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Choice of Law in Air Disaster Cases: Complex Litigation Rules and the Common Law

James A. R. Nafziger*

The Complex Litigation Project of the American Law Institute includes a significant scheme of choice-of-law rules in state created actions.¹ The core provision, Section 6.01 ("Mass Torts"), adopts a "single state" approach to govern consolidated claims, by which one state's tort law is to be applied to all similar claims against each defendant.²

Three sets of significant contacts³ enable courts to identify states⁴ whose policies would be furthered by application of their laws. In selecting among the laws of two or more interested states, the court is to be guided by a prioritized list of preference rules.⁵ Two concluding subsections⁶ provide safety valves. The first safety valve permits a court to avoid an unfair surprise or arbitrary result by selecting a more appropriate law than the prescribed analysis would indicate. The second permits a court to subdivide cases by claims, issues, or parties when it would be inappropriate to lump them together for choice-of-law purposes. The result may be to sever, transfer, or remand issues as appropriate.

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1. The American Law Institute, Complex Litigation Project, Proposed Final Draft §§ 6.01-.07 (May 13, 1993) [hereinafter Proposed Final Draft]. The author was a member of the Project's Consultative Group.

2. Section 6.01 is to govern consolidated mass tort actions in a disinterested or neutral federal court. Its central purpose is to avoid forum-shopping and to simplify the choice-of-law process in complex litigation. *Id.* Ch. 6, Intro. Note, at 376. Ideally, the rules would become federal law.

3. *Id.* § 6.01(b) (place(s) of: injury, conduct causing the injury, and business or habitual residences of the plaintiffs and defendants).

4. *Id.* § 6.01(c). The rules speak in terms of "states" in the domestic sense but are of course applicable in cases with international contacts unless international law is dispositive.

5. First, if the place of both the injury and the conduct causing the injury are the same, that state's law governs. *Id.* § 6.01(c)(1). Second, if the first preference does not apply, but *all* of the plaintiffs habitually reside or have their principal places of business in the same state, and a defendant has its principal place of business there, that state's law governs with respect to that particular defendant. Plaintiffs are treated as sharing a common habitual residence or principal place of business if they are located in states whose laws do not conflict materially. *Id.* § 6.01(c)(2). Third, if the second preference does not apply, but *all* of the plaintiffs habitually reside or have their principal places of business in the same state, and that state is also the place of the injury, its law governs. *Id.* § 6.01(c)(3). Fourth, in all other cases, the governing law is of the state where the conduct causing the injury occurred. When conduct has occurred in more than one state, the law of the state with the most significant relationship to the occurrence applies. *Id.* § 6.01(c)(4).

6. *Id.* § 6.01(d), (e). Under § 6.01(d), a court, "when appropriate," may depart from the order of preference or apply "additional factors that reflect the regulatory policies and legitimate interests of a particular state not otherwise identified" by preliminary analysis. The single amendment to § 6.01 that emerged at the ALI's concluding deliberations on the text was to change the prefatory wording from "when necessary" to "when appropriate." 15 ALI Reporter, Summer 1993, at 9.

Sections 6.04 and 6.05 provide that the law selected under Section 6.01 governs issues involving, respectively, statutes of limitations and monetary relief generally.⁷ Section 6.06 provides special rules to govern the award of punitive damages.⁸

Although these rules are complicated, they provide for clear choices among connecting factors, in order of preference by a court. This prioritization of connecting factors is a welcome departure from the customary (and often inept) juggling of competing interests. The troublesome Hydra of "pure" government interest analysis⁹ continues to menace mass tort cases. One explanation of the durability of interest analysis is its notoriously tempting ambiguity and manipulability. Courts can use it to justify almost any result they want;¹⁰

7. There are two exceptions to this rule. Under § 6.04 (Statutes of Limitations), "any claim that was timely where filed but is not under the law chosen pursuant to this section will be deemed timely by the transferee court and remanded to the transferor court." *Id.* § 6.04. Under § 6.05 (Monetary Relief Generally):

(b) If the court determines that the monetary relief issues involve policies different from those underlying the liability issues and that the application of the law or laws [under § 6.01] to those issues would ignore the interests of states whose policies regarding the measure of relief would be furthered by the application of their laws, it may sever the relief issues for treatment under the laws of the states whose regulatory policies would be furthered thereby.

Id. § 6.05.

8. The relevant contacts are the same as under § 6.01 except that the place of business or habitual residence of a plaintiff or plaintiffs is not relevant. *Id.* § 6.06(b). Whenever the imposition of punitive damages would further more than one state's policy, the court may award them

if the laws of the states where any two of the factors listed in subsection (b) are located authorize their recovery and the court finds that the possible imposition of punitive damages reasonably was foreseeable to the defendants. If multiple places of injury are involved and they differ as to the availability of punitive damages, the law of the state where the conduct causing the injury occurred governs. When conduct occurred in more than one state, the court will choose the law of the conduct state that has the most significant relationship to the occurrence.

Id. § 6.06(c).

If the court determines that punitive damages are authorized under subsection (c), but the state laws identified in subsection (b) differ with respect to the standard of conduct giving rise to the availability of punitive damages, the standard of proof required, the method of calculation, limitations on the amount of punitive damages, or other matters, the order of preference for the governing law on those issues, among the states authorizing punitive damages, is the place of conduct, the primary place of business or habitual residence of the defendant, and the place of injury.

Id. § 6.06(d).

9. The prototype of "pure" interest analysis was set forth by Brainerd Currie, *Comments on Babcock v. Jackson*, 63 Colum. L. Rev. 1233, 1242-1243 (1963); see also Brainerd Currie, *Selected Essays on the Conflict of Laws* 183 (1963). Another, more complicated version of interest analysis is enshrined within the matrix of considerations in the Restatement (Second) of the Conflict of Laws § 6 (1971). The "better rule" approach also incorporates interest analysis. See Robert A. Leflar, *Conflicts of Law: More On Choice-Influencing Considerations*, 54 Cal. L. Rev. 1584, 1586-87 (1966).

10. A vast amount of literature illuminates this problem. For a close look at the problem in

objective analysis, like the three-headed Hydra, thus becomes the stuff of mythology. Although Section 6.01 may not be the Hercules to slay this Hydra, it can help tame the beast in consolidated litigation and perhaps temper the confusion in other fields of mass tort litigation as well. Section 6.01 is likely to promote somewhat greater predictability, uniformity, and ease of judicial administration, and to deter forum-shopping. These attributes ought to impress Congress in its consideration of the ALI Project. Even if Congress fails to adopt Section 6.01 or a similar federal choice-of-law scheme, however, the courts may at least want to adopt or adapt its prioritization of connecting factors.

The attractiveness of Section 6.01 to Congress or the courts may depend in part on its general conformity with common-law precedent. Of course, a *close* conformity would be surprising. After all, the ALI Project responds to dissatisfaction about the perceived chaos of the common law in consolidated mass tort cases. Nevertheless, a *general* conformity between the ALI rules and the common law is essential. Although the ALI sought to break new ground, it did not intend to displace the common law entirely. The ALI Project's Reporters evidently understood that modern choice-of-law thinking rests on the hope, if not the promise, of development on the palimpsest of judicial analysis.¹¹ Reformulation of new rules is to be based on observations of the way courts actually decide cases. Although this expectation has not materialized after forty years of judicial decisions inscribed on an invitingly clean slate—unless a *lex fori* presumption is the new “rule”—the common law nevertheless remains a foundation for any responsible regime of choice-of-law rules.

The ALI Project deserves great credit for citing and clearly summarizing leading scholarship about choice of law in mass tort cases. It is striking, however, that the cited literature and the Project itself seldom stray beyond a select few cases.¹² There are apparently no comprehensive digests of the case law with which Sections 6.01-.07 can be reliably compared, analyzed, and tested against in the courts.¹³

To help fill this gap, the Appendix to this study provides outlines of 62 judicial decisions in air-disaster cases. These include not only consolidated cases

two jurisdictions, see James A. R. Nafziger, *Conflict of Laws: A Northwest Perspective* 136, 144-48, 184-87 (1985) (2d ed. forthcoming).

11. See, e.g., Walter W. Cook, *The Logical and Legal Bases of the Conflict of Laws* (1942).

12. A particularly useful summary of three of these cases, however, may be found in Andreas Lowenfeld, *Conflict of Laws: Federal, State, and International Perspectives* 456 (1986).

13. Recently, however, the *American Journal of Comparative Law* has published excellent annual summaries of conflict-of-laws jurisprudence. These *do* highlight salient mass tort cases. The summaries include Michael E. Solimine, *Choice of Law in the American Courts in 1991*, 40 *Am. J. Comp. L.* 951 (1992); Larry Kramer, *Choice of Law in the American Courts in 1990: Trends and Developments*, 39 *Am. J. Comp. L.* 465 (1991); P. John Kozyris & Symeon C. Symeonides, *Choice of Law in the American Courts in 1989: An Overview*, 38 *Am. J. Comp. L.* 601 (1990); Symeon C. Symeonides, *Choice of Law in the American Courts in 1988*, 37 *Am. J. Comp. L.* 457 (1989); P. John Kozyris, *Choice of Law in the American Courts in 1987: An Overview*, 36 *Am. J. Comp. L.* 547 (1988).

in federal courts, but federal diversity cases, federal statutory and Warsaw Convention¹⁴ cases, and state court cases. Although federal consolidated cases are clearly the most relevant, decisions in other types of cases are instructive. They help clarify the common law in air-disaster cases, add perspective to the rate of conformity between the common law and probable results in consolidated cases under the ALI Project rules, and indicate the feasibility of adopting the rules for application in non-consolidated cases.

The judicial decisions also constitute a data base for further analysis of mass tort litigation and reformulation of rules. More stable rules need to be devised for both interested and disinterested fora without regard to the procedural posture of particular cases.

This article will now turn to the characteristic choice-of-law issues and problems in air disaster litigation, particularly in consolidated cases.¹⁵ A summary of proposals for reform, including the new ALI rules, follows. The article concludes with a comparison between the decisions in the 62 cases outlined in the Appendix and the probable decisions under Sections 6.01-6.07 of the ALI Project.

I. INTRODUCTION TO THE CONFLICTS PROBLEMS

A. Choice-of-Law Complexity

Claims arising out of air disasters involve a variety of issues that may require adjudication. The most common issues are liability, survivability of actions after the death of a tortfeasor or victim, compensatory damages for injury, loss of life or loss of property, damages for pain and suffering, and punitive damages.

In *simple litigation*, choice-of-law issues are routinely resolved according to a single approach or set of rules. For example, in a personal injury or wrongful death claim arising out of an automobile accident in one state brought by a citizen of another state, a single, applicable methodology is usually clear

14. Convention for the Unification of Certain Rules Relating to International Transportation by Air, concluded October 12, 1929, 49 Stat. 3000, 137 L.N.T.S. 11 [hereinafter the Warsaw Convention]. Significant litigation resulted from the Korean air disaster of 1983. All passengers and crew of a jumbo jet perished when Soviet missiles shot down Korean Air Lines Flight 007, which had apparently strayed into Soviet airspace. As is now clear, the tragedy represented a nadir in Cold War relationships. The Korean Air Lines tragedy also stimulated efforts to reform methods for adjudicating mass disaster claims when it became apparent that like many other air disasters, most of them accidental, the incident would generate a wave of complicated litigation. On the public international law issues, see *Legitimate Responses to Aerial Intrusion in Time of Peace*, 1984 Proc. Am. Soc. Int'l L. 15 (1986). For a summary of the United States' response, see, e.g., Marian N. Leich, *Destruction of Korean Airliner: Action by International Organizations*, 78 Am. J. Int'l L. 244 (1984); *International Claims: Destruction of Strayed Civilian Airliner*, 78 Am. J. Int'l L. 213 (1984) (official United States action in the matter).

15. See also *Essays in Honor of Doo Hwan Kim* 52 (1993).

although its application may not be so clear. On the other hand, air disaster or other mass accident or mass tort cases¹⁶ often involve a confusing myriad of methodologies because of consolidated claims initially filed in multiple courts by multiple plaintiffs and multiple defendants from multiple jurisdictions. This is the essence of *complex litigation*. For example, in one federal action arising out of a Michigan crash of a commercial airliner that had been designed and manufactured in California,¹⁷ the court consolidated 157 different cases on behalf of passengers, flight attendants, and innocent bystanders who died or were injured. The consolidation merged cases from many different federal jurisdictions, thereby raising the additional issue of whether the appropriate law was to be chosen according to the rules of the transferor courts or of the transferee courts. Because the stakes of litigation are usually high in mass tort litigation, the expenditure of party and judicial resources is apt to be astronomical, the litigation as prolific as it is complex, and the judicial analysis highly complicated. All of these characteristics inhere in major air disaster claims.¹⁸

Complex cases thus raise difficult choice-of-law issues.¹⁹ These issues may be even more complicated in air disaster cases than in products liability,

16. As used in this study, the term "mass tort" is one in which "many victims . . . are injured by the same wrongful conduct." Russell J. Weintraub, *Methods for Resolving Conflict-of-Laws Problems in Mass Tort Litigation*, 1989 U. Ill. L. Rev. 129. Sometimes, however, the term "mass tort" is defined by reference to "multiple occurrences of various related harms over time," whereas a "mass accident" refers to "situations in which a number of persons are simultaneously harmed by a single act of the defendant." Linda S. Mullenix, *Class Resolution of the Mass-Tort Case: A Proposed Federal Procedure Act*, 64 Tex. L. Rev. 1039, 1044 n.19 (1986); Briggs L. Tobin, Comment, *The "Limited Generosity" Class Action and A Uniform Choice of Law Rule: An Approach to Fair and Effective Mass-Tort Punitive Damage Adjudication in the Federal Courts*, 38 Emory L.J. 457 n.1 (1989).

17. *In re Disaster at Detroit Metropolitan Airport on August 16, 1987*, 750 F. Supp. 793 (E.D. Mich., S.D. 1989).

18. Large-scale, complex litigation invariably results from a commercial air crash. Modern commercial aircraft carry hundreds of individuals, and each person on board represents a potential plaintiff if an accident occurs. Moreover, an aviation disaster commonly involves numerous defendants. Plaintiffs almost always name the airline as a defendant, citing pilot error or faulty maintenance, and plaintiffs typically sue the plane's manufacturer regarding the aircraft's design. These two defendants, in turn, frequently join the manufacturers of myriad component parts, such as altimeters, warning devices, landing gear, or engine bolts, any of which might contribute to a particular crash. Other potential defendants include airports and the United States government.

The multiple parties and multiple actions which usually accompany air disasters produce massive litigation efforts in numerous federal and state courts. Individual plaintiffs, for example, may file separate actions arising from the same crash in several federal districts simply to obtain personal jurisdiction over each defendant. Defendants complicate the process by cross-claiming among each other. This multiple district litigation often results in uncoordinated pretrial and trial proceedings concerning a single air crash.

John H. Cowrie, Note, *Air Crash Litigation and 28 U.S.C. Section 1407: Experience Suggests a Solution*, 1981 U. Ill. L. Rev. 927, 927-28 (footnotes omitted).

19. Larry Kramer, *Choice of Law in the American Courts in 1990: Trends and Developments*, 39 Am. J. Comp. L. 465, 472 (1991).

employer liability, and other mass tort cases. This complexity is a result of the mobility of aircraft and the relatively large number of prospective defendants in multiple jurisdictions who are directly associated with the design, construction, operation and maintenance of aircraft, aircraft engines, and component parts.

Unfortunately, the rules for resolving such issues are inadequate, often because they were designed for simple, two-party litigation.²⁰ It is small wonder that the choice-of-law process in air disaster cases "is a veritable jungle, which, if the law can be found out, leads not to a 'rule of action' but a reign of chaos dominated in each case by the judge's 'informed guess' as to what some *other* state than the one in which he sits *would* hold *its* law to be."²¹

To be sure, the menu of choice-of-law techniques is generally quite precise. For example, a court may apply the laws of different jurisdictions to different plaintiffs and defendants, respectively, or to different issues in a single case (*dépeçage*). Alternatively, a court may fashion its own multi-jurisdictional rules. In international cases, a court may variously apply the Warsaw Convention and other treaty law, international law principles and custom, and preemptive federal law.

Although the menu of techniques may be clear, the methods for selecting among them and applying them consistently in complex litigation are anything but clear. One United States district judge recently complained that "[t]he choice of law problems inherent in air crash and mass disaster litigation cry out for resolution."²²

B. Multi-Jurisdictional Complexity

Another problem is multi-jurisdictional complexity. Choice-of-law issues are complicated enough in a single jurisdiction, but the multiplicity of jurisdictions nation-wide generates an extraordinarily complicated pattern of decisions. Within the federal system, any of the more than 50 bodies of choice-of-law rules and procedures may apply. The jurisdictional differentiation and the sheer volume of cases ensure an ever-changing kaleidoscope of case law.²³ Of the more than

20. "Choice of law rules have been designed and developed with the two-party case in mind, where the relevant contacts or interests at stake between the parties and the statutes in conflict are more easily ascertainable and not so difficult in application." *In re San Juan Dupont Plaza Hotel Fire Litig.*, 745 F. Supp. 79, 81 (D.P.R. 1990).

21. *In re Paris Air Crash of March 3, 1974*, 399 F. Supp. 732, 739 (C.D. Cal. 1975).

22. *In re Air Crash Disaster at Stapleton Int'l Airport*, 720 F. Supp. 1445, 1454 (D. Colo. 1988) (Finesilver, J.).

23. For example,

[t]he kinds of choices that now exist (and the problem presented) can be understood best by an example, which illustrates the lack of predictability under the current regime. After an air crash at Chicago's O'Hare Airport in the late 1970s, one hundred eighteen wrongful death actions were filed in Illinois, California, New York, Michigan, Hawaii, and Puerto Rico. The decedents and plaintiffs in those cases hailed from California, Connecticut, Hawaii, Illinois, Indiana, Massachusetts, Michigan, New Jersey, New York, Vermont,

1,200 conflict-of-laws cases decided in just one year,²⁴ federal courts alone must handle several hundred air disaster cases.²⁵ Fortunately, the majority of these cases involve relatively simple claims although they may arise out of multiparty disasters, just as state cases typically involve simple claims arising out of crashes of small airplanes.²⁶ A minority of cases, however, involve very complex sets of claims.

