

(i) NY. He had no physical presence in FL, no intent to VA so you are left with NY. He keeps NY domicile until he gets a new one.

(3) The motive for going to another state to acquire a domicile is irrelevant.

(a) G was in financial trouble. To cover his losses, he began to steal from his employer but he was discovered. He was fired and was about to be indicted by the state. Additionally, he was 6 months behind in child support payments and feared authorities were about to take action. He sold his house and flew to FL in hopes that being out of NY would discourage prosecutors from coming after him in FL. Is his change of domicile from NY to FL valid, given his motives for making the move?

(i) Yes. Motive for moving is irrelevant. All that is required is physical presence and intent.

c) **Domicile by operation of law**

i) If a person has no legal capacity to acquire a domicile of choice, that person will be assigned one by operation of law.

ii) Situations:

(1) Domicile of **child**

(a) If a child has legal capacity, they can have a domicile of choice.

(b) If a child does not have legal capacity, the child will have the domicile of his parents.

(c) If parents are divorced, domicile of the child is that of the parent who has physical custody of the child.

(2) Domicile of a **married woman** living apart from her husband in a different state.

(a) Today: married woman can have a domicile of choice, the 2-part test.

(b) Old rule: married woman had the domicile of her husband.

- 3) **Choice of Law** [chief topic]
 - a) Constitutional limitations – must meet constitutional test
 - i) Due process and full faith and credit
 - (1) **Test: the state chosen must have a significant contact(s) with the parties or the subject matter of the litigation which give it legitimate interest in seeing its law applied.**
 - (a) Remember: significant contact giving legitimate interest
 - (b) This is not a hard test to satisfy.
 - (c) Example: J, resident of state X, was driving in state Y and was involved in an accident with R, resident in state Y. J wanted to sue R but the law in state Y would not consider R to be negligent. X's law would have considered R negligent. R worked in state X and when he was at work, he was served with process in a suit by J in state X's courts. At trial, can state X court validly apply its own law to determine if R is liable?
 - (i) Yes because state X does have a significant contact giving a legitimate interest. J lives in state X. State X is certainly interested in its citizens' welfare.
 - (2) No weighing of interests of the states is needed. As long as a state meets the test, then its laws can be applied.
 - (3) Other than the 2 exceptions below, the situation will not violate the constitution and will likely meet the test.
 - (a) Exceptions:
 - (i) If, after the event in question, someone moves to a new state and that move creates the only contact with that state, then it would be unconstitutional to apply that state's law.
 - (ii) If the only contact with the parties or the litigation is that the suit is brought in a state then it would be unconstitutional to apply that state's law.
 - (b) Example: H filed a part-year tax return in CA, alleging he moved to NV just before receiving a large fee. After an investigation for tax fraud, CA tax agency assessed his for unpaid taxes and imposed civil fraud penalties. H sued in NV, alleging that the CA agency committed torts in their investigation. Under CA law that tax agency is immune from such suits by NV law provides no such immunity. After considering the relative interests of CA and CV immunity, the NV courts applied NV law. CA alleged NV failed to give full faith and credit to the CA law and that it should be applied because CA's interest is much greater than NV's. Did NV violate the constitutional standard by failing to apply CA law?

- (i) No. NV did have a legitimate interest in seeing its own law applied.
 - (c) Example: L lived in large apartment in NY. J lives in small apartment in NY. Both attend concerts in MA. They got into an accident in NY. J was in hospital in MA for 3 months. When released, he decided to stay in MA and moved out of NY. Before he left NY, he talked to an attorney and brought suit against L in NY. L urged the NY court to apply to MA law since his attorney told him he'd get a more favorable result under MA law. Can the NY court apply MA law?
 - (i) No because the only contact with MA was J moving there after the accident.
 - (d) Example: same facts but what if both L and J lived in NY but J wanted to sue in MA since that law would be more favorable. Suit was filed in MA and personal jx was validly obtained over L at a concert in MA. Can MA court validly apply MA law?
 - (i) No because the only contact MA had was the fact that the suit was brought here.
- b) **Vested rights approach to choice of law** – also called territorial approach
- i) Under this approach, the law to be applied is the law where the rights of the plaintiff vested.
 - ii) Rules for each area of law, examples:
 - (1) **Torts**
 - (a) The instant a cause of action arises plaintiff's rights become vested.
 - (b) So the vested rights rule would say to apply the law of the place where the injury occurred or the place of the wrong.
 - (i) This is not the place of the negligence but the place of the injury.
 - (2) **Contracts**
 - (a) Rights under a contract vest at the moment the contract is made, so the vested rights rule would say to apply the law of the place of the making of the contract.
 - (3) There was a rule for every area of the law and all rules were territorial, pointing to a single place.
 - (a) Problem with this approach is that it might wind up pointing to a place that has no policy interest in the outcome of the litigation.

