

**CONFLICT OF LAWS:
A BRIEF OVERVIEW
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NOTES

What is Conflict of Laws?

CONFLICTS OVERVIEW

Conflicts Covers 3 Broad Areas

What state or countries' courts can hear a dispute (Personal Jurisdiction)?

Which state or countries' law should that court apply (Choice of Law)?

How do you go about enforcing a judgment in another state or country (Recognition of Judgments)

We also consider domicile a part of conflicts, although sometimes not as a separate subject.

DOMICILE

Domicile says that everybody has a home state or country which they intend to be their "home" forever or at least for the foreseeable future.

Everybody retains their present domicile until they abandon that domicile to establish a new domicile somewhere else

Until they do establish a new domicile somewhere else, they remain domiciled in their old domicile.

There is no such thing as someone being "between domiciles" so that they do not have a domicile anywhere.

"Everybody's got to be someplace."

Domicile requires physical presence in the new state or country with an intent to make that place her domicile for the foreseeable future.

Domicile is important for several reasons.

One can always be sued at their domicile, whether they are physically present there or not.

Domicile is important to choice of law.

Some questions of choice of law are required to be answered based on where the person has her domicile.

For example, issues of title to personal property (sometimes called “movables”) will often be determined by the law of the domicile of the owner.

Marital domicile becomes important in family law matters.

PERSONAL JURISDICTION

Where can you sue someone?

Where you can sue somebody is ultimately a function of fairness.

It would be fundamentally unfair to be able to sue somebody in a state or country where they had no connection.

For example:

- Worldwide Volkswagen v. Woodson

Car wreck just inside Creek County badly burns family moving from New York to Arizona

The lawyers for the badly injured family claimed the fire resulted from a defect in the Audi they were in, made by Volkswagen

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If they sued just Audi and Volkswagen, the defendants would remove the case to federal court, a lot more conservative venue than Creek County

Remember the injured plaintiffs were moving from New York to Arizona but had not yet gotten there.

Their domicile (and citizenship) remained in New York

Federal court jurisdiction required diversity. If there were New York citizens on each side, the case could not be removed to federal court in Tulsa

Plaintiffs' lawyers joined in the suit against VW and Audi the New York dealer and the New York importer to defeat diversity and keep the case in Creek County

The dealer and the importer had never had any connection with Oklahoma

They argued it would be fundamentally unfair to require them to come to Oklahoma (where they never chose to do business) to defend

The trial court (Judge Woodson, in Creek County) and the Oklahoma Supreme Court held there was personal jurisdiction

The United States Supreme Court reversed

It held putting the cars into "the stream of commerce" which ended up with the vehicle being driven in Oklahoma was not enough connection

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Because the New York defendants (whose presence destroyed diversity) were out of the suit, the case was removed to Federal Court in Tulsa, where the injured family lost the case

WWVW v. Woodson is now the most cited case dealing with personal jurisdiction

Curtis v. CIA Machinery, Inc., 1977 OK CIV APP 31 571 P.2d 862: Non-resident D. selling drilling rig to OK. P. through “intermediary” was subject to OK. Ct. jurisdiction. D. paid OK intermediary a commission and was authorized by D. to sell drilling rig.

Deerinwater v. Circus Circus Enterprises, 2001 OK CIV APP 37, 21 P.3d 646: Tunica casino advertising in Oklahoma was not amenable to personal jurisdiction in slip and fall case by Oklahoma resident who fell in casino. Fall did not arise out of advertising, even though advertising caused Plaintiff to take trip on which injury occurred.

Roberts v. Jack Richards Aircraft Co., 1975 OK 72, 536 P.2d 353: National TV advertising and ticket sales by travel agent not sufficient minimum contacts where C. of A. did not arise out of those activities. Yellow page advertising might but did not occur until after C. of A. arose.

Glidewell Motors, Inc. v. Pate, 1978 OK 46, 577 P.2d 1290: Arkansas D. advertising in Ft. Smith paper with some circulation in Okla. not enough where C. of A. arose other than from advertising.