C. *General Rules of Common Law*

This article will focus primarily on federal jurisprudence because its characteristic complexity raises the most serious choice-of-law issues. Federal cases have prompted the proposed reforms discussed in Part II and are most relevant to the ALI Project in particular.

1. *Diversity Jurisdiction and Consolidation of Cases*

Federal court jurisdiction over air disaster cases is sometimes based on federal statutory law such as the Foreign Sovereign Immunities Act of 1976.²⁷ Usually, however, jurisdiction is based on a diversity of domicile or residence as between or among the parties to an action.

To avoid a proliferation of cases in different courts arising out of the same incidents and raising the same issues, the Multidistrict Consolidation Statute²⁸ provides rules and procedures, relying on a Judicial Panel on Multidistrict Litigation, for transferring such cases into a single federal court. Judicial decisions have helped define the standards for transferring cases.²⁹ The federal

Puerto Rico, Japan, The Netherlands, and Saudi Arabia. Although several choice of law issues surfaced, those surrounding the availability of punitive damages were most striking. The district court analyzed the varying choice of law rules of California, New York, Michigan, Missouri, Puerto Rico, Hawaii, and Illinois and determined that all of the states, for one reason or another, would allow punitive damages to be sought against the aircraft manufacturer, which was a domiciliary of Missouri. The Court of Appeals for the Seventh Circuit reanalyzed the same issue and reversed the lower court's conclusion in every single instance. See *In re Air Crash Disaster Near Chicago*, 644 F.2d 594 (7th Cir.), *cert. denied*, 454 U.S. 878, 102 S. Ct. 358 (1981).

Proposed Final Draft, *supra* note 1, Ch. 6, Intro. Note, cmt. a, at 377.

24. Symeonides, *supra* note 13, at 457.

25. Kozyris & Symeonides, *supra* note 13, at 609.

26. *Id.* at 612.

27. 28 U.S.C. §§ 1330, 1602-11 (1988).

28. 28 U.S.C. § 1407 (1988).

29. Convenience plays a dominant role in a transfer decision. More broadly:

The trial court has broad discretion in determining whether to consolidate actions. . . . As federal court dockets burgeon, interests of judicial economy and efficiency gain importance. Nevertheless, considerations of convenience must yield when consolidation threatens to deny litigants a fair trial. . . .

consolidation statute lacks a choice-of-law provision, however. Instead, two rules fashioned by the United States Supreme Court govern the choice of law.

The *Klaxon* rule establishes that a federal court hearing a case based on diversity jurisdiction will apply the choice-of-law rules of the state in which the federal court is sitting.³⁰ Thus, a federal court in Los Angeles would apply California's choice-of-law rules, which, of course, may differ from those of other states. Often, however, it is difficult for a federal court to identify the relevant state rules because they are largely uncodified, they are still evolving in some states, and state courts or legislatures may have been silent, ambiguous or even contradictory in addressing choice-of-law issues. When the courts have spoken, they have often articulated rather elaborate analytic schemes or approaches such as that of the Restatement (Second).³¹ Such approaches often burden federal courts in their valiant efforts to identify and apply state rules with integrity and clarity. Federal courts may certify questions to state courts about their rules, but the certification procedure is cumbersome and has been underutilized.³² Mistakes, inconsistencies and confusion therefore abound.

The *Van Dusen* rule provides that when a case is transferred from one federal court to another, as will occur when a complex case is consolidated in a single court, choice-of-law rules of the transferor (original) court continue to apply after the transfer.³³ Coupled with the principle of *dépeçage*, by which laws of different jurisdictions may be applied to different issues and parties in a single case, the *Van Dusen* rule can perplex courts³⁴ and produce odd or discriminatory results. For example, when several similar actions are consolidat-

[C]riteria that the [trial] court must consider in making determinations concerning consolidation [include]:

[W]hether the specific risks of prejudice and possible confusion [are] overcome by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses, and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

In re E. & S. Dist. Asbestos Litig., 772 F. Supp. 1380, 1387 (E.&S.D.N.Y. 1991) (citations omitted) (quoting *Johnson v. Seletex Corp.*, 899 F.2d 1281, 1285 (2d Cir. 1990)).

30. *Klaxon v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 61 S. Ct. 1020 (1941).

31. Restatement (Second) of Conflicts of Laws (1988).

32. John B. Corr & Ira P. Robbins, *Interjurisdictional Certification and Choice of Law*, 41 Vand. L. Rev. 411, 458 (1988).

33. *Van Dusen v. Barrack*, 376 U.S. 612, 84 S. Ct. 805 (1964). The rule applies whether the moving party for transfer is the plaintiff or defendant. *Ferens v. John Deere Co.*, 494 U.S. 516, 110 S. Ct. 1274 (1990).

34. In this type of litigation, the application of choice of law standards turns into a colossal struggle for the transferee court in attempting to ascertain relevant contacts between the parties and the multiple states and in struggling to understand, evaluate and weigh the particular policies behind the different statutes allowing or disallowing claims and/or remedies.

In re San Juan Du Pont Plaza Hotel Fire Litig., 745 F. Supp. 79, 81 (D.P.R. 1990).

ed in the same court, different laws may apply to plaintiffs who are domiciled in the same state but have filed claims in different states.

2. Doctrinal Uncertainty

The variety, ambiguity, and instability of the rules and principles that underlie modern choice-of-law processes in the United States pose particular problems in air disaster cases. When a consolidation court is called upon to apply the choice-of-law rules or approaches of several different jurisdictions, the task is daunting. For example, in the Boston air disaster case,³⁵ the court applied five choice-of-law theories—*lex loci delicti*, *lex domicilii*, a public policy exception to normal rules for recognizing foreign law, the Restatement (Second), and choice-influencing considerations (the “better rule” approach).³⁶ It is small wonder that one federal court, for example, simply collapsed one theory into another, claiming that one was “a more formalized version”³⁷ of the other.

Even when only one choice-of-law approach applies in a case, it may not provide the necessary measure of predictability, uniformity, and ease of administration in a complicated, high-stake aviation case.³⁸ Consequently, the principal Reporter for the Restatement (Second) himself noted the undesirability of trying to apply the law of the state with the most significant relationship, which is the core concept in the Restatement (Second).³⁹ Another scholar has highlighted the uncertain scope of the “unless clause” in the rule that the *lex loci delicti* applies unless another state has a more significant relationship to the occurrence or the parties.⁴⁰

Policy analysis of even simple rules may be questionable. For example, the rule or presumption of *lex loci delicti* is routinely discredited in air disaster cases because of the “fortuity” of accidents. In reality, the place of an air accident is usually *not* fortuitous: most accidents occur as a plane is either taking off or

35. *In re Air Crash Disaster at Boston, Massachusetts on July 31, 1973*, 399 F. Supp. 1106 (D. Mass. 1975).

36. Lowenfeld, *supra* note 12, at 457. Professor Lowenfeld's summary and brief analysis of three air disaster cases highlights the complexity and uncertainty that beset choice-of-law analysis in these cases. *Id.* at 456.

37. *In re Air Crash Disaster at Stapleton Int'l Airport*, 720 F. Supp. 1445, 1448 (D. Colo. 1988) (equation of the Restatement (Second) of Conflict of Laws approach with government interest analysis).

38. For an excellent exposition of this problem, see Friedrich K. Juenger, *Mass Disasters and the Conflict of Laws*, 1989 U. Ill. L. Rev. 105, 112 (1989).

39. If possible, it would be desirable to avoid such vague criteria as application of the law of the state with the most significant relationship or of the state which has the greatest interest in the decision of the issue at hand or of the state whose interests would be most impaired if its law were not applied. Formulations of this sort are hard for the courts to apply and afford little predictability of result except in the clearest of cases. Willis Reese, *The Law Governing Airplane Accidents*, 39 Wash. & Lee L. Rev. 1303, 1304 (1982).

40. See Andreas F. Lowenfeld, *Mass Torts and the Conflict of Laws: The Airline Disaster*, 1989 U. Ill. L. Rev. 157, 161 (1989).

landing at an established place. Even mid-air disasters cause major impacts on the financial resources and community of the jurisdiction directly below the airspace of the disaster.⁴¹

In overcoming these deficiencies, fundamental policies of tort law, such as deterrence, compensation and risk-spreading, are helpful, even necessary.⁴² But reliance on such policies does not resolve specific issues of *how much* deterrence, compensation or risk-spreading, when fundamental policies conflict. For example, it would seem that the choice-of-law issues related to *punitive* damages should be resolved by emphasizing the policy of deterrence and hence applying the law of a defendant's allegedly outrageous conduct, as is emphasized in the ALI Project. But alternative policies have been seductive. They have teased out alternative rules such as the *lex fori* and the *lex domicilii*. A policy underlying the choice of the *lex fori* has been the forum's interest in protecting its integrity against inherently speculative awards, whereas a policy for tipping the balance in favor of the plaintiff has been to give further effect to the fundamental tort principle of compensation.⁴³ Amidst such confusion about the applicability of particular rules, a court can simply rule-shop for a suitable rationale, choosing from among the many alternatives so as to "produce" a predetermined result.

Ironically, modern approaches to choice of law are partly derived from judicial opinions in several important air disaster cases of the 1960's, including *Van Dusen* itself.⁴⁴ Today, however, the case law is itself a disaster. Applications of these approaches in recent air disaster cases "seem to have made a parody not only of the conflict of laws but of the law of torts in general."⁴⁵

II. PROPOSALS FOR REFORM

Proposals for improving the legal regime in air disaster cases have followed several tracks.

A. Federal Substantive Rules

The most ambitious proposals for reform urge the adoption of a comprehensive federal code of aviation law to avoid, manage, and resolve disputes uniformly throughout the United States.⁴⁶ The Warsaw Convention, which

41. Louise Weinberg, *Mass Torts at the Neutral Forum: A Critical Analysis of the ALI's Proposed Choice Rule*, 56 Alb. L. Rev. 807, 839 (1993).

42. *Id.* at 851.

43. *Lee v. Ford Motor Co.*, 457 So. 2d 193 (La. App. 2d Cir. 1984).

44. Lowenfeld, *supra* note 40, at 157-58.

45. *Id.* at 158; accord Juenger, *supra* note 38.

46. [I]t is clearly in the interests of passengers, airline corporations, airplane manufacturers, and state and federal governments, that airline tort liability be regulated by federal law. Of course, we are well aware of the fact that it is up to Congress, and not the courts, to

already applies in a limited number of international disasters, provides one model for such a code. An advantage of this model is that courts are familiar with the treaty rules in international cases. Unfortunately, however, the antiquated rules of the Convention and a "willful misconduct" exception, in particular, have discouraged legislative imitation of the Warsaw Convention to govern domestic cases.⁴⁷ Other proposals for a comprehensive code of substantive law have been futile in the face of Congressional indifference and threats to state authority.

Common-law models for nation-wide uniformity have also been controversial. In the famous *Agent Orange*⁴⁸ litigation, involving damage claims by victims of herbicide spraying in the Vietnam War, a courageous federal judge, relying on federal question jurisdiction, applied "federal common law."⁴⁹ On remand later by an appellate court, the same judge applied a surrogate "national consensus Law."⁵⁰ Similarly, *Kohr v. Allegheny Airlines, Inc.*⁵¹ held that federal common law applied to issues of indemnity and contribution related to an air disaster.⁵² Skepticism has, however, greeted both opinions.⁵³

Although there has been no real movement toward comprehensive substantive reform, the need is obvious for making hard decisions rather than simply delegating them to the courts or devising new rules of procedure.⁵⁴ Half a loaf of reform—better conflict-of-law rules—might be better than none at all.⁵⁵

create the needed uniform law.

In re Air Crash Disaster Near Chicago, Illinois, 644 F.2d 594, 632-33 (7th Cir. 1981).

47. Weintraub, *supra* note 16, at 144.

48. *In re "Agent Orange" Prod. Liab. Litig.*, 635 F.2d 987 (2d Cir. 1980), *cert. denied sub nom. Chapman v. Dow*, 454 U.S. 1128, 102 S. Ct. 980 (1981); 580 F. Supp. 690 (E.D.N.Y. 1984).

49. *In re "Agent Orange" Prod. Liab. Litig.*, 506 F. Supp. 737 (E.D.N.Y. 1979).

50. *In re "Agent Orange" Prod. Liab. Litig.*, 580 F. Supp. 690 (E.D.N.Y. 1984).

51. 504 F.2d 400 (7th Cir. 1974), *cert. denied*, 421 U.S. 978, 95 S. Ct. 1980 (1975).

52. *Id.* at 403.

53. Weintraub, *supra* note 16, at 141.

54. We need, in short, to make some decisions. Once the competing values have been sorted out, procedural devices such as consolidation, supervised discovery, lead and liaison counsel, special masters, minitrials, and test cases can help. None of these devices, however, is a substitute for deciding whether fault must be proved, is to be presumed, or is not decisive in determining compensation for accident victims. None of these devices is a substitute for deciding how the value of a person's life is to be assessed, whether the survivors' grief is to be compensated, and when, if at all, to assess punitive or exemplary damages. None of these devices is a substitute for deciding how to deal with comparative fault or responsibility, which in airplane disasters rarely involves the victims but importantly affects the liability of the various actors whose errors together produced the disaster.

Lowenfeld, *supra* note 40, at 171-72.

55. [I]t is hard to quarrel with the assertion that a federal aviation accident act would be the desirable solution. But such legislation, raising all the problems of accident compensation in the United States generally—fault or no-fault, compensation vs. punitive damages, collateral benefits, pain and suffering, contingent fees and their regulation, etc., etc.—has proved impossible to adopt. A bill providing for federal choice of law rules, say limited

B. Amendments to Current Rules

A more modest reform, then, would be to amend the threshold choice-of-law rules. First, *Klaxon's*⁵⁶ application of state rules in federal diversity cases seems ill-equipped for cases whose complicated scope and multi-party character engage the national interest.⁵⁷ In complex litigation, at least, there is little justification for applying state choice-of-law rules rather than a special multi-jurisdictional or national rule that would take account of the broad, national complexion of most air disaster claims and the national interest in their fair and consistent disposition by the courts.

The American Bar Association (ABA) proposed federal legislation to displace the *Klaxon* principle in mass tort cases. The ABA report aptly observed that

separate adjudication of individual tort claims arising from a single accident or use of or exposure to the same product or substance is inefficient and wasteful, seriously burdens both state and federal judicial systems, poses unacceptably high risks of inconsistent results, and contributes to public dissatisfaction with the tort law system and the legal profession.⁵⁸

Similarly, the *Van Dusen* rule is hard to justify in mass tort cases. While responding to a classic threat of vertical (federal-state) forum-shopping, it utterly ignores, or even encourages, the serious threat of horizontal (state-state) forum-shopping, especially in a plaintiff's crusade for punitive damages.⁵⁹ In consolidated actions, *Van Dusen*⁶⁰ may produce unjustifiable discrimination among parties on the artificial basis of where their actions were originally filed.

A Congressional report concluded that "[w]hen the purpose of the jurisdiction is to use the Federal courts to do what no state court may be able to do, it makes no sense to have a Federal court bound by the conflicts laws of a single state."⁶¹ Instead, the *transferee* court should be allowed to choose the proper law without being bound "by the choice of law rules which the transferor court . . . would otherwise apply in cases governed by State law."⁶²

C. New Conflict-of-Laws Rules

A third path to reform involves the statutory creation of a single, stable conflict-of-laws approach to govern mass accident/tort cases. Studies have repeatedly revealed the impracticality of working within a jumbled framework of open-textured, highly discretionary approaches. Dépeçage in consolidated and

to multi-party and multidistrict cases, might have a better chance.

Lowenfeld, *supra* note 12, at 460; see also Lowenfeld, *supra* note 40, at 171.

56. *Klaxon v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 61 S. Ct. 1020 (1941).

57. For a detailed description of the complexities, with a focus on a single case, see John Austin, *A General Framework for Analyzing Choice-of-Law Problems in Air Crash Litigation*, 58 J. Air L. & Comm. 909 (1993).

58. American Bar Association, Commission on Mass Torts, Report to the House of Delegates (1989).

59. Proposed Final Draft, *supra* note 1, at 376.

60. *Van Dusen v. Barrack*, 376 U.S. 612, 84 S. Ct. 805 (1964).

61. House Comm. on the Judiciary, Judicial Improvements and Access to Justice Act, H.R. Rep. No. 889, 100th Cong., 2d Sess. 43 (1988), reprinted in 1988 U.S.C.C.A.N. 5982, 6003.

62. H.R. 4807, 100th Cong., 2d Sess., §§ 301-07 (1988).

other complex cases is often cumbersome. Horizontal (state-state) forum-shopping is a serious problem. In response, a consensus has emerged in favor of applying the same body of rules to govern all issues in a single case. The ALI Project is now the model. It prescribes rules of preference, to be applied in the order in which they are listed, subject to exceptions in unusual cases.⁶³

III. COMPARISON OF THE ALI SCHEME WITH JUDICIAL DECISIONS

The courts applied plaintiff-favorable law and the plaintiff won in the majority of the sixty-two air-disaster cases outlined in the Appendix. This tendency is consistent with the fundamental tort principle of compensation and a plaintiff-preference that underlies modern thinking. When courts have adopted modern approaches to choice of law that utilize interest analysis in some way, there has been a somewhat surprising tendency to establish a true conflict and then to balance interests to determine the applicable law. Thus, an important contribution of interest analysis—its methodology for finding false conflicts, that is, for avoiding conflicts—does not seem to have been as influential as one might have expected.

There appears to be a significant inconsistency between the judicial decisions in consolidated cases of complex litigation and *probable* decisions under the ALI scheme.⁶⁴ Only 40% of the issues (n=20) would probably be decided the same way. A partial explanation for this discrepancy is the relatively greater weight that the ALI scheme puts on a combination of domicile and place of wrong. Another explanation is the elimination of the *lex fori* as a choice-of-law rule or presumption although it doubtlessly remains an influence. The best explanation, though, is perhaps the most obvious: consolidated cases are so complicated as things stand that they defy consistency and integrity to the point of randomness. The courts need more guidance.