- iii) Example: 2 NY residents drive into Ontario on a day trip. While in Canada, they have an accident and the passenger is injured. Passenger sues in NY court. NY does not have a guest statute that would prohibit suit by the passenger. Ontario does have such a statute. Does Ontario have a policy interest in this case to see that its statute is applied by the NY passenger against the NY driver in a NY court?
- (1) No. Vested rights approach would have said that the Ontario law applies, but there is no interest to Ontario to prevent a NY passenger from suing a NY driver in a NY court.

c) **Interest analysis approach to choice of law**

i) Babcock approach to interest analysis:

- (1) List the factual contacts with each state.
 - (a) So in the above example, both P and D are residents of NY, insurance policy is in NY. Ontario is only the place of injury.
- (2) Note the different state laws in issue.
 - (a) So in above example, Ontario has guest statute prohibiting suit by passenger. NY has no similar statute.
- (3) Find out the policies underlying each state's law by consulting legislative history and court decisions.
 - (a) Who is the law designed to protect?
 - (b) On exam, find out which state's law favors plaintiff and which would favor defendant. Just mention that one favors P and one favors D.
- (4) Take the facts and relate them to the policies to see if state has an interest in seeing its law applied.
 - (a) On exam, does the party being favored by a state's law reside in that state? If so, that state has an interest.
 - (b) So in the above example, Ontario's law favors defendant, but defendant has no connection to Ontario and therefore Ontario does not have an interest.
- (5) Apply the law of the state with the greatest governmental interest in the outcome.
 - (a) See which of 4 categories the conflict fits in:
 - (i) False conflict – where only one state has an interest in having its law applied.
 1. If so, the law of the only jx with an interest in the outcome in the litigation is applied.
 - a. Above example is a false conflict. Only NY has an interest in applying its law.

(ii) True conflict – where 2 or more states involved have an interest in the litigation and one of them is the forum state.

1. Presume that you apply the law of the forum state unless the interest of the other state is much greater.
2. Example: a NJ corp is contracted to build in NY. Delays in construction caused plaintiff to sue corp. for breach of contract in NY court. Under NY law plaintiff would prevail in the suit because NY law would hold that defendant violated several provisions of the contract. Under NJ law, defendant would prevail because NJ law says contract would not have been breached by defendant. What state law should be applied by the NY court?
 - a. Both states have an interest in applying its law. Apply NY law because there is no overriding reason to apply NJ's law and NY is the forum state.

(iii) Disinterested forum – where 2 or more states have an interest in having their law applied and the forum is not one of them.

1. NY court can:
 - a. Apply the law that is closest to NY law, or
 - b. Apply the better law.
2. Example: S, resident of CT, contracted to perform in TX. Contract had clause that she would be prohibited from performing anywhere else in TX for next 5 years. 6 months after signing this contract, S agreed to sign elsewhere in TX. The first opera house sued in NY court, having personal jx over her when she was served on stage at the Met. Under TX law the non-compete clause was valid and S was in breach of it. Under CT law the non-compete clause would be held as invalid as an improper restraint on freedom of contract. Under NY law the non-compete clause would be found valid, same as under TX law.
 - a. What states have an interest in having their laws applied?
 - i. TX and CT.
 - b. What law should be chosen by NY courts?
 - i. Apply both NY options. They can apply the law that is closest to NY law, which would be TX. (most NY courts will follow this) Or the NY court can apply the better law.
 - c. [There are 3 states involved. TX would favor P. P is a TX corp. and thus TX has an interest in protecting its residents. CT law favors D and D is a CT resident and thus CT has an interest in protecting its residents. NY has no interest. It is just the forum.]