Gregory v. Grove, 1976 OK 5, 547 P.2d 381: Yellow page advertising and writing letters to D. OK gave OK Ct. jurisdiction as to C. of A. arising out of ads and letters.

These cases give rise to a distinction between “General jurisdiction” and “specific jurisdiction”

General jurisdiction is where the claim or cause of action (the terms are interchangeable) does not arise from the contact with the state or country

General jurisdiction arises where the defendant does some business in the state, but the claim sued on does not arise from that business done in the state

Specific Jurisdiction is where the claim sued on arises out of the contact the defendant has in the state

Much less contact is required for specific jurisdiction than for general jurisdiction

CHOICE OF LAW

Now we’ve decided (we think) where we can pursue a claim

Now the trick becomes to figure out which state or country’s law the court in that state will apply

There are several different rules applying in different states and countries as to which state or country’s law will be applied

The most common rule around the country is the “Restatement 2nd Rule”

- Apply the law of the state or country having the most significant relationship with the transaction

This is the rule Oklahoma uses in tort cases

Oklahoma adopts that rule in Brickner v. Gooden, 1974 OK 91, 525 P.2d 632

Brickner v. Gooden

Guys charter an airplane in Oklahoma for a hunting trip to Mexico

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Airplane crashes in Mexico and kills them

If you apply Mexican law to the wrongful death cases, the potential recovery is very low

If you apply Oklahoma law, there can be a large recovery

Prior law was that the court had to apply the law of the place of the wrong (Mexico)

The Oklahoma Supreme Court adopted the then “new” rule of applying the law of the State or Country having the most significant relationship to the transaction

This rule gives a lot more sensible result
But it is often a much less predictable result
For this reason, 11 states around the country still use the old “lex locus delicti” or “law of the place of the wrong” rule

These states prefer predictability to flexibility

Three states (including the District of Columbia) use “interest analysis”

These states analyze what “interest” each of the conflicting states have in having that state’s law applied

They then apply the law of the state whose interests would be more impaired by not having its law applied

Interest analysis also creeps into the states which use the Restatement 2nd Analysis but are not as blatant about it

Two states (Kentucky and Michigan) apply a rule that applies that state’s law unless some other state had a much stronger interest in having its law applied

These are called “forum favoring” rules

What can we do with all this?

Actually, it is a pretty powerful tool for “forum shopping”

By deciding where to file the suit, you have some control over what law will be applied to decide questions which may end up controlling the outcome of your case

For example: Hatchett v. K&B Transportation Company (See handout)

Hatchett v. K&B Transportation Company

Oklahoma two-year statute of limitation ran on an Oklahoma truck wreck

The defendant trucking company was incorporated in Nebraska

Nebraska had a 4 year statute of limitation and a statute which provided the statute would not be held to have run until it had run in Nebraska

We filed the suit in federal court in Nebraska, then moved for an “inter-district transfer” to federal court in Oklahoma

Then we used a rule established in a U.S. Supreme Court case that the transferee court had to apply the statute of limitations law of the transferor court Ferens v. John Deere Co. 494 U.S. 516 (1990)

Under that rule, the Oklahoma federal court had to apply the Nebraska four-year statute of limitation and not the Oklahoma two-year statute

This enabled us to turn a probable legal malpractice case into a good recovery

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The analysis you go through to determine where the suit should be filed requires you to research thoroughly the issues which will be crucial to your case

You then must research the jurisdiction rules to determine where you can sue the defendant

Then you determine the substantive law rule in those states where the defendant can be sued

Finally, you research the choice of law rules to determine which states will apply a rule which reaches a result favorable to your client

It is a complicated process but one which gets really good results

For example, 12 Oklahoma Statutes Sec. 105 provides if a suit which arises elsewhere is filed in Oklahoma, the Oklahoma court will apply the law of the state which last bars the claim

You may have a claim which arises in Louisiana (which has a one-year statute of limitation on negligence cases)