On the other hand, correlations between decisions on issues in the simpler, *non-consolidated* cases and probable decisions on the same issues under the ALI rules were much stronger. These correlations were as follows: issues in diversity cases (n=20): 55%; issues in federal statutory cases (n=7): 71%; and issues in state cases (n=24): 63%.⁶⁵ Explanations for these correlations are largely the obverse of the weak correlations in consolidated cases of complex

63. See *supra* notes 1-8.

64. The word "probable" is an important qualification. Numerous uncertainties cloud the comparison. These include the intricacy of the ALI Project's rules and hence difficulty of reliably applying them, the absence or ambiguity of facts in the reported decisions that would be significant to an ALI Project analysis, the uncertainty of whether a court would employ the prescribed safety valves or other exceptions, and the problem of multiple places of injury-related conduct. It is also unclear exactly when the laws of two or more states "conflict materially" (Proposed Final Draft, *supra* note 1, § 6.01(c)) for the purpose of determining whether the residences of "all" plaintiffs are tantamount to being in the "same state." One problem that may be endemic to interest analysis is determining the locus of tort-producing conduct. It is often difficult or impossible to pinpoint a single locus. For example, either the principal place of business, where decisions are made, or the place of manufacture or assembly of a plane or its engine may be significant. The issue becomes even more complicated when the most significant relationship test must be applied, namely, when the connecting factor of conduct is determinative and conduct has occurred in more than one jurisdiction. Whenever the principal place of business and place of wrong were known but the place of conduct was not specifically identified as such, the author assumed, as a rule of thumb, that the principal place of business was the primary place of conduct relevant to the occurrence of a mass tort.

65. Cases in which the Warsaw Convention preempts state law are not relevant in the ALI scheme.

litigation. In particular, the common law is more likely to influence the resolution of choice-of-law issues in simpler litigation arising out of air disasters.

To the author's surprise, the common law reveals a generally careful and accurate identification of state rules by federal courts. To be sure, the New York-related cases exhibit that state's tradition of hopping from one choice-of-law approach to another with the greatest of ease and the faintest of advance notice. Decisions in air disaster cases thus confirm the uncertainty of the New York choice-of-law process over the years. The courts also arrived at contending interpretations of Michigan choice-of-law jurisprudence. With these exceptions, however, the courts have been quite consistent in identifying particular state rules and approaches, even when these have changed over time.

Applying the rules and approaches to the facts in individual cases is, however, another matter. The flexibility of modern approaches underscores the need for an omnibus rule or prioritization of rules to govern the choice of law in complex litigation. The choice-of-law scheme in the ALI Complex Litigation Project is a step in the right direction. This first step may be somewhat wobbly, however, because of exceptions for judicial discretion that encourage inconsistent and pre-determined results. Nevertheless, the ALI scheme would help bring some order and integrity out of the chaos that characterizes multi-party adjudication of complex air disaster claims.

In the best of conflicts worlds, interest analysis would not exist. In exercising the discretion inherent in any rule system, courts would be encouraged to forthrightly reveal and defend the value premises and biases that understandably and inevitably shape decision-making. The common law reveals a pattern of plaintiff-preference in difficult cases, a vindication of the tort principle of compensation, and a concern for applying the law, especially with respect to the issue of punitive damages, that would best encourage high standards of design, manufacture, and use of airplane equipment. This experience suggests the advisability of highlighting these factors in a set of preference rules to guide interest analysis more reliably and functionally.

The next step toward greater judicial consistency and predictability may be for at least those courts applying some version of interest analysis to modify the ALI rules of preference for application in non-consolidated cases. In taking this step, courts would do well to minimize exceptions to the rules of preference. They are the most troublesome feature of the proposed scheme.

Whatever the procedural posture of a case, and however neutral the forum may be, judges should appreciate the need for a multi-jurisdictional perspective that discourages horizontal forum-shopping and maximizes legitimate expectations of parties and systemic integrity. Choice-of-law rules in the ALI's Complex Litigation Project are complicated and perhaps too flexible. They do, however, point the way to a better regime. They actually look like rules. Even if the ALI Project succeeds only as guidance for the courts, it can help rescue them from choice-of-laws disasters and steer the law into the friendly skies of stability and fairness.

APPENDIX

FEDERAL CONSOLIDATED CASES

(Selective coverage: 1975-1993, in reverse chronological order)

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p data-bbox="166 490 209 510">No.1</p> <p data-bbox="166 513 565 610"><i>In re Air Crash Disaster at Sioux City, Iowa, on July 19, 1989,</i> 734 F. Supp. 1425 (N.D.Ill. 1990)</p> <p data-bbox="166 633 364 658">1. <i>Site of Crash:</i> Iowa</p> <p data-bbox="166 683 260 709">2. <i>Parties:</i></p> <p data-bbox="166 734 548 782"><i>Plaintiffs</i> from 30 states and two foreign countries sued the following <i>defendants</i>:</p> <p data-bbox="166 807 565 929">a. United Airlines (United), a Delaware corporation with its principal place of business in Illinois. United maintained an aircraft that crashed in California and had a crew training center in Colorado;</p> <p data-bbox="166 954 559 1051">b. McDonnell Douglas (MDC), a Maryland corporation with its principal place of business in Missouri. It designed and manufactured the plane in California; and</p> <p data-bbox="166 1076 565 1172">c. General Electric (GE), a New York corporation with its principal place of business in New York and a plant in Ohio which manufactured the engines on an ill-fated flight.</p> <p data-bbox="166 1197 243 1222">3. <i>Issue:</i></p> <p data-bbox="166 1248 559 1315">What law should govern punitive damage claims consolidated in a federal court after transfer from other district courts?</p> | <p data-bbox="600 465 995 562">1. Following <i>Klaxon</i> and <i>Van Dusen</i>, the court applied California, Colorado, Iowa, New York, Georgia, Illinois, Pennsylvania, and District of Columbia choice-of-law rules.</p> <p data-bbox="600 587 744 612">2. <i>Methodology:</i></p> <p data-bbox="600 637 897 685">a. <i>California-transferred cases:</i> Comparative impairment analysis.</p> <p data-bbox="600 710 995 1222">(1) As to United: Illinois, Colorado, and California all had interests in controlling its activities. The punitive damages laws of these states present a true conflict. California does not permit punitive damages in wrongful death actions while it permits them in survival and personal injury actions. Colorado does not permit punitive damages in wrongful death or survival actions. Illinois does not permit punitive damages in wrongful death or survival actions, but permits them in other actions when a defendant has engaged in gross negligence. The interests of Colorado and California were limited to activities within their respective territories. Illinois, as the principal place of business, had an interest in activity performed in all three states. Therefore, the Illinois interest in providing for punitive damages would be impaired more than that of either Colorado or California if its law were not applied.</p> <p data-bbox="600 1248 995 1441">(2) As to MDC: Missouri and California law would be equally impaired if not applied. Therefore, California law, as the law of the transferor forum, would govern claims for punitive damages because of California's general preference to apply its own law when it shares an equal interest in application of its law with another state.</p> <p data-bbox="600 1466 995 1615">(3) As to GE: Ohio's interest would be more impaired if its punitive damages policy were not applied. Since the alleged wrongful acts occurred in Ohio, its law ought to govern the balancing of interests between deterrence and protection of GE.</p> <p data-bbox="600 1640 995 1707">b. <i>Colorado, Iowa, New York, Illinois and Georgia-transferred cases:</i> most significant relationship test.</p> <p data-bbox="600 1733 995 1800">(1) As to United: The states whose law must be considered are: Iowa, the place of the injury; Colorado and California, the places of</p> |

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| <p>4. <i>Decision:</i></p> <p>a. Illinois law governed claims for punitive damages against the airline.</p> <p>b. California law governed claims for punitive damages against the aircraft manufacturer.</p> <p>c. Ohio law governed punitive damages claims against the engine manufacturer.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.06(b), (c), (d)):</i></p> <p>a. As to United, probably a different result.</p> <p>b. As to MDC, the same result.</p> <p>c. As to GE, the same result.</p> | <p>the alleged misconduct; Illinois, the principal place of business of United; and Delaware, the place of incorporation of United. The states of domicile of the plaintiffs were not relevant. On balance, Illinois bore a more significant relationship to the connecting factors on the issue of punitive damages because it benefitted from United's economic activity there and ordinarily bore a substantial risk that United's wrongful behavior would result in an accident occurring on flights scheduled to arrive in or depart from Chicago.</p> <p>(2) As to MDC: The analysis was limited to California, site of the alleged wrongful conduct; Missouri, MDC's principal place of business; Maryland, its place of incorporation; and Iowa, the site of the injury. Since faulty design and manufacture were the basis for the punitive damages claims against MDC and both occurred in California, California law appropriately governed these actions.</p> <p>(3) As to GE: GE manufactured and designed the plane's engine in Ohio. Although New York is GE's principal place of business, its relationship to GE's aircraft engine manufacturing business was less than Ohio's relationship as the site of engine manufacturer.</p> <p>c. <i>Pennsylvania and District of Columbia-transferred cases:</i> government interest analysis and most significant relationship test.</p> <p>Because both tests led to the same result in an earlier analysis by the same court, the choice-of-law rules of Pennsylvania and the District of Columbia would result in application of Illinois law to allow limited punitive damage claims against United, California law to claims against MDC, and Ohio law to claims against GE.</p> |
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| Choice-of-Law Facts, Issues & Decision | Analysis |
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| <p data-bbox="176 295 223 318">No.2</p> <p data-bbox="182 320 572 392"><i>In re Air Crash at Detroit Metropolitan Airport on August 16, 1987,</i></p> <p data-bbox="196 394 559 417">750 F. Supp. 793 (E.D.Mich., S.D. 1989)</p> <p data-bbox="178 444 413 467">1. <i>Site of Crash:</i> Michigan</p> <p data-bbox="178 494 272 517">2. <i>Parties:</i></p> <p data-bbox="178 542 505 591"><i>Plaintiffs</i> from four states sued the following <i>defendants</i>:</p> <p data-bbox="178 616 532 687">a. Northwest Airlines (Northwest), a Minnesota corporation with its principal place of business there; and</p> <p data-bbox="178 712 568 803">b. McDonnell Douglas (MDC), a Maryland corporation, which had designed and manufactured a plane in California, with its principal place of business in Missouri.</p> <p data-bbox="178 830 256 853">3. <i>Issue:</i></p> <p data-bbox="178 879 565 1000">What law should govern compensatory and punitive damage claims consolidated in a federal court sitting in Michigan after transfer from Arizona, California, and Florida?</p> <p data-bbox="178 1027 286 1051">4. <i>Decision:</i></p> <p data-bbox="178 1076 559 1124">a. California law applied to design defect claims by all claimants;</p> <p data-bbox="178 1149 561 1271">b. Michigan's corporate protective law applied to punitive damages claims against both Northwest and MDC, other than those filed in California, to which California law applied.</p> | <p data-bbox="610 272 1005 343">1. Following <i>Klaxon</i> and <i>Van Dusen</i>, the court applied Michigan, Arizona, California, and Florida choice-of-law rules.</p> <p data-bbox="610 370 753 394">2. <i>Methodology:</i></p> <p data-bbox="610 396 971 419">a. Product liability claims against MDC:</p> <p data-bbox="610 444 1008 591">(1) <i>Cases originally filed in Michigan:</i> Rational reason test. Michigan's courts consider whether there exists a "rational reason" to displace the law of the forum in favor of the law of another state in conflicts analysis.</p> <p data-bbox="610 616 1008 832">(a) States having contacts were Michigan, Missouri, and California. The product liability laws of these three states conflict. Michigan rejects while Missouri adopts the doctrine of strict liability in tort for product defects. California refuses to follow the unreasonably dangerous requirement; instead, it allows recovery on a strict liability theory as long as the product was "defective."</p> <p data-bbox="610 857 1008 1151">(b) Michigan did not have a strong interest in applying its producer-protective products law to protect a foreign state producer that supplied products for a company doing business in Michigan. Both Missouri and California had a strong interest in applying their products liability laws. Thus, there was a rational reason to displace Michigan law. As between the laws of these two states, California had the greater interest in applying its own law since the alleged wrongful conduct by MDC occurred within its borders.</p> <p data-bbox="610 1176 1008 1224">(2) <i>Arizona-transferred cases:</i> Most significant relationship analysis.</p> <p data-bbox="610 1226 1008 1367">The states having contacts were Michigan, California, Missouri, and Arizona. California had a very strong interest in the application of its producer-regulating products liability law. An Arizona court would apply California law to resolve the design defect issues.</p> <p data-bbox="610 1392 1008 1464">(3) <i>Florida and California-transferred cases:</i> Most significant relationship and comparative impairment analyses.</p> <p data-bbox="627 1466 844 1489">California law governed.</p> <p data-bbox="610 1514 1008 1562">b. Punitive damages claims against Northwest and MDC:</p> <p data-bbox="610 1588 1008 1636">(1) <i>Cases originally filed in Michigan:</i> "Rational reason test."</p> |

5. Comparison with A.L.I. Rule (§ 6.01(b), (c), § 6.06(b), (c)):

a. As to MDC, the same result on product liability claims, but partially different result on punitive damage claims.

b. As to Northwest, a different result.

(a) Punitive damage claims against Northwest: (i) The states having legally significant contacts were Michigan and Minnesota; (ii) Michigan disallows while Minnesota allows the recovery of punitive damages. Michigan had a very strong interest in applying its law, which prohibits the imposition of punitive damages on companies doing business within its borders. Because there was no rational reason to abandon Michigan law, it should be applied.

(b) Punitive damage claims against MDC: (i) The states with relevant contacts were Michigan, California, and Missouri; (ii) Both Michigan and California, unlike Missouri, prohibit the imposition of punitive damages in wrongful death actions. The application of the punitive damages law of Michigan, as the forum, would resolve a true conflict in which two involved states had an equal interest in applying their punitive damages laws, and the forum state had a strong interest in implementing its own policy.

(2) *Arizona and Florida-transferred cases*: most significant relationship analysis.

Because the conflicts analysis under Arizona and Florida rules is essentially the same as that of Michigan, Michigan law applied to the punitive claims against both Northwest and MDC.

(3) *California-transferred cases*: comparative impairment analysis.

(a) Punitive damage claims against Northwest: The states having legally significant contacts were Michigan, California, and Minnesota. There is a true conflict between Michigan and Minnesota law because Michigan disallows while Minnesota provides for the recovery of punitive damages. The court concluded that a California court would apply Michigan law to resolve a true conflict under the comparative impairment approach.

(b) Punitive damage claims against MDC: The states with contacts were Michigan, California, and Missouri. Both Michigan and California preclude punitive damage awards in wrongful death cases while Missouri permits such awards. A true conflict exists between the interests of California and Missouri. The court concluded that a California court would say that its own interest would be more impaired by the application of another state's law. Thus, California law governed punitive damage claims against MDC.

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.3 <i>In re Air Crash Disaster at Stapleton Int'l Airport, Denver, Colorado, on Nov. 15, 1987</i></p> <p>720 F. Supp. 1445 (D.Co. 1988), 720 F. Supp. 1467 (D.Co. 1989), 720 F. Supp. 1505 (D.Co. 1989), <i>rev'd in part and remanded,</i> <i>sub. nom. Johnson v. Continental Airlines,</i> 964 F.2d 1059 (10th Cir. 1992)</p> <p>1. <i>Site of Crash:</i> Colorado</p> <p>2. <i>Parties:</i></p> <p><i>Plaintiffs</i> from Arizona, Colorado, Idaho, New Jersey, and Washington sued the following <i>defendants</i>:</p> <p>a. Continental Airlines (Continental), a Texas corporation with its principal place of business in Texas; and</p> <p>b. Texas Air Corporation (Texas Air), a Texas corporation with its principal place of business in Texas.</p> <p>3. <i>Issues:</i></p> <p>a. What law should govern punitive damage claims consolidated in a Colorado federal court after transfer from Idaho, New Jersey and Colorado federal courts?</p> <p>b. What law should apply to negligence issues?</p> | <p>1. Following <i>Klaxon</i>, and <i>Van Dusen</i>, the court applied Idaho, Colorado, and New Jersey choice-of-law rules.</p> <p>2. <i>Methodology:</i> New Jersey applies government interest analysis, whereas Idaho and Colorado apply the most significant relationship analysis. Because the latter test is a more elaborate version of the former, it would subsume government interest analysis.</p> <p>a. The punitive damage laws of Texas, Idaho, and Colorado conflict. Idaho and Texas provide for punitive damages in wrongful death actions as well as contract and personal injury cases while Colorado provides for punitive damage awards only in personal injury cases. Exemplary damages are prohibited in actions for wrongful death or breach of contract.</p> <p>b. The Restatement (Second) of Conflicts [hereinafter "Restatement Second"] two-step choice-of-law analysis involves first, the identification of the states having contacts with the parties in the crash, and, second, a determination of the relative significance of these contacts.</p> <p>(1) Colorado was the place of injury.</p> <p>(2) The place of conduct: Since the plane departed Texas, the conduct for which Continental punitive damages may lie occurred there primarily. Texas was also the place of incorporation of both defendants.</p> <p>(3) Principal places of business: To avoid the application of Texas law, Continental contended that it had more than one principal place of business relevant to a choice-of-law analysis. The court ruled that what mattered was that Continental and Texas Air were incorporated under Texas law and therefore Texas was defendants' principal place of business.</p> <p>(4) Domicile and center of the parties' relationships: Idaho was the residence of most of the crash victims and the center of the relationship between the passengers and the carrier.</p> |

c. What law should apply to issues of compensatory damages?

d. What law should apply to issues of prejudgment interest?

4. *Decision:*

a. Texas law applied to punitive damage claims.

b. By agreement among the parties, Colorado law applied to issues of liability for negligence.

c. By agreement among the parties, issues of compensatory damages were to be resolved under the law of each plaintiff's domicile, which had the most significant interest in placing a value on the injuries suffered.

d. Law governing compensatory damages also governed prejudgment interest.