(iv) Unprovided-for case – where no state has an interest in applying its own law.

1. If no state has an interest, most courts will just apply law of the forum state.

2. Example: same facts as above except now TX law would favor defendant and CT law would favor plaintiff. Neither state has a party to protect and neither state has an interest in applying its law and NY still has no interest in applying its law. What law will NY court apply?

a. NY law. It is the forum.

ii) Specific areas

(1) **Torts**

(a) **Use: Babcock test + rules of Neumeier**

(i) **Neumeier rule 1:** same domicile rule.

1. When plaintiff and defendant are domiciled in the same state, that state's law will be applied.

(ii) **Neumeier rule 2:** when plaintiff and defendant are domiciled in different states:

1. Then the law of the place where the accident occurred helps its citizen, that state's law will be applied.

(iii) **Neumeier rule 3:** unprovided-for case.

1. When plaintiff and defendant are domiciled in different states and the law of the place where the accident occurred does not help its citizen, then you still apply the law of the place of the injury unless the other state has a greater interest in the outcome.

(iv) **Neumeier summary – apply the law of the place of the injury unless both parties live some place else.**

(v) Example: defendant NY resident was driving in Ontario and was involved in an accident with plaintiff, an Ontario resident. P sued D in NY court. Ontario has a guest statute that would bar recovery by P. NY has no guest statute. Which of the 3 Neumeier rules would apply?

1. Not rule 1, as the domicile of the parties is in different jx.

2. Not rule 2, as Ontario law does not help its citizen.

3. Must be a rule 3 situation. Apply Ontario law unless NY has some overriding interest in having its law applied.

(vi) On exam, just assume that Babcock/Neumeier applies to any tort fact pattern.

(b) **Loss distribution** rules

- (i) Most tort rules are loss distribution rules, determining which party will bear the loss.
- (ii) Apply the Babcock/Neumeier analysis to all loss distribution rules.

(c) **Regulating conduct**

- (i) For all rules regulating conduct, apply the law of the place of the injury. Rules of the road.
- (ii) Example: 2 NY residents were driving in KS and got in an accident. If the issue is whether the defendant was driving too fast should the court apply the NY speed limit of 55 rather than KS' 70?
 - 1. No. This is a rule regulating conduct. Apply the law of the place of the injury.

(d) Method to use on exam for torts cases:

- (i) Is the law regulating conduct or a rule on loss distribution?
- (ii) Regulating conduct = law of place of injury.
- (iii) Loss distribution = Babcock method and Neumeier rules.

(2) **Contracts**

(a) Parties can always choose the law in the contract for matters of contract construction. Any law can be chosen.

- (i) Example: Farm contracted with farmer for sale and delivery of 100 fence posts of good quality. Farmer bought several hundred for his own yard and wanted to get rid of the rest. When delivered, the purchaser refused them, claiming they were not good quality. In the contract, they agreed that the law of MT would be applied. MT has no connection of any kind with either party or the contract. Is the choice of law valid to resolve the dispute?
 - 1. Yes.

(b) Parties can choose the law to govern the matters of contract validity if these exist:

- (i) Choice cannot be contrary to a fundamental policy of a state with a greater interest than the chosen state.
- (ii) There must be a substantial relationship to the parties or the transaction.
- (iii) The choice must be free of duress, not a contract of adhesion (such as a printed, take it or leave it contract, or imposed by stronger on weaker party)

(c) **NY statute for large contracts**

- (i) If contract is for not less than \$250k, parties can choose NY law even if the contract has no connection to NY at all.
- (ii) If contract is for not less than \$1mill and parties choose NY law in the contract, then parties may also put in a clause specifying that NY may be the forum and courts are prohibited from dismissing under forum non conveniens.

(iii) Example: A CA corp contracts to sell goods to AZ corp for \$1.6 mill. In contract, they choose the law of NY and specify that any suit on contract may be brought in NY.

- 1. Can they choose NY law?
 - a. Yes. Contract is for not less than \$250k.
- 2. Can they choose NY as the forum?
 - a. Yes. Contract is for not less than \$1mill.

