
CONFLICT OF LAWS

I. Introduction

- A. **Judgments** – another state/nation is the source of a judgment. Winner of that judgment wishes to have the judgment *recognized* and *enforced* by NY Courts, which will be the forum for the enforcement action
- B. **Choice of Laws** – litigation filed in NY and the NY court must decide whether to apply NY law to the controversy or some other state's/country's law.

II. Judgments

A. Recognition of Sister State Judgments

1. Under US Constitution, Fed & NY statute – NY must recognize and enforce judgment issues by sister state
 - a. *Recognition* – obligation to convert sister state judgment into NY judgment
 - b. *Enforcement* – obligation of NY to use whatever mechanism to enforcement that judgment
2. **Defenses to recognition and enforcement**
 - a. **Lack of Personal Jurisdiction** in state where judgment was awarded – best defense if applicable; if State X's judgment was **default judgment** (D didn't appear to defend case in State X), D may challenge State X's jurisdiction over him when default judgment is brought to NY for recognition & enforcement
 - (i) If NY court decides State X had jurisdiction over B – NY will recognize and enforce the judgment unless one of the other exceptions applies
 - (ii) If NY court decides State X NOT have jurisdiction over B – NY will declare State X's judgment void (State X's judgment cannot be enforced against D)
 - b. NY may **deny/limit recognition** of a State X judgment if State X itself would deny/limit the effect of its judgment – NY will look to see whether other state has enforced it.

3. Invalid Defenses

- a. *Mistake of Law or Fact* – even though mistake of law or fact in proceeding before State X, NY must still recognize the outcome of the State X proceeding (e.g. the forum to fix is on appeal in State X)
- b. *Public Policy*
 - (i) *General Rule* – NY will recognize and enforce judgment even though underlying determinant violates public policy
 - (ii) *Cautionary Note* – this is a losing argument (*contrast* with following public policy argument for foreign country judgments)

B. Recognition of Foreign Country Judgments

1. **Comity** – respect (overarching stand)
2. *No Constitutional Obligation* – governed by statute (presumption that NY will recognize & enforce)
3. *Mandatory Non-Recognition*
 - a. NO personal jurisdiction over the D in the foreign country;
 - b. D did NOT have full and fair opportunity to defend
4. *Discretionary Non-Recognition*:
 - a. Lack of Subject Matter Jurisdiction in foreign country (discretionary matter)
 - b. Country X was a serious inconvenient venue for the D
 - c. P agreed to resolve the dispute somewhere other than in the courts of Country X (e.g. arbitration)
 - d. Judgment violates the strong *public policy* of NY – NY can refuse recognition

III. Choice of Law

A. Domicile

1. *Basic Principle* – every person has a domicile (domicile may occur by operation of law or by choice)
2. *Types of Domicile*:
 - a. **Domicile of Origin** (*by operation of law*) – domicile at birth
 - (i) Domicile of the child's parents; OR if only 1 parent involved, the custodial parent.
 - (ii) NOTE: person's domicile of origin remains her domicile until that domicile is changed either by operation of law or by choice.
 - b. *Other Domiciles by Operation of Law*
 - (i) Minors – domicile may change if their parents' domicile changes until they reach age of majority
 - (ii) Incompetents – retain/have domicile that they had prior to their incompetency
 - c. **Domicile of Choice** – acquiring a domicile of choice (& abandoning domicile of origin) requires:
 - (i) **Physical presence** in chosen state/country (temporary presence will suffice if intention met); AND
 - (ii) **Intention** to be domiciled (must manifest an intention to remain in new state/ country *indefinitely*)