5. *Comparison with A.L.I. Rule (§§ 6.01(b), (c), 6.05 and 6.06(b), (c)):*

a. As to punitive damages, the same result.

b. As to negligence, a different result in the absence of agreement among the parties.

c. As to compensatory damages, a different result in the absence of agreement among the parties.

d. As to prejudgment result, a different result.

c. Relevant contacts with this litigation were with Colorado, Texas, and Idaho. Texas, as the place of wrongful conduct and the defendants' principal place of business had the most significant relationship to the parties and the occurrence in regard to the issue of punitive damages for these reasons:

(1) In air crash cases, the interests of the domicile of the plaintiffs and the center of the relationship between the passengers and a carrier is relatively low with regard to the issue of punitive damages. Accordingly, the relationship of Idaho to this litigation through these two contacts did not surpass that of Colorado.

(2) Colorado was less than a fortuitous place of injury. Its interest in and ability to control behavior by deterrence or punishment or to protect defendants from liability was, however, less than that of Texas. The shared goal of safe air travel was served by applying the law of a home state to an airline. Colorado's interest in air safety "was lessened when a foreign corporation attempted to shield itself from the more onerous laws of its home state by seeking refuge under Colorado law." 720 F. Supp. at 1453. Colorado's decision to implement its economic interest would not be frustrated by applying Texas law.

d. Prejudgment interest.

The district court held that Colorado law should govern an issue involving prejudgment interest because the defendant bore the burden of informing the court, prior to the entry of judgment in an exemplar trial, of showing that Idaho law barred Idaho plaintiffs' claims for prejudgment interest and the defendant had waived any objection. The Tenth Circuit reversed this decision for these reasons:

(1) Prejudgment interest is an element of compensatory damages. The court was unable to justify separating prejudgment interest from the remaining elements of compensatory damages.

(2) The Restatement Second classifies prejudgment interest as an element of damages for conflict-of-law purposes. Logically, the same law should govern all compensation-related issues.

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.4 <i>In re Air Crash Disaster Near New Orleans, Louisiana, on July 9, 1982,</i> 789 F.2d 1092 (5th Cir. 1986), <i>vacated other reasons,</i> 490 U.S. 1032, 109 S. Ct. 1928 (1989)</p> <p>1. <i>Site of Crash:</i> Louisiana.</p> <p>2. <i>Parties:</i> Uruguayan <i>plaintiffs</i> sued <i>defendant</i>, Pan American World Airways, a New York corporation with its principal place of business there.</p> <p>3. <i>Issue:</i> Should Louisiana or Uruguay law apply to wrongful death claims arising out of a crash in Louisiana brought by Uruguayans that were consolidated in a Louisiana federal court?</p> <p>4. <i>Decision:</i></p> <p>a. Louisiana law applied generally to wrongful death recovery.</p> <p>b. Uruguayan law applied specifically to one plaintiff's claim for death of his aunt.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(b), (c)):</i> A different result.</p> | <p>1. Following the <i>Klaxon</i> rules, Louisiana choice-of-law rules applied.</p> <p>2. <i>Methodology:</i> Most significant relationship test.</p> <p>a. Prior to the enactment of a new code of private international law, Louisiana courts inquired whether there was a true conflict. If so, the most significant relationship test was applied.</p> <p>b. Under the Restatement Second, the law of Louisiana as the place of injury ordinarily would apply absent a strong, countervailing Uruguayan interest. Because the law of Louisiana ordinarily would provide more compensation than that of Uruguay, however, Uruguay would have no interest in limiting an award in favor of Uruguayan plaintiffs, provided no Uruguayan defendant was involved. The court reasoned that the needs of the international system ordinarily would be served best by applying Louisiana law.</p> <p>c. But Louisiana law provided <i>no</i> remedy for a nephew's injury arising out of the death of his aunt in a crash. Therefore, with respect to the nephew's claim, the law of Uruguay applied.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.5</p> <p style="text-align: center;"><i>In re Air Crash Disaster at Mannheim, Germany, on September 11, 1982, 575 F. Supp. 521 (E.D.Penn. 1983), rev'd on other ground, 769 F.2d 115 (3rd Cir. 1985) cert. denied 474 U.S. 1082, 106 S. Ct. 851 (1986)</i></p> <p>1. <i>Site of Crash:</i> Germany</p> <p>2. <i>Parties :</i></p> <p><i>Plaintiffs</i> from Germany, Great Britain, France, and the United States, sued <i>defendant</i>, Boeing, a Delaware corporation with its principal place of business in Washington and doing business in California. Boeing designed and manufactured a plane that crashed in Pennsylvania.</p> <p>3. <i>Issue:</i></p> <p>What law should govern liability and damages issues in claims consolidated in a federal court arising out of a crash in Germany?</p> <p>4. <i>Decision:</i></p> <p>Pennsylvania law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(b), (c)):</i></p> <p>The same result.</p> | <p>1. Following <i>Klaxon</i>, Pennsylvania's choice-of-law rule applied as follows:</p> <p>2. <i>Methodology:</i> Pennsylvania uses a hybrid conflict of laws approach, which combines significant relationship approach with interest analysis.</p> <p>a. The jurisdictions to be considered on the liability issue in the cases were Pennsylvania, Germany, Great Britain, and France.</p> <p>b. Pennsylvania had an interest in applying its liability law against a resident manufacturer acting within its home borders because the "interests articulated by the Pennsylvania courts in seeking to hold its manufacturers as guarantors of their products' safety would be furthered by application of its own law." 575 F. Supp. at 525.</p> <p>c. Regarding the laws of Germany, Great Britain and France, the defendants argued that all the foreign cases should be governed by German law. The court ruled that the interest that might be furthered by applying German law was doubtful. If in limiting compensation to injured parties, Germany was seeking to protect resident defendants from excessive liability, the policy would not be furthered in this situation since Boeing was not a German resident. Therefore, these cases essentially present a "false conflict" on the liability issue.</p> <p>d. In those cases where Pennsylvania compensatory damages law provides greater protection than does the damages law of another jurisdiction, Pennsylvania law would be applied. "The Pennsylvania principle of full compensation and placing [sic] the risk of loss on its manufacturers would be furthered by applying Pennsylvania liability law to all of the plaintiffs and applying Pennsylvania damages law to the foreign plaintiffs." <i>Id.</i> at 526.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p data-bbox="172 311 220 334">No.6</p> <p data-bbox="196 336 552 430"><i>In re Air Crash Disaster at Washington, D.C. on January 13, 1982,</i> 559 F. Supp. 333 (D.D.C. 1983)</p> <p data-bbox="172 479 510 504">1. <i>Site of Crash:</i> District of Columbia</p> <p data-bbox="172 529 268 554">2. <i>Parties:</i></p> <p data-bbox="172 577 534 653"><i>Plaintiffs</i> from seven states and the District of Columbia, sued the following <i>defendants</i>:</p> <p data-bbox="172 678 552 749">a. Air Florida (AF), a Florida corporation with its corporate headquarters in Florida that operated the jet that crashed;</p> <p data-bbox="172 774 571 896">b. Boeing Company (Boeing), a Delaware corporation with its headquarters in Washington (in those cases in which Boeing was not named in the complaint, it was impleaded by AF); and</p> <p data-bbox="172 921 571 1089">c. American Airlines (AA), a Delaware corporation that had recently moved its principal place of business from New York to Texas. AA is a defendant in some of the cases because its employees at National Airport de-iced an aircraft that crashed, allegedly because of ice on its equipment.</p> <p data-bbox="172 1114 260 1139">3. <i>Issues:</i></p> <p data-bbox="172 1164 575 1259">a. What law should govern negligence, product liability, and punitive damage claims in a federal court after transfer from other district courts?</p> | <p data-bbox="606 311 1005 430">1. Following <i>Klaxon</i> and <i>Van Dusen</i>, District of Columbia, Georgia, Illinois, Maryland, Massachusetts, Pennsylvania, Texas, and Virginia choice-of-law rules applied as follows:</p> <p data-bbox="606 455 752 481">2. <i>Methodology:</i></p> <p data-bbox="606 506 1005 600">a. <i>Illinois, Maryland, Texas, Massachusetts and Pennsylvania-transferred cases and cases originally filed in District of Columbia:</i> government interest analysis.</p> <p data-bbox="606 625 1005 720">(1) Negligence: In the absence of conflict among the negligence laws of the various interested jurisdictions, the law of the forum applied.</p> <p data-bbox="619 745 999 772">(2) Product liability claims against Boeing:</p> <p data-bbox="606 797 1005 991">(a) The potentially interested jurisdictions were Washington, the District of Columbia, and Florida. As between the District of Columbia and Florida, the former was a more likely choice. The great majority of passengers were from the District of Columbia, and the municipality itself was a plaintiff.</p> <p data-bbox="606 1016 1005 1137">(b) The District of Columbia has adopted the doctrine of strict liability in tort for product defects whereas the state of Washington has established a negligence standard.</p> <p data-bbox="606 1163 1005 1576">(c) District of Columbia law should govern because it had the most significant relationship to this issue. The location of the crash was not fortuitous because many of the victims had some kind of settled relationship in the District of Columbia. The District of Columbia's interest in liability for compensatory damages and punitive damages vis-a-vis Washington (the state of manufacture), was substantial. The Boeing 737 aircraft had been designed for operation from an airport such as National Airport, concerning which the District of Columbia had a substantial interest. Although the state of Washington had an interest in the design of the aircraft, its interest was not greater than that of the District of Columbia.</p> <p data-bbox="619 1601 815 1628">(3) Punitive damages:</p> <p data-bbox="606 1653 1005 1725">(a) As to the punitive damage claims against AF and AA: The states having some contact with this litigation relevant to the</p> |

b. What law should govern the apportionment of liability or contribution?

4. *Decision:*

a. District of Columbia law governed all issues with respect to cases filed in Virginia; with respect to actions filed in other jurisdictions, District of Columbia law governed all issues except the apportionment of liability or contribution.

b. Georgia law governed the apportionment of liability or contribution with respect to actions filed in Georgia.

c. Florida, Texas, and Washington law governed the apportionment of liability or contribution with respect to actions filed in all other jurisdictions.

5. *Comparison with A.L.I. Rule (§ 6.05, § 6.06(b), (c)):*

a. As to AF, different results.

b. As to AA, different results.

c. As to Boeing, different results.

punitive damages issue were the District of Columbia and Virginia, principally, but also Texas and Florida. Because AF and AA's conduct occurred outside of Texas and Florida, the corporate accountability interests of Texas and Florida were lessened and the most interested jurisdictions were the District of Columbia and Virginia. As between the District of Columbia and Virginia, the former had the most significant relationship to this issue because the injurious effects of the conduct were predominantly felt in the District of Columbia and victims were rushed by rescue units stationed there to hospital and other facilities within the District. Accordingly, District of Columbia law, which allows punitive damages in survival actions but not wrongful death actions, would control the question of the liability of AF and AA for punitive damages.

(b) Punitive damage claims against Boeing: The jurisdictions having contacts with this issue were Washington state and the District of Columbia. The District of Columbia had the greater interest in the question of Boeing's liability for punitive damages. Accordingly, with respect to those actions originally filed in a jurisdiction that has adopted interest analysis, the law of the District of Columbia would apply.

(4) *Apportionment of liability:*

(a) The District of Columbia and Virginia both follow an equal-share rule, under which all culpable defendants contribute equal parts of the judgment, regardless of their relative fault. All defendants, however, supported application of a comparative fault rule under the laws of other jurisdictions according to which each tortfeasor is assessed a portion of the judgment proportional to its relative culpability.

(b) The court held the jurisdictions most interested in the application of the comparative fault rule were those in which the defendants were located. Florida, Texas, and Washington (the principal places of business of Air Florida, American Airlines, and Boeing, respectively) all follow the so-called comparative fault rule. Therefore, the comparative fault rule would govern the apportionment of liability among the defendants.

b. *Virginia, Georgia, and Maryland-transferred cases:* Interest analysis would direct that the law of the District of Columbia

should be applied to all issues except for the apportionment of liability because the defendant's domicile would be more interested in how fault was apportioned.

(1) *Virginia-transferred cases:*

Under Virginia's *lex loci delicti* rule, the law of the District of Columbia governed all issues.

(2) *Georgia-transferred cases:*

Although it was not certain that the Georgia Supreme Court would follow the doctrine of *lex loci delicti*, it would be inappropriate to rule that *lex loci delicti* was no longer the rule in Georgia tort actions. Precedent indicated that Georgia would not enforce foreign statutory law in conflict with its own public policy. Georgia has a comparative fault rule for contribution among tortfeasors. The policy behind such a rule includes the forum's interest in fair treatment of all parties, contrary to the District of Columbia's equal-share rule. Consequently, while District of Columbia law would govern all other issues, the Georgia rule of apportionment by comparative fault would govern the liability of the various defendants.

(3) *Maryland-transferred cases:*

Unlike Virginia and Georgia, Maryland left the door open to adopting a modern choice-of-law approach at an appropriate time. Since the *lex loci delicti* rule apparently no longer has vitality in Maryland, its courts presumably would not apply it in this case. Therefore, "the law . . . shall be the same as the relevant law governing those other actions subject to the analysis [elsewhere in the opinion]." *Id.* at 362.

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p data-bbox="194 289 241 318">No.7</p> <p data-bbox="215 318 577 444"><i>In re Air Crash Disaster Near Chicago, Illinois on May 25, 1979</i> 644 F.2d 594 (7th Cir. 1981), <i>cert denied</i>, 454 U.S. 878, 102 S. Ct. 358 (1981)</p> <p data-bbox="194 463 409 492">1. <i>Site of Crash</i>: Illinois</p> <p data-bbox="194 511 288 540">2. <i>Parties</i>:</p> <p data-bbox="194 560 591 618"><i>Plaintiffs</i> from 11 states and three foreign countries sued the following <i>defendants</i>:</p> <p data-bbox="194 637 591 763">a. McDonnell Douglas (MDC), a Maryland corporation with its principal place of business in Missouri. MDC had designed and manufactured in California a plane that crashed in Illinois; and</p> <p data-bbox="194 782 564 879">b. American Airlines (AA), a Delaware corporation with its principal place of business in New York and a maintenance base in Oklahoma.</p> <p data-bbox="194 898 275 927">3. <i>Issue</i>:</p> <p data-bbox="194 956 591 1052">What law should govern punitive damage claims consolidated in a federal court sitting in Illinois after transfer from six federal courts?</p> <p data-bbox="194 1072 302 1101">4. <i>Decision</i>:</p> <p data-bbox="194 1120 591 1197">Because there was a true conflict between the laws of states having equal interests, the law of the place of the injury was applied.</p> <p data-bbox="194 1217 571 1275">5. <i>Comparison with A.L.I. Rule (§ 6.06(b), (c))</i>:</p> <p data-bbox="194 1294 477 1323">a. As to AA, a different result.</p> <p data-bbox="194 1342 450 1371">b. As to MDC, same result.</p> | <p data-bbox="624 270 1028 347">1. Following <i>Klaxon</i> and <i>Van Dusen</i>, Illinois, California, Michigan, New York, Puerto Rico, and Hawaii choice-of-law rules should apply.</p> <p data-bbox="624 357 772 386">2. <i>Methodology</i>:</p> <p data-bbox="624 396 1028 531">a. Illinois, the place of injury, California, the place of MDC's alleged misconduct, and New York, which was one of the principal places of business of AA, did not allow punitive damages, whereas all other states, including Oklahoma, did.</p> <p data-bbox="624 550 1028 598">b. <i>Illinois-transferred cases</i>: most significant relationship test.</p> <p data-bbox="624 608 1028 898">(1) It was unclear whether the relationship of the parties was "centered" in Illinois, the place of departure, or California, the place of destination. The court found that the domicile of the plaintiffs had no interest in disallowing punitive damages because the underlying policy is designed to protect the interest of <i>resident</i> defendants. This determination left for consideration the interest of the state where the alleged misconduct occurred, the state of the principal place of business, and the state where the injury occurred.</p> <p data-bbox="624 917 1028 1420">(2) The court explained that states award punitive damages to deter wrongful conduct or disallow punitive damages to protect the economic well-being of corporations in their state. The court concluded that California, the place of MDC's conduct in the manufacture and design of the plane, and New York, AA's principal place of business, had obvious interests in protecting businesses within their borders. The court also found that the states allowing punitive damages had strong interests in preventing future misconduct. The court rejected MDC's argument that the state of a corporation's principal place of business had no interest in punishing its own corporate domiciliary. The court concluded that both the state of the principal place of business and the state of the defendants' misconduct had strong interests in the issue of punitive damages, but the court was unable to say which one had the stronger interest of the two.</p> <p data-bbox="624 1439 1028 1729">(3) As to MDC: Missouri had an interest in allowing punitive damages in order to control the conduct of its corporations. California had an interest in protecting a domestic corporation against excessive liability. However, Illinois' interests were paramount to those of Missouri and California because of its interest in encouraging air transportation companies to do business within Illinois by limiting punitive damages. Other factors being equal, the law of the place of injury should apply.</p> |

(4) As to AA: Oklahoma, the place of conduct, and New York, the principal place of business, each had strong interest in having its law applied to the issue of punitive damages. It was also very hard to conclude that one state's interest was greater than the other. Following the same analysis used above, when the interests of the states of alleged misconduct and principal place of business were equal and in a true conflict, the law of the place of injury (Illinois) would apply.

b. *California-transferred cases*: comparative impairment approach.

(1) The court examined two factors to determine the relative commitment of each state to the law involved: "[a] the current status of a statute and the intensity of interest with which it was held; and [b] the comparative pertinence of the statute: the 'fit' between the purpose of the legislature and the situation in the case at hand." 644 F.2d at 622.

(2) The court found that the states of MDC's and AA's principal places of business and of their alleged misconduct all had strong current interests in their punitive damages laws, and that there was a good "fit" between the purpose of each law and the facts of the case. The court was unable to say "that either state's interest would be impaired less by the failure to apply its policy." *Id.* at 625. The court resolved "a total and genuine conflict between the laws of the principal place of business and the place of the injury by turning to the law of Illinois, the place of the injury." *Id.* at 61. The justification for application of Illinois law was that, although the interests of Illinois were inferior to those of the other states considered, Illinois was nevertheless severely affected by this disaster and the expenses incurred by it on account of the crash; with respect to the actions filed in Illinois, all but two of the decedents resided there; and Illinois, as home of one of the world's busiest airports, had a strong interest in protecting airplane-related industries.

c. *New York-transferred cases*: most significant relationship test.