(d) Choice of law if parties do not choose the law in the contract

- (i) NY abandoned vested rights rule (place of making) in favor of the governmental interest analysis in the Babcock test.
 - 1. When this analysis is used, the state chosen is the state with the most significant relationship to the contract.

(ii) Rule for insurance contracts:

- 1. All issues regarding the rights and duties under a policy are determined by the state where the policy is written.

(iii) Example: P, a NY resident, was struck by D in NY. D is a resident of NY but his car is registered in state X. When he got car insurance from a state X company, he stated that he was a resident of state X and would garage his car there. When insurance company heard of accident and D's true residency, they retroactively cancelled his policy. NY does not permit retroactive cancellation of policies, but state X does. What law should be applied?

- 1. State X, even though Babcock/Neumeier might point to NY. The state where the policy is written is most significant relationship because of the rule.

(3) **Real property**

- (a) Law of the situs of the property governs. I.e. law of the place where the property is located.

(4) Personal property

- (a) Same situs rule as for real property (law of place where property is located)
- (b) Exception:
 - (i) If the issue is passing pf personal property by intestate succession, the state chosen is the state of the deceased's domicile at death.
- (c) Example: M was domiciled in NY and had a country house in CT that she used on weekends. Both of her places were full of expensive paintings and antiques. When M died, she had no will. What state law will be used to determine devolution of these items?
 - (i) Apartment in NY?
 - 1. NY – real property is he law of where it is located.
 - (ii) House in CT?
 - 1. CT
 - (iii)Furniture and paintings in NY?
 - 1. NY – domicile of decedent at their death.
 - (iv)Furniture and paintings in CT?
 - 1. NY

(5) Inheritance

- (a) A non-NY domiciliary can choose NY law in a will to apply to the disposition of NY assets.
 - (i) This applies in all situations, even when it would oust a spouse from elective share.

(6) Family law

- (a) Rule: if a marriage is valid where performed, it is valid everywhere.
 - (i) Also vice versa – if invalid where performed, invalid everywhere.
- (b) Exception:
 - (i) If a marriage would violate the strong public policy of a state then it may not be recognized even though it was valid where performed.
 - (ii) However, if the marriage is void because it failed to comply with some technical requirement of the state where performed, it can still be recognized in NY if it would have complied with the NY rule.
 - (iii)Example: J and J, residents of MA, were properly married in MA, a state that permits same-sex marriages. Later they moved to NY. Will NY courts recognize J and J's MA marriage?
 - 1. Yes.
- (c) Divorces are governed by the law of plaintiff's domicile.

d) **Defenses to choice of law**

i) That law chosen is procedural, not substantive.

(1) Procedural:

(a) Burden of proof

(b) Ability to bring counter claims

(c) Statute of limitations

(i) Exception: NY's borrowing statute, which will borrow and apply the shorter statute of the state where a cause of action arose. This prevents forum shopping.

1. But NY will not apply the borrowing statute if plaintiff is from NY.

(ii) Example: On 3/1/2003, A and B were in a car crash in PA. A is a resident of NY and B of PA. On 4/1/2005, B sued A for negligence in NY court. Statute of limitations in PA is 2 years and in NY is 3 years. Has the statute of limitations run?

1. Yes because NY's borrowing statute. PA has the shorter statute of limitations.

a. But if B had lived in NY, then the NY statute of limitations would have been applied.

(2) Substantive: if it is outcome-determinative, then it is substantive.

(a) Contributory or comparative negligence

(b) Statute of frauds

(c) Parol evidence

(d) Contribution among tortfeasors

(e) Direct action statutes

(i) NY allows a plaintiff to sue insurance company directly without suing the negligent tortfeasor (this is opposite of most states).

ii) That the law is against the public policy of the forum state.

(1) This is useless as a defense because the law must be really offensive for this to apply.

iii) That the law is a penal law.

(1) Applies only to offenses against the public – a criminal judgment or civil fine.

e) **Use of state law in federal courts**

i) A federal court sitting in a diversity case must use the choice of law rules of the state in which it sits.

f) Notice and proof of foreign law

- i) Courts will take judicial notice of sister-state and federal law, but the law of a foreign country is a fact that must be pleaded and proved.
- ii) If the foreign law cannot be determined than a NY court will apply NY law, so long as there is no injustice.