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- d. *Further Changes* – as long as he meets the presence and intentionally requires, a person may change domicile multiple times
 - e. *Multiple Dwellings* – when a person has more than 1 home, NY will apply the following general rules
 - (i) If one is a principal home and the other a seasonal one, the principal home is normally the domicile
 - (ii) If both are principal homes, the first acquired normally is the domicile.
- B. Preliminaries to Choice of Law Analysis**
- 1. Commonalities in all choice of law issues:
 - a. Laws of the 2 states must differ, and
 - b. Difference must matter
 - NOTE: no impact on criminal law & tax law
 - 2. **Identifying the Choices** – identifying which states’ laws offer a permissible choice is a *2-step process*:
 - a. **Constitutional Limitations** – permissible for NY to apply own law?
 - (i) Constitutional Standard – applying *due process clause* and *full faith and credit clause*, for a choice of a state’s law to be constitutional, **the state must have a significant contact or significant aggregation of contacts, creating state interest**, such that the choice of its law is neither arbitrary nor fundamentally unfair (e.g. strong connection)
 - (ii) Note: Constitution allows a choice but does not compel it; NY could choose the NY rule but could apply State X’s rules
 - b. **State Statutory Limitations** – there may be state statutory limitations; NY court could not properly choose some other state’s laws even if were Constitutional to do so.
- C. NY approach to Choice of Law**
- 1. *Vested Rights (old rule)* – identify a particular event & apply the law of the state *where that event occurred*.
 - 2. **Government Interest Analysis (current approach)** ⇒ seeks to identify which state has the greatest interest in application of its law to the particular case.
 - a. Methodology:
 - (i) Identify the competing state rules
 - (ii) Identify the policies that underlie those rules
 - (iii) Identify the contacts of the parties (e.g. domicile) and transaction (key events underlying the lawsuit) with those states.
 - (iv) Ask *if the contacts with each state implicate/trigger that state’s policies underlying its rules*
 - (a) If yes – that state has an interest in applying its law
 - (b) If not – that state has no interest in applying its law
 - b. *Possible Outcomes of Government Interest Analysis*:
 - (i) **False Conflict** – only one state has an interest in applying its law (NY court will choose the rule of the only interested state)
 - (ii) **True Conflict** – both states have an interest in applying their law (hardest cases & see below)
 - (iii) *Unprovided-for-case* – neither state has an interest (apply the law of forum)
 - (iv) **Disinterested Forum (IF 3 states’ rules might be applied)** – interest analysis is conducted and it’s determined that the forum (NY) has no interest in applying its law and there’s a true conflict between the other 2 states; NY court will either (1) apply NY’s rule or (2) apply rule judge thinks best.
- D. Choice of Law Rules in Tort** – 2 general types of tort issues
- 1. **Conduct-Governing (Conduct-Regulating) Rules** – where rules in conflict differ in defining appropriate level of conduct, NY courts will normally apply the **law of the place of the tort** (usually the *place of the injury*)
 - 2. **Loss-Distributing/Loss-Allocating Rules** – states may be in agreement as to wrongfulness of D’s conduct but disagree as to *consequences* of that conduct – “post-conduct” rules
 - a. Examples:
 - (i) Guest passenger statutes – NY allows passenger to sue driver (other jurisdiction don’t)
 - (ii) All immunity rules – inter-spousal immunity, charitable immunity, etc
 - (iii) Pass on damages
 - (iv) Vicarious liability rules – owner/lessor of car can be held vicariously liable for negligent of driver
 - b. NY applies a modified government interest analysis through the **“Neumeier Rules”**:
 - (i) **Neumeier #1 – Same Domicile**
 - (a) P and D have same domicile, apply law of that domicile; or
 - (b) If P and D are from different states, but on the issue both states have exactly same rules
 - (ii) **Neumeier #2 – Split Domicile**
 - Did the *conduct that caused the accident or injury that resulted* occur in the state of domicile of one of the parties?
 - If yes, did that state’s law favor its domiciliary? – If so, apply that state’s law
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- (iii) **Neumeier #3 – All Other Situations**,
 - (a) NY presumptively applies the *law of the place of the accident* – rebuttable presumption
 - (b) Other situations:
 - 3 states (P and D domiciled in 2 diff states and tort in a third state),
 - Tort actually touches both domicile states (D’s tortious conduct occurred in his state, P’s injury occurred in her state)
 - (c) Overcoming presumption in favor of law of place of accident – where another state’s policies will be severely impaired if the law of the place of the accident is applied
- c. **Loss Allocation Summary** – in most cases, the *Neumeier Rules* boil down to this:
 - (i) **If the parties are from the same domicile, apply that law.**
 - (ii) **In all other situations, apply the law of the place of the accident presumptively and then just mention Neumeier Rules.**

E. Choice of Law in Ks

1. Express Choice of Law Clause Contained in K

- a. If exists, NY courts will apply the chosen law, especially if the law is chosen to govern **construction** of K
 - Parties can choose a particular state’s law, even if that state has no connection with the parties or contractual performance, to govern things such as the stand of performance or excuse for non-performance or the amount of damages
- b. But if the issue is one of **validity** of the K itself, the issue is harder – NY courts enforce the choice of law clause (even when dealing with validity) *unless*:
 - (i) Parties and transaction have no connection with place chosen, OR
 - (ii) NY or State X’s law would otherwise apply, AND
 - (iii) NY or State X have a materially greater interest than State Y, the state chosen in K