Because the New York and Illinois tests were the same, the conflicts analysis was also the same. Thus, for the reasons discussed with regard to Illinois law, the court granted the motion to strike New York punitive damages claims against both MDC and AA by applying Illinois law.

d. *Michigan-transferred cases*: *lex loci delicti* rule.

(1) Although it was clear that Michigan courts had rejected automatic application of the rule of *lex loci delicti*, it was not clear what test had replaced it.

(2) The court concluded that the Michigan court would apply the law of the place of injury to this case since the place of conduct and the principal place of business had equal interests in applying their laws and because Michigan had a long history of following the *lex loci delicti* rule.

e. *Puerto Rico-transferred cases*: *lex loci delicti* rule.

At the time of the litigation, Puerto Rico applied the traditional *lex loci delicti* rule to tort actions. Under this rule, Illinois law applied.

f. *Hawaii-transferred cases*: The choice-of-law rule was not determined.

(1) Where the choice of law could not be determined, "absent an affirmative showing to the contrary, the court should presume that the forum would apply its own law." *Id.* at 631.

(2) Hawaii law, which does not authorize punitive damages in wrongful death cases, would meet the needs of the case and be in the interest of justice because "the use of two modern choice-of-law theories, as well as the old rule of *lex loci delicti*, all lead to the same result in this case." *Id.* at 632. The court granted the motions to strike Hawaii punitive damages claims against both defendants.

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p data-bbox="185 311 584 426">No.8 <i>In re Air Crash Disaster Near Saigon, South Vietnam, on April 4, 1975,</i> 476 F. Supp. 521 (D.D.C. 1979)</p> <p data-bbox="185 455 413 479">1. <i>Site of Crash:</i> Vietnam</p> <p data-bbox="185 504 279 527">2. <i>Parties:</i></p> <p data-bbox="185 552 584 745"><i>Plaintiffs</i> were Friends for All Children (FFAC), a Colorado non-profit corporation which acted on behalf of Vietnamese orphans who had survived a crash and on behalf of the estates of those who had been killed by it; and United States citizens who had survived the crash and representatives of the estates of passengers who had not.</p> <p data-bbox="185 774 584 919"><i>Defendants</i> were Lockheed, a California corporation, which had built a plane in Georgia for the United States Air Force that crashed, and the United States, which Lockheed brought in as a third-party defendant.</p> <p data-bbox="185 948 266 971">3. <i>Issue:</i></p> <p data-bbox="185 996 584 1093">What law should govern wrongful death and survival actions arising out of an air crash in Vietnam after transfer of cases from different federal district courts?</p> <p data-bbox="185 1122 297 1145">4. <i>Decision:</i></p> <p data-bbox="212 1170 505 1193">District of Columbia law applied.</p> | <p data-bbox="620 311 1020 426">1. Because federal jurisdiction was based on both a consolidated assignment of claims and diversity under the <i>Klaxon</i> rule, the District of Columbia's choice-of-law rules were applicable.</p> <p data-bbox="620 455 1020 479">2. <i>Methodology:</i> Government interest analysis.</p> <p data-bbox="620 504 1020 697">a. Precedent offers only limited guidance for interest analysis because the status of the passengers and the carrier was <i>sui generis</i>. It was a paramount interest and concern of the United States federal government that its courts provide a just and reasonable resolution of claims such as those on behalf of the estates of the deceased orphans.</p> <p data-bbox="620 726 1020 890">b. District of Columbia rules on the survival of actions were enacted by Congress. Because of the consequent national interests at stake here, the law of the forum should be displaced only if some other jurisdiction has an overwhelming policy interest in applying its own law.</p> <p data-bbox="620 919 1020 1209">c. Those jurisdictions claimed by Lockheed or FFAC to have a strong or equal interest so as to be an appropriate source of law were: Georgia, the site of the Lockheed plant which built the ill-fated plane; Colorado, the place of FFAC's incorporation and the source of its letters of administration for the deceased orphan's estates; Virginia, the headquarters of the Department of Defense and Air Force; Vietnam, the scene of the crash and the original home of the orphans; and California, the headquarters of Lockheed.</p> <p data-bbox="620 1238 1020 1354">d. There was no legal or functional basis for elevating the law and policy of any jurisdiction relating to survival of actions above the "national" law of the District of Columbia.</p> <p data-bbox="620 1383 1020 1528">(1) Neither Colorado, Georgia, nor Virginia had any interest in providing compensation for the decedents' estates since none of the decedents resided in the United States at the time of their deaths, nor were there any medical creditors in those jurisdictions.</p> <p data-bbox="620 1557 1020 1750">(2) Vietnam's interest, in contrast, might weigh heavily if these decedents had not crashed while in the process of evacuating the country and if the South Vietnamese government, which might have had an interest, had not been conquered and extinguished by the Hanoi government, which apparently had no such interest.</p> |

5. Comparison with A.L.I. Rule (§ 6.01(b), (c)):

The same result (on the relatively unusual basis in this kind of case that only one jurisdiction had a policy that would be furthered by the application of its law).

e. This was not to suggest that in any other diversity case involving a substantial contact in the District of Columbia, its law should necessarily apply. These orphans were en route to the United States when they were killed and injured, and the United States was impleaded as a party to the action. These cases were filed in the District of Columbia, and the multidistrict panel assigned all the companion cases there. Most importantly, the United States had a special role in the design of the plane that crashed. Therefore, the law of the forum, enacted by Congress, should not be displaced.

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.9 <i>In re Air Crash Disaster at Boston, Massachusetts, on July 31, 1973,</i> 399 F. Supp. 1106 (D. Mass. 1975)</p> <p>1. <i>Site of Crash:</i> Massachusetts.</p> <p>2. <i>Parties:</i></p> <p><i>Plaintiffs</i> from eight states sued <i>defendant</i>, Delta Airlines, a Delaware corporation with its principal place of business in Georgia.</p> <p>3. <i>Issue:</i></p> <p>What law should govern the issue of damages in a wrongful death action consolidated in a federal court after transfer from five federal courts?</p> <p>4. <i>Decision:</i></p> <p>a. In the cases transferred from Vermont, New Hampshire, and Florida, the law of each transferor state applied, respectively.</p> <p>b. In the cases transferred from New York, the law of the domiciles of parties applied.</p> <p>c. In the cases transferred from Massachusetts, its limitation on damages applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4)):</i></p> <p>A different result.</p> | <p>1. Following <i>Klaxon</i> and <i>Van Dusen</i>, Vermont, New Hampshire, Florida, New York, and Massachusetts choice of law applied as follows:</p> <p>2. <i>Methodology:</i></p> <p>a. <i>Vermont-transferred cases:</i> Most significant relationship analysis.</p> <p>Although Vermont has never formally abandoned the <i>lex loci</i> rule in torts cases, it would do so in this case in view of both its application of the Restatement Second to contract cases and the trend elsewhere in the law.</p> <p>(1) Vermont and Massachusetts would be the states whose law must be considered under Vermont's presumed new approach.</p> <p>(2) Massachusetts' sole contact with this litigation was the fortuity of the accident there. This contact alone was insufficient to support application of its law to issues involving non-resident parties.</p> <p>(3) Vermont, which was the residence of most plaintiffs and all of their decedents and the place where the relationship between the parties was centered, had the most significant relationship to the occurrence with respect to the issue of a wrongful death limitation.</p> <p>b. <i>New Hampshire-transferred cases:</i> Choice-influencing considerations (the so-called "better rule" test).</p> <p>(1) With one exception, plaintiffs were residents of New Hampshire, as were all of their decedents at the time of their death. All of the plaintiffs' decedents bought their tickets in New Hampshire and expected to return to New Hampshire.</p> <p>(2) Applying the better rule test to these facts, the court concluded that New Hampshire law should apply because:</p> <p>(a) predictability of result is to be accorded little weight in air disaster cases where the "transaction" is unplanned;</p> |

(b) the substantiality of New Hampshire's connection with the issue of damages recoverable for the deaths of its own residents was obvious;

(c) New Hampshire's interest lay in imposing liability calculated to deter future tortious conduct upon her residents;

(d) as between the Massachusetts and New Hampshire statutes, the latter is a better rule of law because it more closely conforms with the policy of compensation which underlies the theory of damages in all tort actions.

c. Massachusetts-transferred cases: Lex loci delicti rule.

All substantive aspects of a cause of action are governed by the law of the place where the injury occurred. Therefore, these actions for wrongful death were governed by the Massachusetts law in effect at the time of the crash, including its limitation on damages.

d. Florida-transferred cases:

Since Florida courts "have never adopted the significant contacts test, nor do they now deem it necessary to adopt or reject it," *id.* at 1116, the court had to determine the public policy of each state with respect to a limitation on damages recoverable for wrongful death. The court concluded that the Florida Supreme Court, as a matter of its public policy, would refuse to grant comity to the Massachusetts damages limitation and would apply the unlimited damages provision of the Florida death statute to these actions. Florida's connection with this case was substantial enough to support application of its own law.

e. New York-transferred cases:

Although neither state nor federal courts in New York would have heard the cases, the court nevertheless applied New York choice-of-law rules. Under these rules, the law applicable to the theory and amount of damages recoverable for wrongful death is that of the domiciles of the decedents and their beneficiaries. The wrongful death statutes of Connecticut, Maryland, and Vermont, which were the domiciles of decedents and their surviving spouses and children, do not limit damages under the circumstances.

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p data-bbox="180 311 239 330">No.10</p> <p data-bbox="200 334 561 407"><i>In re Paris Air Crash of March 3, 1974</i>, 399 F. Supp. 732 (C.D. Ca. 1975)</p> <p data-bbox="180 432 395 455">1. <i>Site of Crash:</i> France</p> <p data-bbox="180 483 276 506">2. <i>Parties:</i></p> <p data-bbox="180 531 583 581"><i>Plaintiffs</i> from 24 foreign countries and 12 states of U.S. sued the following <i>defendants</i>:</p> <p data-bbox="180 606 583 703">a. McDonnell Douglas, a Maryland corporation with its principal place of business in Missouri, which designed, tested, and manufactured the plane in California;</p> <p data-bbox="180 728 575 824">b. General Dynamics, a California corporation which was the subcontractor for the fuselage and doors of a plane that crashed;</p> <p data-bbox="180 850 569 900">c. Turkish Airlines, Inc., a Turkish corporation with its headquarters there; and</p> <p data-bbox="180 925 370 948">d. the United States.</p> <p data-bbox="180 973 260 996">3. <i>Issue:</i></p> <p data-bbox="180 1022 569 1118">What law should govern the issue of damages in products liability claims arising out of a crash in France that were consolidated in a California federal court?</p> <p data-bbox="180 1143 292 1166">4. <i>Decision:</i></p> <p data-bbox="202 1192 408 1215">California law applied.</p> | <p data-bbox="615 311 1013 728">1. The court rejected the plaintiffs' arguments that damages should be awarded according to the laws of the countries where the victims lived at the time of the crash, noting that to do so would deny defendants the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution. The court decided from the bench in the early stages of the proceedings, without written opinion, that the law of California and the United States statutes and regulations applicable to these cases would govern issues of product liability and negligence as well as all other grounds for liability, and that a decision on the choice of law to govern damages would be deferred to a later date.</p> <p data-bbox="615 753 1013 900">2. The parties cited no standard or rules for choice of law on damages under "any of the foreign legal systems" (presumably with particular reference to Turkey, as the state of incorporation and headquarters of the defendant airlines).</p> <p data-bbox="615 925 1013 975">3. Following <i>Erie</i>, <i>Klaxon</i>, and <i>Van Dusen</i>, California choice-of-law rules applied.</p> <p data-bbox="615 1000 1013 1051">4. <i>Methodology:</i> Government interest approach.</p> <p data-bbox="615 1076 1013 1512">a. Governmental interest sufficient to justify application of California law exists when the act or omission which ultimately caused the accident occurred in California. There are three distinct aspects of a cause of action for wrongful death. The first aspect, insofar as plaintiffs are concerned, reflects the state's interest in providing for compensation and in determining the distribution of the proceeds, an interest extending only to local decedents and local beneficiaries; the second, insofar as defendants are concerned, reflects the state's interest in deterring conduct, an interest extending to all persons present within its borders; and the third, insofar as defendants are concerned, reflects the state's interest in protecting resident defendants from excessive financial burdens.</p> <p data-bbox="615 1537 1013 1603">b. All three issues compel application of the California law of damages. California is interested mainly in:</p> <p data-bbox="615 1628 1013 1678">(1) deterring tortious conduct of California defendants present in this case;</p> |

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| <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(b), (c)):</i></p> <p>The same result.</p> | <p>(2) avoiding the imposition of excessive financial burdens on these resident defendants; and</p> <p>(3) providing a uniform rule of damages so that those who come under the ambit of California's strict product liability law and market their product outside of California or in foreign countries may know what risks they are subject to when they make and sell their products. Under its precedent, California courts would not apply foreign standards which limit recovery and would hold that the foreign jurisdiction has no interest in so holding because the latter has no California resident defendant to protect.</p> <p>5. California law does not materially differ from that of other implicated jurisdictions and can be liberalized adequately to take account of a <i>United States</i> interest in regulating civil aviation.</p> |
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FEDERAL DIVERSITY CASES

(Selective coverage: 1975-1993, in reverse chronological order)

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.11</p> <p style="text-align: center;"><i>Western Helicopter, Inc.,</i> v. <i>Rogerson Aircraft Corp.,</i> 728 F. Supp. 1506 (D. Or. 1990)</p> <p>1. <i>Site of Crash:</i> Oregon</p> <p>2. <i>Parties:</i></p> <p>Oregon <i>plaintiffs</i> sued several <i>defendants</i> allegedly responsible for the safety of main rotor blade forks in a helicopter that crashed. Most of the defendants were domiciled in California, except for a Washington and a Nevada corporation.</p> <p>3. <i>Issue:</i></p> <p>What law should govern a wrongful death action in an Oregon federal court arising out of a crash in Oregon when all the defendants were non-residents?</p> <p>4. <i>Decision:</i></p> <p>Oregon law applied.</p> <p>5. <i>Comparison with A.L.J. Rule (§ 6.01(c)(3)):</i></p> <p>The same result.</p> | <p>1. <i>Methodology:</i> Most significant relationship test.</p> <p>2. <i>Rationale:</i></p> <p>a. Under the <i>Klaxon</i> rule, Oregon choice-of-law rules applied. Accordingly, a court must first determine whether a true conflict of law exists. If so, the Restatement Second test applies.</p> <p>b. Oregon's successor-liability law conflicts with those of California and Washington because Oregon does not adopt a product-line exception.</p> <p>c. Relevant contacts in Oregon included the place of injury, residence of the decedent and decedent's representative, and place of ownership and maintenance of the helicopter. Relevant California contacts included the place of helicopter manufacture and places of incorporation of most defendants. Relevant Washington and Nevada contacts were the places of incorporation of the defendants.</p> <p>d. In wrongful death cases the most significant contact is with the place of injury, especially where the decedent has a settled relationship to that state. Because the helicopter was owned and operated by an Oregon resident, the place of injury was not fortuitous, and Oregon law therefore applied.</p> |

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| <p>No.12</p> <p style="text-align:center"><i>Morgan</i> v. <i>United Air Lines, Inc.</i>, 750 F. Supp. 1046 (D. Colo. 1990)</p> <p>1. <i>Site of Accident:</i> Hawaii</p> <p>2. <i>Parties:</i></p> <p><i>Plaintiffs</i>, residents of Colorado, sued <i>defendant</i> United Airlines, Inc., a Delaware corporation with its principal place of business in Illinois. Plaintiffs sought recovery for emotional distress resulting from decompression of airplane when a cargo door separated from the fuselage.</p> <p>3. <i>Issues:</i></p> <p>a. Should federal common law or Colorado law govern the choice of law in an action based on federal diversity jurisdiction?</p> <p>b. Does Hawaii or Colorado law govern an emotional and mental distress claim under the Warsaw Convention?</p> <p>4. <i>Decision:</i></p> <p>Colorado choice-of-law rules and substantive law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4)):</i></p> <p>Probably a different result.</p> | <p>1. <i>Methodology:</i> Most significant relationship test.</p> <p>2. <i>Rationale:</i></p> <p>a. The court held that federal common law did not apply because under the Warsaw Convention it did not preempt state law unless the latter conflicted with the Convention. In a federal diversity action, Colorado's choice-of-law rules applied.</p> <p>b. Using a Restatement Second analysis, although the accident occurred in Hawaii, Colorado bore the most significant relationship to the litigation since the plaintiffs were domiciliaries of Colorado, the parties' business relationship occurred in Colorado, and the defendant had a place of business there.</p> |