If you can get jurisdiction of the defendant in Oklahoma, 12 O.S. Sec. 105 will cause Oklahoma to apply its two-year statute of limitation and the lawsuit can proceed

This becomes particularly helpful because Oklahoma treats uninsured motorist claims as suits on contract, which carry a 5 year statute of limitation

Most insurance companies do business nationwide and so can be sued in Oklahoma where they are licensed to write insurance

So by applying these laws together, you can take a UM case barred by the statute of limitation in Tennessee and make a recovery in Oklahoma

Or, by applying the rule we used in *Hatchett*, if you can get federal court jurisdiction, you can file it in Oklahoma and transfer it to federal court in California

RECOGNITION OF JUDGMENT

It doesn't do you much good to get judgments if you can't collect them

Sometimes it becomes important to be able to collect on a judgment in another state where the defendant may have assets

Two different sets of rules may apply, depending on whether the judgment you are trying to enforce is in another state or another country

If the judgment you are trying to enforce is in another state, the "full faith and credit" clause of the U.S. Constitution requires every state to enforce the judgment

If the judgment you are trying to enforce is in another country, the "full faith and credit" clause does not apply so enforcement is not automatic

However, usually American courts will enforce judgments of foreign countries as a matter of "comity"

Let's talk about an example of how we can use the choice of law rules together with the enforcement of judgment rules to get a really good result

I recently had a case in which a family from New York City had a wreck in Oklahoma

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They incurred about \$70,000 in medical bills which were paid by their NY PIP coverage

There was only \$150,000 in liability coverage.

Under New York law, they had to pay back the PIP carrier even if they were not “made whole” or fully compensated

By the time they paid attorney fees and costs, and paid back the New York PIP, there would be little left for them

Their New York lawyer referred them to me

I soon realized that, if we applied NY law, the clients got almost nothing

However, if we could apply Oklahoma law, the clients would not have to pay back the PIP and would get some recovery.

Oklahoma has a statute, 36 O.S. § 6092 which says the insurance company which pays medical bills under a car policy can't subrogate if payment is to the named insured or household member

Pate v. MFA, 1982 OK CIV APP 36, 649 P.2d 809 holds, due to overriding OK public policy, OK law applied where Arkansas residents on vacation in OK had med-pay claim barred under Arkansas, but not OK law.

A later Oklahoma Supreme Court case, *Bohannon v. Allstate Ins. Co.*, 1991 OK 64, 820 P.2d 787 approved *Pate v. MFA* and noted it applied to a policy written in another state because it applies to coverage existing within the state

The problem was the insurance company doesn't do business in Oklahoma

Under World-Wide Volkswagen v. Woodson, it appeared we could not get jurisdiction in Oklahoma

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However, the New York car policy provided that it covered claims arising anywhere in the US or Canada

We filed in Oklahoma, prepared to argue that. since the insurance company agreed to cover claims in Oklahoma (among other states) it could reasonably expect to be sued here

The NY insurance company didn't hire Oklahoma counsel and answer.

We wrote and reminded them they were in default

Still they did not answer

We moved for a default judgment and sent the NY insurance company a copy by certified mail

They had their NY counsel write me a letter saying they wouldn't be entering an appearance in the Oklahoma case because (1) we served them by certified mail and (2) they didn't do business in Oklahoma

And, they carbon copied the court with their letter to the court

I filed "Plaintiff's Response to Defendant's Special Appearance, Motion to Quash and Plea to Jurisdiction"

I argued the court should treat a pleading as what its content says it is, rather than its title

And I argued the propriety of jurisdiction based on the policy provision about covering claims in all states

I then presented the court a journal entry overruling the defendant's "Motion" and finding in our favor on the jurisdictional issues

Once that ruling became final (after no appeal was filed) the NY insurance company can no longer contest whether the Oklahoma court had jurisdiction

The liability carrier paid the \$150,000 limit

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When the New York insurance company sues the insureds in New York, the full faith and credit clause of the US Constitution will require the New York court to honor the Oklahoma judgment

THIS STUFF IS FUN!