

Conflict of Laws

Professor Michael Solimine

First Assignment: Questions and Comments on the Traditional Approach

pp. xxvii-xxix, 1-15: Introduction; Torts in General

1. Read pp. xxvii-xxix for a brief but helpful history of conflict of laws.
2. Note how Carroll illustrates not only the traditional, territorial rule for torts (i.e., lex loci delicti), but also attempted exceptions to the rule (i.e., escape devices).
3. p.8 note(2): Uniformity, predictability, and avoidance of forum-shopping are often said to be the goals of a rational body of conflict of laws rules. We will talk more about whether these are goals worth following; assuming they are for the moment--
 - (a) Are they advanced by the place of injury rule as illustrated in Carroll?
 - (b) Are they advanced by Prof. Currie's alphabet rule, i.e., that any conflicts of law problem could be resolved by picking the law of the state that comes first in the alphabet? (As we shall see, he advanced this seemingly absurd idea, only half-jokingly, to resolve (in his terminology) a "true conflict" under his theory of "interest analysis," one of the modern approaches to conflict of laws we will discuss later in the semester.)
 - (c) Would automatically applying the forum's law, as hypothesized at p.7 note(1), serve these goals?
 - (d) Consider in future readings to what extent the traditional approach, or any of the modern approaches, fulfills these goals.
4. p.9 note(4): Does the plaintiff or the court present the most plausible reading of the statute? What's the likely intent of the drafters of the statute? Did the legislature want to protect people or did it want to protect locations?
5. p.10 note(5): Why should the "last act" supply the place of injury? What is the "last act" in torts and other cases? Consider how the First Restatement of Conflict of Laws codified these rules in 1934 (pp. 12-13); why is there an exception for poisoning cases?
6. p.10 note (6): Why didn't the employment contract incorporate the statute?
7. Alabama still follows the traditional approach in tort cases, e.g., *Fitts v. Minnesota Mining & Mfg. Co.*, 581 So.2d 819 (Ala. 1991), cited at p. 21 note (4).