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| <p data-bbox="185 312 239 336">No.13</p> <p data-bbox="279 340 489 455" style="text-align: center;"><i>Lewis-DeBoer</i> v. <i>Mooney Aircraft Corp.</i>, 728 F. Supp. 642 (D. Colo. 1990)</p> <p data-bbox="185 483 419 506">1. <i>Site of Crash:</i> Colorado</p> <p data-bbox="185 533 279 556">2. <i>Parties:</i></p> <p data-bbox="185 583 583 699">Colorado <i>plaintiffs</i> sued <i>defendant</i>, a New Jersey corporation with its principal place of business in Texas. It designed, manufactured, promoted, and sold a plane that crashed in Colorado.</p> <p data-bbox="185 726 260 749">3. <i>Issue:</i></p> <p data-bbox="185 776 569 873">What law should apply in a products liability action alleging that a defective cargo door latch caused an aircraft crash in Colorado?</p> <p data-bbox="185 900 292 923">4. <i>Decision:</i></p> <p data-bbox="206 950 373 973">Texas law applied.</p> <p data-bbox="185 1000 462 1047">5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(3)):</i></p> <p data-bbox="206 1074 365 1097">A different result.</p> | <p data-bbox="615 289 1013 336">1. <i>Methodology:</i> Most significant relationship test.</p> <p data-bbox="615 363 731 386">2. <i>Rationale:</i></p> <p data-bbox="615 413 1013 459">a. Under the <i>Klaxon</i> rule, Colorado choice-of-law rules applied.</p> <p data-bbox="615 486 1013 583">b. Using a Restatement Second analysis, the court found that Texas bore the most significant relationship to the litigation and the parties for these reasons:</p> <p data-bbox="615 610 1013 707">(1) Place of injury: That the air crash and resulting injuries occurred in Colorado was fortuitous and therefore warranted little weight.</p> <p data-bbox="615 734 1013 780">(2) Place of injuring conduct: The alleged tort occurred in Texas.</p> <p data-bbox="615 807 1013 950">(3) Domicile, residence, and place of business of the parties: The defendant designed, manufactured, and sold its products in Texas. The importance of defendant's place of business was heightened because this was a product liability case.</p> <p data-bbox="615 977 1013 1143">(4) Policy consideration: The defendant had no significant links to Colorado and could therefore not claim the benefit of Colorado's policy, which limits wrongful death recovery. Application of Texas policy to deter harmful conduct there was appropriate where defendant had close ties to Texas.</p> |

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| <p>No.14 <i>DeGrasse v. Sensenich Co.</i>, CIV.A.No. 88-1490, 1989 WL 23775 (E.D. Pa.)</p> <p>1. <i>Site of Crash</i>: Unidentified.</p> <p>2. <i>Parties</i>:</p> <p>Arkansas plaintiffs sued defendant, a Pennsylvania corporation with its principal place of business in Pennsylvania. It manufactured and supplied an allegedly defective propeller which was installed on a plane that crashed.</p> <p>3. <i>Issue</i>:</p> <p>Should Arkansas or Pennsylvania law apply to the issues of liability and damages in a wrongful death action instituted in a federal court sitting in Pennsylvania arising out of an air crash in an unidentified location?</p> <p>4. <i>Decision</i>:</p> <p>Pennsylvania law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4))</i>:</p> <p>The same result.</p> | <p>1. <i>Methodology</i>: "Pennsylvania's flexible choice-of-law test." <i>Id.</i> at *3.</p> <p>2. <i>Rationale</i>:</p> <p>a. Under the <i>Klaxon</i> rules, Pennsylvania choice-of-law rules would apply.</p> <p>b. Pennsylvania has abandoned the <i>lex loci delicti</i> rule in favor of a "more flexible rule which permits analysis of the policies and interests underlying the particular issue before the court." <i>Id.</i></p> <p>c. The policies of Arkansas and Pennsylvania and the contacts of the two states with the controversy were dispositive.</p> <p>(1) Arkansas can be characterized as a defendant-protecting state in products liability cases. That policy would be irrelevant in a case between Arkansas plaintiffs and non-Arkansas defendants.</p> <p>(2) Pennsylvania can be characterized as a plaintiff-protecting state and its policy is to deter the manufacture of defective products by assigning responsibility for such an activity to Pennsylvania manufacturers. Pennsylvania would thus be a concerned jurisdiction because the defendant, which manufactured the ill-fated plane, was incorporated and had its principal place of business in Pennsylvania. On the other hand, it would be fair to the defendant to apply the law of its home state to the issues of damages and liability.</p> |

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| <p>No.15</p> <p><i>Damin Aviation Corp.</i> v. <i>Sikorsky Aircraft</i>, 705 F. Supp. 170 (S.D.N.Y.), <i>aff'd</i> 880 F.2d 1318 (2d Cir. 1989)</p> <p>1. <i>Site of Crash</i>: New Jersey</p> <p>2. <i>Parties</i>:</p> <p><i>Plaintiff</i>, a New Jersey corporation with its principal place of business in New Jersey, sued <i>defendants</i>, a Delaware corporation with its principal place of business in Connecticut and another Delaware corporation with its principal place of business in Michigan.</p> <p>3. <i>Issues</i>:</p> <p>What law should govern a lessee's tort (and contract) claims instituted in a federal court in New York arising out of a New Jersey air crash?</p> <p>4. <i>Decision</i>:</p> <p>a. New Jersey law governed the lessee's tort claims.</p> <p>b. Connecticut law governed the contract claims.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(3))</i>:</p> <p>The same result.</p> | <p>1. <i>Methodology</i>: New York's "substantial interest" test.</p> <p>2. <i>Rationale</i>:</p> <p>a. Because jurisdiction was based on diversity, New York choice-of-law rules applied following the <i>Klaxon</i> rule.</p> <p>b. New York applies the "substantial interest" test to tort choice-of-law issues. In applying this test, controlling effect is given to the law of the jurisdiction which, because of its relationship to the occurrence or contact with the parties, has the greatest concern with specific issues raised in litigation.</p> <p>c. Since the locus of the tort was in New Jersey, as was the plaintiff's domicile, New Jersey had the most substantial interest in the issue whether the plaintiff should have a remedy in tort. New Jersey law, which precludes recovery in negligence and strict liability for purely economic loss, should apply to tort claims.</p> <p>d. When deciding contract issues, New York applies the "paramount interest" test to determine choice of law. Under this test, the law of the jurisdiction having the greatest interest in the litigation is applicable.</p> <p>e. The court modified the "paramount interest" test because the agreement expressly provided that Connecticut law would govern its construction. Connecticut was the principal place of business of the aircraft manufacturer. Therefore, there were sufficient contacts with the transaction to warrant honoring the parties' choice of Connecticut law.</p> |

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| <p data-bbox="193 316 252 340">No.16</p> <p data-bbox="252 343 534 417"><i>Kramer v. Piper Aircraft Corp.</i>, 868 F.2d 1538 (11th Cir. 1989)</p> <p data-bbox="193 440 419 463">1. <i>Site of Crash:</i> Virginia</p> <p data-bbox="193 486 287 510">2. <i>Parties:</i></p> <p data-bbox="193 533 591 656">New Jersey plaintiffs sued defendant, a Pennsylvania corporation with its principal place of business in Florida. It had designed, manufactured, and tested a plane that crashed in Virginia.</p> <p data-bbox="193 680 268 703">3. <i>Issue:</i></p> <p data-bbox="193 726 591 803">Should Virginia or Florida statute of limitations apply to a personal injury action arising out of a Virginia airplane crash?</p> <p data-bbox="193 826 301 850">4. <i>Decision:</i></p> <p data-bbox="193 873 591 927">Remand for application of significant relationship test.</p> <p data-bbox="193 950 548 973">5. <i>Comparison with A.L.I. Rule (§ 6.04):</i></p> <p data-bbox="209 996 435 1020">Probably the same result.</p> | <p data-bbox="623 316 1018 370">1. <i>Methodology:</i> Most significant relationship test.</p> <p data-bbox="623 394 736 417">2. <i>Rationale:</i></p> <p data-bbox="623 440 1018 687">a. Virginia's two-year statute of limitations applied, rather than Florida's four-year statute, because under Florida's "borrowing" statute, the plaintiffs' cause of action arose in Virginia. Since Florida's significant relationship test was established after the district court's opinion, the case was remanded for new analysis. The appropriate law is that which exists at the time of an appeal rather than trial court judgment.</p> <p data-bbox="623 710 1018 927">b. The district court might deem Florida to have a more significant relationship to this case than Virginia because the plane was designed, manufactured, and tested in Florida and the plaintiffs were now residents of Florida. Florida's four-year statute of limitation would not bar the plaintiffs' claims. (Note: The district court's decision is not available.)</p> |

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| <p>No.17</p> <p style="text-align: center;"><i>Thornton</i> v. <i>Cessna Aircraft Co.</i>, 703 F. Supp. 1228 (D.S.C. 1988), <i>aff'd</i> 886 F.2d 85 (4th Cir. 1989)</p> <p>1. <i>Site of Crash: Tennessee</i></p> <p>2. <i>Parties:</i></p> <p><i>Plaintiff</i>, a resident of South Carolina, sued the <i>defendant</i>, Cessna Aircraft Company, a Kansas corporation with its principal place of business in Kansas.</p> <p>3. <i>Issue:</i></p> <p>What law should a South Carolina federal court apply to a wrongful death claim and related warranty involving a Kansas manufacturer and arising out of a crash in Tennessee?</p> <p>4. <i>Decision:</i></p> <p>The Tennessee ten-year statute of repose governed the tort claim, but South Carolina law governed the breach-of-warranty claim.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4)):</i></p> <p>A different result.</p> | <p>1. <i>Methodology: Lex loci delicti rule.</i></p> <p>2. <i>Rationale:</i></p> <p>a. Following <i>Klaxon</i>, South Carolina's <i>lex loci delicti</i> rule applied. Therefore, the substantive law of Tennessee and the procedural law of South Carolina applied.</p> <p>b. A statute of limitation is generally procedural because it is primarily an instrument of court management and therefore affects the remedy rather than the right. Tennessee's statute of repose for products liability cases, however, is intended to relieve defendants of anxiety over liability for long-past acts. Repose "requires that an action be brought within a fixed period from some date unrelated to the accrual of the action, such as the date of purchase or sale." 703 F. Supp. at 1230. This makes it a substantive statute, engrafted onto the plaintiff's right created by law. Thus, Tennessee product liability statute of repose governed plaintiff's tort claims.</p> <p>c. With respect to the manufacturer's warranty, South Carolina law governed, and the Tennessee statute of repose therefore did not apply because the decedent resided in South Carolina and had purchased and maintained the airplane there. When a plaintiff asserts his warranty claim under the Uniform Commercial Code, the forum state will apply its own law if it has a reasonable relationship to the contract.</p> |

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| <p>No.18</p> <p style="text-align: center;"><i>Myers</i> v. <i>Hayes Int'l Corp.</i>, 701 F. Supp. 618 (M.D. Tenn. 1988)</p> <p>1. <i>Site of Crash</i>: Kentucky</p> <p>2. <i>Parties</i>:</p> <p><i>Plaintiffs</i>, residents of Tennessee, sued <i>defendants</i>, several corporations from jurisdictions that the court did not disclose in the published opinion. The defendants allegedly played some role in the design, redesign, manufacture, maintenance, inspection, and sale of an ill-fated plane.</p> <p>3. <i>Issue</i>:</p> <p>What law should govern a product liability action against the manufacturer instituted in a federal court in Tennessee arising out of an air crash in Kentucky?</p> <p>4. <i>Decision</i>:</p> <p>Kentucky law applied.</p> <p>5. <i>Comparison with A.L.I. Rule § 6.01(b), (c)</i>:</p> <p>A different result.</p> | <p>1. <i>Methodology</i>: <i>Lex loci delicti</i> rule.</p> <p>2. <i>Rationale</i>:</p> <p>a. Tennessee's statute of repose barring products liability action more than ten years after the date of purchase of a defective product conflicts with Kentucky products liability law which included a rebuttable presumption that products beyond a certain age were safe.</p> <p>b. Following the <i>Klaxon</i> rule, Tennessee's <i>lex loci delicti</i> rule required application of the substantive law of Kentucky, where the crash occurred, to product liability action.</p> |

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| <p>No.19</p> <p style="text-align:center"><i>Emmart</i> v. <i>Piper Aircraft Corp.</i>, 659 F. Supp. 843 (S.D. Fla. 1987)</p> <p>1. <i>Site of Crash:</i> Indiana</p> <p>2. <i>Parties:</i></p> <p><i>Plaintiffs</i>, residents of Indiana, sued <i>defendant</i>, a Florida corporation with its principal place of business in Florida.</p> <p>3. <i>Issue:</i></p> <p>What law should govern compensatory relief and punitive damage claims instituted in a federal court sitting in Florida where the site of a crash was in Indiana?</p> <p>4. <i>Decision:</i></p> <p>Indiana law governed the action.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.06(c)(3)):</i></p> <p>The same result.</p> | <p>1. <i>Methodology:</i> Most significant relationship test.</p> <p>2. <i>Rationale:</i></p> <p>a. Under the <i>Klaxon</i> rule, Florida choice-of-law rules applied.</p> <p>b. In Florida, the most significant relationship test would include the following factors:</p> <p>(1) The crash in Indiana was not fortuitous because the decedents were all Indiana residents;</p> <p>(2) The aircraft was hangared in Indiana for use by the Piper distributor at the time of the crash; and</p> <p>(3) The only contact with Florida was the defendant's principal place of business there.</p> <p>c. Indiana had a greater interest than Florida with regard to the compensatory relief afforded the decedents' beneficiaries because, as the state in which the decedents resided before their deaths, it had a substantial interest in the nature and extent of their compensatory relief.</p> <p>d. Florida allows, while Indiana prohibits, the recovery of punitive damages. When there is a true conflict between the corresponding laws of states having equal interests in an issue of punitive damages, and when the state of the place of injury has a strong interest in air safety, its law (Indiana) will apply.</p> |

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| <p data-bbox="198 305 256 330">No.20</p> <p data-bbox="270 332 525 380"><i>Price v. Litton Sys.</i>, 784 F.2d 600 (5th Cir. 1986)</p> <p data-bbox="198 403 431 428">1. <i>Site of Crash</i>: Alabama</p> <p data-bbox="198 452 292 477">2. <i>Parties</i>:</p> <p data-bbox="198 500 579 722"><i>Plaintiffs</i>, residents of Alabama, sued <i>defendants</i> (1) International Telephone and Telegraph Corporation (ITT), a Delaware corporation, with its principal place of business in New York (ITT manufactured night vision goggles which were worn by the crew members of the plane that crashed); and (2) Litton Systems, Inc., (its place of incorporation was not identified).</p> <p data-bbox="198 745 274 770">3. <i>Issue</i>:</p> <p data-bbox="198 794 592 915">Which state statute of limitations should apply to claims for negligence, strict liability and breach of warranty instituted in a federal court sitting in Mississippi and arising out of an air crash in Alabama?</p> <p data-bbox="198 938 306 964">4. <i>Decision</i>:</p> <p data-bbox="198 987 579 1035">a. Alabama substantive law applied to tort claims.</p> <p data-bbox="198 1058 592 1157">b. The statute of limitations for a tort claim under Alabama law is substantive and would therefore be applied by a Mississippi federal court.</p> <p data-bbox="198 1180 575 1302">c. A separate analysis on remand, to be based on the Uniform Commercial Code, was appropriate for determining which statute of limitations to apply to breach-of-warranty claims.</p> <p data-bbox="198 1325 471 1373">5. <i>Comparison with A.L.I. Rule</i> (§ 6.01(c)(3), § 6.04):</p> <p data-bbox="198 1396 579 1476">The same result as to the tort claims, but uncertain as to the statute-of-limitations issue.</p> | <p data-bbox="627 305 1022 353">1. <i>Methodology</i>: Most significant relationship test.</p> <p data-bbox="627 376 740 401">2. <i>Rationale</i>:</p> <p data-bbox="627 425 1022 647">a. Under <i>Klaxon</i>, Mississippi's most significant relationship test would lead to the application of Alabama law. The helicopter flight was to take place entirely within Alabama and the decedents were stationed in Alabama at the time of the accident. The court therefore rejected the plaintiffs' characterization of the place of the accident as merely "fortuitous."</p> <p data-bbox="627 670 1022 865">b. Ordinarily, Mississippi courts would apply Mississippi law to procedural issues. Since Alabama courts construed the two-year statute of limitations contained in the Alabama Wrongful Death Act to be substantive and not procedural, however, Alabama's shorter statute of limitations would apply.</p> <p data-bbox="627 888 1022 1157">c. On breach-of-warranty claims, the Mississippi statute governing warranty claims provides that local law applies. The court concluded that it should follow this explicit provision, but also found that the only connection between the accident and Mississippi was that Mississippi was the forum state. Therefore, the court remanded the case to the trial court to consider whether the application of Mississippi law would be constitutional.</p> |

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| <p>No.21</p> <p style="text-align: center;"><i>Wert</i> v. <i>McDonnell Douglas Corp.</i> 634 F. Supp. 401 (E.D. Mo. 1986)</p> <p>1. <i>Site of Crash:</i> Arizona</p> <p>2. <i>Parties:</i></p> <p><i>Plaintiff</i>, a member of the Indiana Air National Guard, sued <i>defendants</i> (1) McDonnell Douglas, a Maryland corporation with its principal place of business in Missouri; (2) Martin-Baker Aircraft Co., Ltd. (its place of incorporation was not identified); and (3) General Electric (its place of incorporation was not identified).</p> <p>3. <i>Issue:</i></p> <p>What law should govern a wrongful death action instituted in a federal court sitting in Missouri where the site of crash was in Arizona?</p> <p>4. <i>Decision:</i></p> <p>Arizona law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4)):</i></p> <p>A different result.</p> | <p>1. <i>Methodology:</i> Most significant relationship test.</p> <p>2. <i>Rationale:</i></p> <p>a. Following <i>Klaxon</i> and <i>Van Dusen</i>, Arizona's choice-of-law rules would apply.</p> <p>b. Although "the general rule is that little weight is given to the place of injury in choice of law determinations," <i>id.</i> at 401, the place of this accident in Arizona was not fortuitous, since the training flight took off and was planned for execution and landing there.</p> <p>c. The primary purpose of Indiana's statute of repose is to limit the liability of Indiana manufacturers and to conserve the judicial resources of the Indiana courts. Since the case was not pending in Indiana and none of the defendants were domiciled in Indiana, the court found that "Indiana's interest should be discounted." <i>Id.</i> at 404.</p> <p>d. The court concluded that since no other state had a more significant relationship to the case than Arizona, its law applied.</p> |