2. Special Rules

- a. **Ks governed by UCC** – UCC calls for recognition of the parties’ choice of law IF state chosen shows & bears a reasonable relationship to parties or the transaction and the parties actually agreed to the clause
- b. **NY General Obligations Law** – parties to a K involving \$250,000 or more (including those covered by the UCC) may choose NY law to govern their K even though the parties and the transaction have no connection with NY and NY courts will often enforce those clauses
 - NY also provides that if (1) K is *for \$1 mill or more*; & (2) *parties have chosen NY law*; & (3) parties have *submitted to NY jurisdiction* – then NY courts **must** hear the case (can’t dismiss on forum non conveniens grounds) and apply NY law even if there’s no other connection with the state (this trumps other rules concerning choice of law rules)

3. Choice of Law in Absence of Express Agreements

- a. **Vested Rights Theory** – traditional rule comprised of 2 parts:
 - (i) Issues of validity and effect of a K – governed by law of the place of execution of the K
 - (ii) Issues of performance – governed by law of the place of performance
- b. **Limited Government Interest Analysis** – plays only a limited role in Ks choice of law; for most Ks, simply no strong government policies at stake
 - (i) NOTE: there are strong policy issues at stake where issues such as capacity of parties (particularly whether 1 party old enough), adhesion issues
- c. **Modern K Choice of Law Approach** – “*most significant relationship test*” or “*grouping of Ks test*” or “*center of gravity test*” But it’s all same test.
 - (i) Determine *relevant contacts with each state* (include – domicile of the parties, place of negotiation of the K, place of execution of the K, place of performance of the K)
 - (ii) Consider *which state appears to have the most significant contacts* given the issue (E.g. if issue is one of performance, then place of performance gets more weight; if issue one of validity, then place of execution and domicile of parties seems important) – but no clear answers

4. Special Cases

- a. **Usurious Ks** (Ks that specify an interest rate that’s too high under NY law) – NY will sustain if valid under the law of any jurisdiction with reasonable relationship to the parties and the transaction.
- b. **Automobile Insurance Policies** – in actions between insured and insurer, *place where policy was issued* is the source of the governing law.

F. Choice of Law Rules in Property (no government interests; no Neumeier Rules)

1. Intervivos Transactions

- a. **Real Property (Situs rule)** – all aspects governing and arising out of the conveyance of real property are governed by the law of the situs (location) of the real property
- b. **Personal Property** – situs rule

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- c. *Ks to Convey Distinguished* –
 - (i) K to convey land is governed by Ks rules – grouping of contacts test
 - (ii) Conveyance is governed by situs law
 - d. *New UCC Rule* – law and filing system of the debtor’s location (residence or place of business) governs, rather than the situs of the secured chattel
2. *Inheritance Issues* – NY choice of law rules are largely statutory
- a. *Real Property* – all aspects of the testamentary and intestate devolution of real property are determined by the law of the **situs of the real property**
 - (i) **EXCEPTION** – if the real property is *located in NY*, NY law will provide that the will is formally valid; it has been properly executed if it would be valid under the law of:
 - (i) NY; (ii) place of execution at time of exec of the will; or (iii) domicile of decedent at time of execution or at time of death
 - (ii) This rule applies **ONLY IF** the land is located in NY – If the land is elsewhere, apply the law of place where land is located
 - b. *Personal Property*
 - (i) *Intestate Succession* – NY courts apply law of decedent’s domicile at death
 - (ii) *Testamentary Disposition*
 - (a) **General Rule** – all issues concerning validity of a will disposing of personal property are to be determined by law of decedent’s domicile at death
 - (b) **EXCEPTIONS**:
 - *Formal validity* – whether will was properly executed, witnessed, etc.
 - if valid under law of NY
 - place of exec at time of execution
 - domicile of decedent at execution or at death
 - *Revocation or alteration*: law of domicile at time of revocation/alteration, not at time of death
 - (c) *Electing Against the Will* – if a will of a non-domiciliary designates NY law, NY courts will apply NY law to all property located in the state; Testator can do this and defeat otherwise applicable rule that personal property is governed by law of decedent’s domicile at death