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| <p data-bbox="198 324 260 351">No.22</p> <p data-bbox="327 351 473 475" style="text-align: center;"><i>Foster</i> v. <i>United States</i>, 768 F.2d 1278 (11th Cir. 1985)</p> <p data-bbox="198 494 444 521">1. <i>Site of Crash</i>: Wisconsin</p> <p data-bbox="198 540 297 568">2. <i>Parties</i>:</p> <p data-bbox="198 591 596 765"><i>Plaintiff</i>, the personal representative of the decedents' estates, was a Florida resident who sued the <i>defendant</i> United States government for alleged negligent provision of air traffic control services to the crew of an airplane in the Chicago Air Route Traffic Control Center.</p> <p data-bbox="198 788 276 815">3. <i>Issue</i>:</p> <p data-bbox="198 838 575 935">What law, Illinois or Florida, should apply to a wrongful death action instituted in a federal court sitting in Florida where the site of the crash was in Wisconsin?</p> <p data-bbox="198 958 306 985">4. <i>Decision</i>:</p> <p data-bbox="198 1008 534 1062">The law of Illinois, the place of the alleged misconduct, applied.</p> <p data-bbox="198 1085 475 1132">5. <i>Comparison with A.L.I. Rule</i> (§ 6.01(c)(4)):</p> <p data-bbox="217 1155 365 1182">The same result.</p> | <p data-bbox="628 324 1026 378">1. <i>Methodology</i>: Most significant relationship test.</p> <p data-bbox="628 401 744 428">2. <i>Rationale</i>:</p> <p data-bbox="628 452 1026 548">a. Since Illinois was the place where the act or omission occurred, the court found that Illinois law governed, including its choice-of-law principles.</p> <p data-bbox="628 571 1026 645">b. Under Illinois' most significant relationship test, the following elements were significant:</p> <p data-bbox="628 668 1026 722">(1) The alleged misconduct occurred in Illinois;</p> <p data-bbox="628 745 1026 842">(2) The only lineal descendant of the decedent was a resident of Illinois at the time of the accident even though she moved to Florida subsequently; and</p> <p data-bbox="628 865 1026 919">(3) The relationship between the parties was centered in Illinois.</p> <p data-bbox="628 942 1026 1112">c. Although the estate was to be probated in Florida and any interest would take place there, the court held that the interest of Illinois in deterring tortious conduct in Illinois and in compensating its citizens was greater than Florida's interest in limiting recovery. Thus, Illinois law applied.</p> |

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| <p>No.23</p> <p style="text-align:center"><i>Kinnett</i> v. <i>Sky's West Parachute Center, Inc.,</i> 596 F. Supp. 1039 (D. Colo. 1984)</p> <p>1. <i>Site of Crash:</i> Colorado</p> <p>2. <i>Parties:</i></p> <p><i>Plaintiff</i>, a Wyoming resident, sued <i>defendants</i>, Sky's West Parachute Center, a Colorado corporation, and Air U.S., a Colorado corporation doing business in several states including Colorado and Wyoming.</p> <p>3. <i>Issues:</i></p> <p>What law should govern punitive damages in a wrongful death action instituted in a federal court sitting in Colorado where the site of the crash was in Colorado and all the defendants were Colorado corporations, but all other significant contacts were in Wyoming?</p> <p>4. <i>Decision:</i></p> <p>Wyoming law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.06(b), (c)):</i></p> <p>A different result.</p> | <p>1. <i>Methodology:</i> Most significant relationship test.</p> <p>2. <i>Rationale:</i></p> <p>a. The court held that Colorado's choice-of-law rules would apply because subject-matter jurisdiction over the action was based on diversity of citizenship.</p> <p>b. Colorado followed the Restatement Second approach whereby the law of the state where the injury occurred would apply in a wrongful death action unless some other state has a more significant relationship to the occurrence and the parties.</p> <p>c. The court found that the most significant contacts in this case were that:</p> <p>(1) the plaintiffs resided in Wyoming;</p> <p>(2) the decedent lived in Wyoming;</p> <p>(3) the decedent purchased his ticket in Wyoming from a corporation doing business there;</p> <p>(4) the decedent's purpose was to travel round-trip, commencing and terminating in Wyoming; and</p> <p>(5) the accident occurred in Colorado airspace near the Wyoming border, while the airplane was returning to Wyoming. Further, the court stated that Colorado's contact with this action was merely fortuitous because the Wyoming-bound airplane collided and crashed south of the Colorado-Wyoming border.</p> |

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| <p>No.24</p> <p style="text-align:center"><i>Salomey</i> v. <i>Jeppesen & Co.</i>, 707 F.2d 671 (2d Cir. 1983)</p> <p>1. <i>Site of Crash</i>: West Virginia</p> <p>2. <i>Parties</i>:</p> <p><i>Plaintiff</i>, residents of Connecticut, sued <i>defendant</i>, a Colorado corporation which produced and supplied navigational charts that caused a crash.</p> <p>3. <i>Issue</i>:</p> <p>Should West Virginia, Connecticut, or Colorado law apply to product liability and damage claims in a Connecticut federal court arising out of crash in West Virginia?</p> <p>4. <i>Decision</i>:</p> <p>Colorado law applied.</p> <p>5. <i>Comparison with A.L.I. Rule</i> (§ 6.01(c)(4)):</p> <p>The same result.</p> | <p>1. <i>Methodology</i>: Most significant relationship test.</p> <p>2. <i>Rationale</i>:</p> <p>a. Following <i>Klaxon</i>, Connecticut choice-of-law rules would apply.</p> <p>b. Although Connecticut courts apply the rule of <i>lex loci delicti</i> in automobile accident cases, the Supreme Court of Connecticut had never had occasion to apply the rule of <i>lex loci</i> to a wrongful death action arising from an aviation accident.</p> <p>c. The federal court predicted that a Connecticut court would choose to follow the most significant relationship approach. It reasoned that, by contrast to automotive travel, accidents in interstate air travel more frequently pose situations in which the place of actual injury is wholly fortuitous and unimportant.</p> <p>d. Colorado, rather than West Virginia or Connecticut law, should apply because the place of incorporation and principal place of business of defendant were in Colorado. The pilot of the plane that crashed had purchased navigational charts from the defendant in Colorado.</p> |

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| <p>No.25</p> <p style="text-align:center"><i>Bennett</i> v. <i>Enstrom Helicopter Corp.</i>, 679 F.2d 630 (6th Cir. 1982), cert. denied, 459 U.S. 1210, 103 S. Ct. 1202 (1983)</p> <p>1. <i>Site of Crash</i>: New Zealand</p> <p>2. <i>Parties</i>:</p> <p><i>Plaintiff</i>, the administratrix of the estate of a New Zealand citizen killed in a helicopter crash in New Zealand, sued <i>defendant</i>, Enstrom Helicopter Corporation, a Michigan corporation.</p> <p>3. <i>Issue</i>:</p> <p>What law, Michigan or New Zealand, should apply to a wrongful death action before a federal court in Michigan arising out of a crash in New Zealand?</p> <p>4. <i>Decision</i>:</p> <p>New Zealand law applied to bar the action.</p> <p>5. <i>Comparison with A.L.I. Rule</i> (§ 6.01(c)(3)):</p> <p>The same result.</p> | <p>1. <i>Methodology</i>: <i>Lex loci delicti</i> rule.</p> <p>2. <i>Rationale</i>:</p> <p>a. Under Michigan's place-of-wrong rule, New Zealand law would apply.</p> <p>b. New Zealand no longer permits common-law personal injury actions. The plaintiff had already received compensation under New Zealand's comprehensive no-fault compensation act and was therefore barred from further recovery.</p> <p>c. Even if the court were to apply a more flexible "dominant contacts" rule, there were no such dominant contacts in Michigan.</p> |

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| <p data-bbox="206 311 266 334">No.26</p> <p data-bbox="287 336 525 455" style="text-align: center;"> <i>Cox</i> v. <i>McDonnell Douglas Corp.</i>, 665 F.2d 566 (5th Cir. 1982) </p> <p data-bbox="206 508 411 531">1. <i>Site of Crash:</i> Idaho</p> <p data-bbox="206 556 301 579">2. <i>Parties:</i></p> <p data-bbox="206 604 602 774">Texas <i>plaintiffs</i>, the widow and minor children of a decedent killed in a crash of his aircraft in Idaho, sued <i>defendant</i>, McDonnell Douglas, a Maryland corporation with its principal place of business in Missouri, where a plane that crashed was manufactured.</p> <p data-bbox="206 799 283 823">3. <i>Issue:</i></p> <p data-bbox="206 848 592 940">Should Texas, Idaho, or Missouri law govern a wrongful death action before a federal court in Texas arising out of a crash in Idaho?</p> <p data-bbox="206 966 314 989">4. <i>Decision:</i></p> <p data-bbox="225 1014 391 1037">Idaho law applied.</p> <p data-bbox="206 1062 481 1116">5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4)):</i></p> <p data-bbox="225 1141 384 1164">A different result.</p> | <p data-bbox="637 311 959 334">1. <i>Methodology:</i> <i>Lex loci delicti</i> rule.</p> <p data-bbox="637 359 749 382">2. <i>Rationale:</i></p> <p data-bbox="637 407 1032 461">a. Following <i>Klaxon</i>, Texas choice-of-law rules would apply.</p> <p data-bbox="637 486 1032 606">b. The <i>lex loci delicti</i> rule of Texas would refer to the law of the state in which the injury occurred (Idaho), rather than the law of the state in which the negligent act occurred (Missouri).</p> |

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| <p data-bbox="180 297 236 320">No.27</p> <p data-bbox="272 320 483 517" style="text-align: center;"> <i>Reyno</i> v. <i>Piper Aircraft Co.</i>, 630 F.2d 149 (3d Cir. 1980), <i>rev'd on other grounds</i>, 454 U.S. 235, 102 S. Ct. 252 (1981) </p> <p data-bbox="180 542 411 566">1. <i>Site of Crash</i>: Scotland</p> <p data-bbox="180 591 276 614">2. <i>Parties</i>:</p> <p data-bbox="180 639 581 784"> <i>Plaintiffs</i>, a California resident and personal representative of various Scottish decedents, sued <i>defendants</i> (1) Piper Aircraft Corporation (Piper), a Pennsylvania plane manufacturer; and (2) Hartzell Propeller, Inc. (Hartzell), an Ohio propeller manufacturer. </p> <p data-bbox="180 809 259 832">3. <i>Issue</i>:</p> <p data-bbox="180 857 581 954"> What law should govern a wrongful death action arising out of a crash in Scotland in a Pennsylvania federal court after its transfer from a California federal court? </p> <p data-bbox="180 979 292 1002">4. <i>Decision</i>:</p> <p data-bbox="180 1027 552 1076"> Pennsylvania law applied to both Piper and Hartzell. </p> <p data-bbox="180 1101 454 1149"> 5. <i>Comparison with A.L.I. Rule</i> (§ 6.01(c)(4)): </p> <p data-bbox="211 1174 360 1197"> The same result. </p> | <p data-bbox="610 272 1009 320">1. <i>Methodology</i>: comparative impairment analysis and government interest analysis.</p> <p data-bbox="610 320 1009 513"> Note: The U.S. Supreme Court eventually held that choice of law was immaterial to its decision to dismiss the action on the ground of <i>forum non conveniens</i>. The Court nevertheless noted in <i>dicta</i> that "Scotland had a 'very strong interest' in this litigation" because the plane crashed there. 454 U.S. at 237. </p> <p data-bbox="610 542 723 566">2. <i>Rationale</i>:</p> <p data-bbox="610 591 1009 639"> a. Under <i>Klaxon</i> and <i>Van Dusen</i>, California choice-of-law rules would apply to Piper. </p> <p data-bbox="610 664 1009 857"> (1) Scotland's interest in the encouragement of industry by protecting manufacturers and making it relatively more difficult for consumers to recover, was perceived to be in conflict with Pennsylvania's adherence to strict liability, which acted to shift some of the burdens of injury from consumers to producers. </p> <p data-bbox="610 882 1009 1095"> (2) Any asserted conflict between U.S. and Scottish law was, however, false. The application of Pennsylvania strict liability standards to its resident manufacturer would serve its interest in the regulation of manufacturing. Scotland's interest in encouraging industry within its borders would not be impaired by applying a strict standard of care to a <i>foreign</i> corporation. </p> <p data-bbox="610 1120 1009 1246"> b. Personal jurisdiction over Hartzell, however, was lacking. Thus, California's application of choice-of-law rules would not be proper and Pennsylvania's conflicts rules applied to Hartzell. </p> <p data-bbox="610 1271 1009 1348"> (1) Pennsylvania's approach to choice of law is quite similar, at least for purpose of this litigation, to that of California. </p> <p data-bbox="610 1373 1009 1499"> (2) In determining which state had the greater interest in the application of its law, the weight of a particular state's contacts must be measured on a qualitative rather than quantitative scale. </p> <p data-bbox="610 1524 1009 1591"> (3) Under the applicable choice-of-law rules, Pennsylvania and Ohio had the greatest policy interest in this dispute. </p> |

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| <p>No.28</p> <p style="text-align:center"><i>Baird</i> v. <i>Bell Helicopter Textron,</i> 491 F. Supp. 1129 (N.D. Tex. 1980)</p> <p>1. <i>Site of Crash:</i> Surinam.</p> <p>2. <i>Parties:</i></p> <p><i>Plaintiffs</i> from Canada sued <i>defendants</i>, Bell Helicopter Textron, a Delaware corporation with its principal place of business in Texas, and third-party defendants, all of which were Canadian corporations.</p> <p>3. <i>Issue:</i></p> <p>What law should apply to a products liability action instituted by Canadian citizens in a Texas federal court arising out of an air crash in Surinam?</p> <p>4. <i>Decision:</i></p> <p>a. Texas law applied to liability aspects of plaintiff's products liability claims against manufacturer and manufacturer's claims of contribution from helicopter owners.</p> <p>b. Texas law also applied to plaintiff's pecuniary losses, but Canadian law applied to nonpecuniary damage claim.</p> <p>5. <i>Comparison with A.L.J. Rule (§ 6.01(c), 6.05):</i></p> <p>a. The same result as to Texas defendant.</p> <p>b. A different result as to Canadian third-party defendants.</p> | <p>1. <i>Methodology:</i> Most significant relationship test.</p> <p>2. <i>Rationale:</i></p> <p>a. Because federal jurisdiction was based on diversity of citizenship, under <i>Klaxon</i> rules, Texas choice-of-law rules applied.</p> <p>b. No party contended that Surinam law should be applied. The location there of the crash was fortuitous. The only other contact with Surinam was that a subsidiary of one of the Canadian defendants was a Surinam corporation.</p> <p>c. Both Canada and Texas had important contacts with this lawsuit. Texas, however, had more significant interests with regard to the product liability issue because of its policy in protecting its citizens from, and compensating them for, injuries resulting from defective products and its desire to regulate the conduct of Texas manufacturers. Also, the court could more easily administer local (Texas) law.</p> <p>d. As to defendant's third-party claims against the three Canadian defendants, the interested jurisdictions, again, were Canada and Texas, both of which were significant under Section 6 of the Restatement Second. Texas and Canadian law is quite similar concerning indemnity and contribution issues. Texas law applied for these reasons:</p> <p>(1) Protection of justified expectations could not be served merely by applying Canadian law because none of the defendants had relied on the application of any particular jurisdiction's contribution statute.</p> <p>(2) The basic policy behind the law of contribution would be better served by applying Texas law because it more precisely responded to the issues of this case.</p> |

(3) The pro-rata system of damage attribution under Texas law would lead to more uniform results than the Canadian statute, which has the potential for producing inconsistent verdicts.

(4) Ease of administration.

e. As to the issue of the calculation of non-pecuniary damage, Canada has a ceiling of \$100,000 while Texas has no ceiling. Canadian law was applied to this issue because (1) the plaintiff was a Canadian citizen and resided there and none of the interests implicitly furthered by Texas damage principles applied; (2) Canada had explicitly disapproved of the possibility of unlimited recovery for a non-quantifiable injury by exempting its domiciliary defendants from excessive liability; and (3) comparative analysis of the interests and policies strongly favored the application of Canadian law.