G. Choice of Law Issues Involving Matters of Family

- 1. *Marriage*
 - a. **General Rule** – if valid where celebrated, then valid everywhere including NY
 - b. **EXCEPTIONS** – if marriage violates a strong public policy of NY
 - (i) incest, (ii) under age of majority, (iii) polygamous
 - Even though NY does not recognize gay marriages, if valid in another state, NY will recognize at least in all property matters
- 2. *Divorce* – issue of full faith and credit, not choice of law
 - a. NY will recognize any divorce in which divorcing state had jurisdiction over the parties/marriage
 - b. Governed by the law of P’s domicile
- 3. *Alimony* – governed by law of state that directed payment
- 4. *Child Support/Custody* – entirely statutory

H. Exceptions Applicable to All Categories

- 1. **Procedural rules** – apply law of the forum (which is NY).
 - a. *Civil practice rules* – apply CPLR (e.g. if State X gives longer period of time for answers than NY, then NY applies CPLR)
 - b. **Statute of Limitations** – normally procedural so NY applies own statute *unless* NY’s borrowing statute applies, which applies when: P is
 - (i) Non-NY *resident*, & (ii) cause of action arose outside NY
 - NOTE: If **both** these requirements, Ps may choose **shorter** of NY statute and statute of state where cause of action arose (what matters is residence, not domicile)
 - c. Contrast **statute of repose** (which extinguishes a cause of action) – applies even though NY’s S/L, which ran from date of his injury would’ve allowed the claim to proceed
- 2. *Foreign Law is Completely Contrary to the Forum’s Public Policy* – NY is free to bypass that foreign law (applies only if it would be deeply offensive for NY to apply that law)
- 3. *Foreign Law is Penal or Tax* – either apply NY or extradite criminal to another jurisdiction (do NOT apply another state/country’s penal/tax law)

CONFLICT OF LAWS – ESSAY QUESTIONS

I. QUESTION – 84 (& COMMERCIAL PAPER)

- A. Which state's guest statute should apply – in loss distribution rules in a tort case
 - 1. Court of appeals has rejected the old vested rights approach – which would mandate the automatic application of the law of the situs of the tort
 - 2. Government Interest Analysis (ensure jurisdiction with greatest interest law apply) – (i) factual contacts of each jurisdiction, (ii) differing laws, (iii) underlying policies of each law, (iv) apply the facts
 - 3. Neumeir rules are a product of the government interest analysis
 - a. Here, *Neumeier Rule 3* – when a law of the situs does not benefit a citizen of the situs, the law of the situs will control unless that would frustrate or significantly undermine an important policy of the outside jurisdiction

II. QUESTION – 84 (& NY PRACTICE & FEDERAL JURISDICTION)

- A. Neumeir Rule 1 – if parties are from a particular jurisdiction, then the law of that jurisdiction will apply
- B. Neumeir Rule 2 – if parties have different domiciles, and the tort occurred in the state of the domicile of one of the parties, and that state favors its domiciliaries, then that state law will apply
- C. Neumeir Rule 3 – in all other situations, apply the law of the place of the accident UNLESS that would frustrate or significantly undermine an important policy of the outside jurisdiction

III. QUESTION – 40 (& FEDERAL JURISDICTION & NY PRACTICE)

- A. Which state's guest statute should apply – in loss distribution rules in a tort case
 - 1. Government Interest Analysis (ensure jurisdiction with greatest interest law apply) – (i) factual contacts of each jurisdiction, (ii) differing laws, (iii) underlying policies of each law, (iv) apply the facts
 - 2. Neumeir rules are a product of the government interest analysis
 - a. Here, *Neumeier Rule 3* – when a law of the situs does not benefit a citizen of the situs, the law of the situs will control unless that would frustrate or significantly undermine an important policy of the outside jurisdiction

IV. QUESTION – 72 (& FEDERAL JURISDICTION & NY PRACTICE)

- A. Which state's guest statute should apply – in loss distribution rules in a tort case
 - 1. Government Interest Analysis (ensure jurisdiction with greatest interest law apply) – (i) factual contacts of each jurisdiction, (ii) differing laws, (iii) underlying policies of each law, (iv) apply the facts
 - 2. Here, *Neumeier Rule 1* – if parties are from a particular jurisdiction, then the law of that jurisdiction will apply

V. QUESTION – 101 (& NY PRACTICE & TORTS)

- A. Whether the laws of NY should apply
 - 1. Government Interest Analysis (ensure jurisdiction with greatest interest law apply) – (i) factual contacts of each jurisdiction, (ii) differing laws, (iii) underlying policies of each law, (iv) apply the facts
 - 2. Here, *Neumeier Rule 3* – when a law of the situs does not benefit a citizen of the situs, the law of the situs will control unless that would frustrate or significantly undermine an important policy of the outside jurisdiction