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| <p data-bbox="198 320 259 343">No.29</p> <p data-bbox="292 369 508 562" style="text-align: center;"> <i>Kohr</i> v. <i>Allegheny Airlines, Inc.</i>, 504 F.2d 400 (7th Cir. 1974), <i>cert. denied</i>, 421 U.S. 975 95 S. Ct. 1974 (1975) </p> <p data-bbox="198 585 417 608">1. <i>Site of Crash:</i> Indiana</p> <p data-bbox="198 631 297 654">2. <i>Parties:</i></p> <p data-bbox="198 681 596 778"> <i>Plaintiffs</i> from seven states sued Allegheny Airlines, Inc. (its place of incorporation was not disclosed in the written opinion) and the United States. </p> <p data-bbox="198 801 276 824">3. <i>Issue:</i></p> <p data-bbox="198 852 596 977"> What law should apply to a wrongful death action arising out of an Indiana air crash after the two defendants had settled out of court and subsequently sought contribution and indemnity from two codefendants? </p> <p data-bbox="198 1000 306 1023">4. <i>Decision:</i></p> <p data-bbox="198 1051 596 1147"> Federal common law applied. The Seventh Circuit affirmed in part and reversed in part the trial court's judgment for plaintiffs and remanded for a new trial. </p> <p data-bbox="198 1170 596 1193">5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4)):</i></p> <p data-bbox="219 1221 377 1244">A different result.</p> | <p data-bbox="628 320 969 343">1. <i>Methodology:</i> Federal common law.</p> <p data-bbox="628 369 740 392">2. <i>Rationale:</i></p> <p data-bbox="628 419 1026 537"> For avoiding analysis of complicated conflict-of-laws problems and the risk of inconsistent results, a federal law of contribution and indemnity governing air collisions is preferable. </p> <p data-bbox="628 564 1026 709"> (1) "The basis for imposing a federal law of contribution and indemnity is what we perceive to be the predominant, indeed almost exclusive, interest of the federal government in regulating the affairs of the nation's airways." 504 F.2d at 403. </p> <p data-bbox="628 736 1026 904"> (2) "Moreover, the imposition of a federal rule of contribution and indemnity serves a second purpose of eliminating inconsistency of result in similar collision occurrences as well as within the same occurrence due to the application of differing state laws on contribution and indemnity." <i>Id.</i> </p> <p data-bbox="628 931 1026 1027"> (3) "Given the prevailing federal interest in uniform air law regulation, we deem it desirable that a federal rule of contribution and indemnity be applied." <i>Id.</i> </p> |

FEDERAL STATUTORY CASES

(Selective coverage: 1980-1993, in reverse chronological order)

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.30 <i>Schoenberg v. Exportador</i>, 930 F.2d 777 (9th Cir. 1991)</p> <p>1. <i>Site of Crash</i>: California</p> <p>2. <i>Parties</i>:</p> <p><i>Plaintiffs</i>, two of them residents of California and the other of Japan, sued <i>defendant</i>, Exportadora de Sal, S.A. de C.V., a Mexican corporation of which the Mexican government owned 51% and which had an office in San Diego.</p> <p>3. <i>Issues</i>:</p> <p>a. Should California or federal common law govern the choice of law in an action based on jurisdiction under the Foreign Sovereign Immunity Act?</p> <p>b. Does California or Mexican law govern a wrongful death action arising out of an airplane crash in California, when the defendant was not a resident of California?</p> <p>4. <i>Decision</i>:</p> <p>a. Federal common law choice-of-law rule applied.</p> <p>b. California rather than Mexican law governed the action.</p> <p>5. <i>Comparison with A.L.I. Rule</i> (§ 6.01(c)(4)):</p> <p>The same result.</p> | <p>1. <i>Methodology</i>: Federal common law.</p> <p>2. <i>Rationale</i>:</p> <p>a. Although the general rule is "that a federal court sitting in diversity applies the conflict of law rules of the state in which it sits," jurisdiction here was based on the Foreign Sovereign Immunity Act (FSIA). Therefore, federal common law applied.</p> <p>b. Federal common law follows the approach of the Restatement Second. [The court cited <i>Harris v. Polskie Linie Lotnicze</i>, 820 F.2d 1000, at 1003-04 (9th Cir. 1987).]</p> <p>c. The Restatement Second presumes that the law of the place where the injury occurred applies unless, with respect to the particular issue, some other state has a more significant relationship to the occurrence and the parties under the principles stated in Section 6 of the Restatement. <i>Id.</i></p> <p>d. Mexico's policy is to limit the liability of its resident defendants in wrongful death actions. California's rule allowing full recovery serves two policies: to provide full compensation for the survivors of its residents and to deter wrongful conduct within its borders.</p> <p>e. Mexico does not have a more significant relationship to this suit than California, the place of injury. Applying California law in this case furthers the choice-of-law values of certainty, predictability, uniformity of result, and ease in determining and administering the law.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.31</p> <p style="text-align: center;"><i>Barkanic</i> v. <i>General Administration of Civil Aviation of the People's Republic of China,</i> 923 F.2d 957 (2d Cir. 1991)</p> <p>1. <i>Site of Crash:</i> China</p> <p>2. <i>Parties:</i></p> <p><i>Plaintiffs</i>, the estates of two American citizens, sued <i>defendant</i>, General Administration of Civil Aviation of the People's Republic of China ("CAAC").</p> <p>3. <i>Issues:</i></p> <p>a. Should New York or federal common law govern the choice of law in an action based on jurisdiction under the Foreign Sovereign Immunity Act ?</p> <p>b. Should New York or Chinese substantive law govern a wrongful death action arising out of an air crash in China ?</p> <p>4. <i>Decision:</i></p> <p>a. New York choice-of-law rules applied.</p> <p>b. Applying New York choice-of-law rules, the law of China applied to a wrongful death action.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4)):</i></p> <p>The same result.</p> | <p>1. <i>Methodology:</i> The <i>Neumeier</i> rules (<i>lex loci delicti</i> unless the parties are co-domiciliaries).</p> <p>2. <i>Rationale:</i></p> <p>a. Because the Foreign Sovereign Immunities Act (FSIA) does not contain an express choice-of-law provision, the court inferred from the statutory language a choice-of-law analysis that best effectuates Congress' overall intent. The court concluded that the FSIA requires courts to apply the choice-of-law rules of the forum state.</p> <p>b. Applying the <i>Neumeier</i> rules of New York would be consistent with the treaty law of the Warsaw Convention. The New York rules would choose the law of China, limiting liability to \$20,000 per decedent, to govern a wrongful death action.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.32</p> <p style="text-align:center"><i>Burgio</i> v. <i>McDonnell Douglas, Inc.</i>, 747 F. Supp. 865 (E.D.N.Y. 1990)</p> <p>1. <i>Site of Crash</i>: Louisiana</p> <p>2. <i>Parties</i>:</p> <p><i>Plaintiff</i>, wife and executrix of the estate of a New York resident, sued <i>defendants</i> McDonnell Douglas, a Maryland corporation with a principal place of business in Missouri; and Douglas Aircraft, a division of McDonnell Douglas, located in California.</p> <p>3. <i>Issues</i>:</p> <p>a. Should federal, Louisiana or New York law govern the choice of law in an action based on jurisdiction under the Federal Reservation Act?</p> <p>b. Should Louisiana or New York law govern claims involving a loss of consortium and wrongful death?</p> <p>4. <i>Decision</i>:</p> <p>a. With respect to an air crash on a federal military base, under the Federal Reservations Act, Louisiana choice-of-law rules applied.</p> <p>b. Under Louisiana choice-of-law rules, New York law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4))</i>:</p> <p>A different result.</p> | <p>1. <i>Methodology</i>: Most significant relationship test.</p> <p>2. <i>Rationale</i>:</p> <p>a. The parties agreed that a wrongful death action was controlled by the Federal Reservations Act because the accident occurred on a federal military base. In wrongful death actions this Act requires application of the law of the state (Louisiana) in which a federal enclave is located or to which a federal enclave is adjacent.</p> <p>b. The court then considered whether to apply the whole law of Louisiana, including that state's choice-of-law rules, or only the internal law of that state. Recognizing that the purpose of the Federal Reservations Act was to put tort victims injured on federal land on an equal footing with those injured outside federal boundaries, the whole law applied.</p> <p>c. Turning to Louisiana choice-of-law rules to determine whether Louisiana or New York substantive law applied to plaintiff's claims, the court found that "true conflicts" existed with respect to a number of issues.</p> <p>d. Since the plaintiff's domicile was in New York, Louisiana had little connection to the case beyond the situs of the accident there. Thus, the law of New York, the plaintiff's domicile and forum, governed damage claims.</p> |

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| <p>No.33</p> <p><i>Hensley v. United States</i>, 728 F. Supp. 716 (S.D. Fla. 1989)</p> <p>1. <i>Site of Crash</i>: New Jersey</p> <p>2. <i>Parties</i>:</p> <p><i>Plaintiffs</i>, the personal representatives of the estates of a deceased pilot and passengers from Florida, sued <i>defendant</i>, United States, under the Federal Tort Claims Act, alleging negligence of air traffic controllers and the national weather service meteorologist.</p> <p>3. <i>Issue</i>:</p> <p>What law should govern a wrongful death action arising out of the alleged negligent acts of employees at a New York weather service center, under the Federal Tort Claims Act?</p> <p>4. <i>Decision</i>:</p> <p>Florida law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4))</i>:</p> <p>A different result.</p> | <p>1. <i>Methodology</i>: New York's interest analysis.</p> <p>2. <i>Rationale</i>:</p> <p>a. Under the Federal Tort Claims Act, the "whole law," including the choice-of-law rules, of the state where the alleged act or omission occurred governs the rights and liabilities of the parties.</p> <p>b. Although the site of crash was in New Jersey, this accident arose out of the alleged negligent acts of national weather service employees at a New York center. The "whole law" of New York, including its choice-of-law rules, thus applied to this action.</p> <p>c. Florida had the greatest interest in this litigation.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.34</p> <p style="text-align: center;"><i>Harris</i> v. <i>Polskie Linie Lotnicze,</i> 820 F.2d 1000 (9th Cir. 1987)</p> <p>1. <i>Site of Crash:</i> Poland</p> <p>2. <i>Parties:</i></p> <p><i>Plaintiffs</i>, parents of deceased passenger and residents of California, sued <i>defendant</i>, Polskie Linie Lotnicze (Polskie), a Polish corporation, wholly owned by the government of Poland.</p> <p>3. <i>Issue:</i></p> <p>Should California or Polish law govern damages in a wrongful death action brought by California residents against the Polish national airline for death of their son in Poland?</p> <p>4. <i>Decision:</i></p> <p>Polish law, which was similar to California law on the issue of damages, applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(1)):</i></p> <p>The same result.</p> | <p>1. <i>Methodology:</i> Federal common law.</p> <p>2. <i>Rationale:</i></p> <p>a. In a case under the Foreign Sovereign Immunities Act (FSIA), the <i>Klaxon</i> rule does not apply.</p> <p>b. Instead, the case came within both the Warsaw Convention and the FSIA. In the absence of specific statutory guidance as to which it should apply, the court turned to federal common law to supply a choice-of-law rule.</p> <p>c. The Restatement Second is a source of general choice-of-law principles and therefore an appropriate starting point for applying federal common law in this area.</p> <p>d. Poland's relationship to this action was at least as significant as California's with regard to the factors listed in Section 6 of the Restatement Second. California and Poland had offsetting interests in the parties to the action.</p> <p>e. Since the state where the injury occurred furthers the choice-of-law values of certainty, predictability, and uniformity of result, and since the state where the injury occurred will usually be readily ascertainable, Polish law applied to this case.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.35</p> <p style="text-align: center;"><i>Poindexter</i> v. <i>United States</i>, 752 F.2d 1317 (9th Cir. 1984)</p> <p>1. <i>Site of Crash</i>: Nevada</p> <p>2. <i>Parties</i>:</p> <p><i>Plaintiffs</i>, residents of Arizona, sued <i>defendant United States</i> for alleged breach of duty in Nevada under the Federal Tort Claims Act.</p> <p>3. <i>Issue</i>:</p> <p>Should Arizona or Nevada law govern a wrongful death action in an Arizona federal court arising out of a crash in Nevada?</p> <p>4. <i>Decision</i>:</p> <p>Nevada law applied.</p> <p>5. <i>Comparison with A.L.I. Rule</i> (§ 6.01(c)(1)):</p> <p>The same result.</p> | <p>1. <i>Methodology</i>: <i>Lex loci delicti</i> rule.</p> <p>2. <i>Rationale</i>:</p> <p>The district court, finding that Arizona law applied because the heirs had received death benefits in Arizona, had held that the United States was immune from suit as a statutory employer under Arizona's workmen's compensation law. The Ninth Circuit Court of Appeals reversed because:</p> <p>a. The plane crash occurred in Nevada. The whole law of Nevada, including its conflict-of-laws principles, would govern claims under the Federal Tort Claims Act.</p> <p>b. Nevada's <i>lex loci delicti</i> rule was controlling and therefore the Nevada wrongful death statute applied.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p data-bbox="176 316 233 340">No.36</p> <p data-bbox="270 340 475 459" style="text-align: center;"> <i>O'Rourke</i> v. <i>Eastern Air Lines, Inc.</i>, 730 F.2d 842 (2d Cir. 1984) </p> <p data-bbox="176 484 424 508">1. <i>Site of Crash:</i> New York</p> <p data-bbox="176 533 272 556">2. <i>Parties:</i></p> <p data-bbox="176 581 572 678"> <i>Plaintiff</i>, the administrator of the estate of a Greek seaman who died in a June 1975 crash in New York, sued <i>defendant</i>, Eastern Airlines, Inc., a New York corporation. </p> <p data-bbox="176 703 256 726">3. <i>Issue:</i></p> <p data-bbox="176 755 565 852"> Should New York or Greek law apply to a wrongful death action under the Federal Tort Claims Act before a federal court in New York? </p> <p data-bbox="176 877 287 900">4. <i>Decision:</i></p> <p data-bbox="198 925 408 948">New York law applied.</p> <p data-bbox="176 973 458 1022"> 5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(1)):</i> </p> <p data-bbox="198 1047 348 1070">The same result.</p> | <p data-bbox="610 316 932 340">1. <i>Methodology:</i> <i>Lex loci delicti</i> rule.</p> <p data-bbox="610 365 720 388">2. <i>Rationale:</i></p> <p data-bbox="610 413 1006 510"> a. "Under the [Federal Tort Claims Act], a district court must apply the whole law of the state in which the acts of negligence occurred." 730 F.2d at 846. </p> <p data-bbox="610 535 1006 658"> b. The court noted that although New York was one of the first states to reject the <i>lex loci</i> approach in favor of a more flexible methodology, recent state court decisions had signaled a return to it. </p> |

WARSAW CONVENTION-BASED FEDERAL COMMON LAW CASES

(Selective coverage: 1989-1993)

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.37</p> <p style="text-align: center;"><i>Park</i> v. <i>Korean Air Lines Co., Ltd.</i>, No. 82-CIV-7900, 1992 WL 331092 (S.D.N.Y.)</p> <p>1. <i>Site of Crash</i>: Former Soviet Union</p> <p>2. <i>Parties</i>:</p> <p><i>Plaintiff</i>, the personal representative and the administratrix of the estate of a New York citizen, sued <i>defendant</i>, Korean Air Lines, a Korean corporation with its principal place of business in South Korea.</p> <p>3. <i>Issues</i>:</p> <p>a. What law should govern a determination of damages in a wrongful death action arising under Warsaw Convention?</p> <p>b. Does the Warsaw Convention preclude the application of Korean law to an action brought concurrently with one arising under the Convention?</p> <p>4. <i>Decision</i>:</p> <p>a. Federal common law of torts governed.</p> <p>b. Plaintiff's motion for a ruling that Korean law governs the availability of survivor's recovery was denied.</p> <p>5. <i>Comparison with A.L.I. Rule</i> (§ 6.01(c)(1)):</p> <p>Application of Project to cases governed by treaties is uncertain. See text accompanying note 14.</p> | <p>1. <i>Methodology</i>: Federal common law.</p> <p>2. <i>Rationale</i>:</p> <p>a. The Warsaw Convention creates a cause of action for wrongful death. In such an action, the federal common law of torts governs the right to wrongful death recovery.</p> <p>b. If, therefore, the Warsaw Convention preempts state law, including choice-of-law rules, a foreign cause of action cannot be brought concurrently with one under the Convention.</p> <p>c. Allowing a foreign cause of action would not only result in inconsistent application of law to the same accident, but would cause enormous confusion for an airline in predicting what law might apply. The Convention seeks to avoid such inconsistency and uncertainty.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.38 <i>In re Air Disaster at Lockerbie, Scotland on December 21, 1988</i>, 928 F.2d 1267 (2d Cir. 1991), <i>cert. denied sub. nom.</i> <i>Rein v. Pan Am World Airways</i>, 112 S. Ct. 331 (1991)</p> <p>1. <i>Site of Crash</i>: Scotland</p> <p>2. <i>Parties</i>:</p> <p><i>Plaintiffs</i>, the surviving relatives and personal representatives of those who died in the terrorist bombing of Pan Am Flight 103, sued <i>defendants</i>, Pan American World Airways, Inc., a New York corporation with its principal place of business there; and two Pan Am subsidiary corporations and Pan Am's parent corporation.</p> <p>3. <i>Issue</i>:</p> <p>What law should govern punitive damages in actions brought under the Warsaw Convention?</p> <p>4. <i>Decision</i>:</p> <p>Federal common law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(1))</i>:</p> <p>Application of Project to cases governed by treaties is uncertain. See text accompanying note 14.</p> | <p>A. <i>Methodology</i>: Federal common law.</p> <p>B. <i>Rationale</i>:</p> <p>1. The Warsaw Convention preempts a state cause of action because differences among state laws—some of which view punitive damages as penal in nature, some as compensatory, and some both—would be confusing and might undermine the goal of uniformity in applying the Convention.</p> <p>2. "[B]ecause air carrier liability is a uniquely international problem requiring uniform interpretation, the Convention must be interpreted according to federal common law." 928 F.2d at 1270.</p> <p>a. "[F]ederal common law of torts does not contemplate a compensatory element in a punitive damages claim." <i>Id.</i></p> <p>b. The Convention does not permit punishment of a defendant or punitive damages because:</p> <p>(1) Article 17 of the Convention refers to "actual harm caused by an accident rather than generalized legal damages." <i>id.</i> at 1281;</p> <p>(2) It was highly unlikely that Article 24 (2) of the Convention "was intended by its drafters to preserve a common law right to punitive damages," <i>id.</i> at 1284; and</p> <p>(3) Article 25's "unlimited liability for willful misconduct" was meant only to refer to unlimited liability for compensatory damages.</p> <p>c. Allowing recovery of punitive damages would undermine the convention's policies including:</p> <p>(1) The goal of establishing a uniform carrier liability regime because some legal systems provide for punitive damages and others do not.</p> <p>(2) The goal of making airlines insurable, because if an airline could not find an insurer willing to sell insurance for punitive damages, it might choose to terminate international flights rather than risk bankruptcy with every flight.</p> <p>(3) The goal of compensating plaintiffs quickly with a minimum of litigation, especially on issues of willful misconduct.</p> |

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| <p>No.39 <i>In re Korean Air Lines Disaster of September 1, 1983</i>, 932 F.2d 1475 (D.C. Cir. 1991), <i>cert. denied sub. nom. Dooly v. Korean Air Lines, Ltd.</i>, 112 S. Ct. 616 (1991)</p> <p>1. <i>Site of Crash</i>: Former Soviet Union</p> <p>2. <i>Parties</i>: <i>Plaintiffs</i> from eight states and three foreign countries sued <i>defendant</i>, Korean Air Lines Co., Ltd., a Korean corporation with its principal place of business in Korea.</p> <p>3. <i>Issues</i>:</p> <p>a. What law should govern punitive damages in a case brought under the Warsaw Convention?</p> <p>b. Does the Warsaw Convention bar recovery of punitive damages?</p> <p>4. <i>Decision</i>:</p> <p>a. Federal common law applied to cases brought under the Warsaw Convention.</p> <p>b. The Warsaw Convention barred recovery of punitive damages, and choice-of-law analysis was not relevant to punitive damages in cases brought under the Warsaw Convention.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.06(c))</i>: A different result.</p> | <p>1. <i>Methodology</i>: Federal common law.</p> <p>2. <i>Rationale</i>:</p> <p>a. The language "liable for damage sustained" in the Convention strongly implies that the carrier's responsibility is purely compensatory and extends only to the reparation of loss from the death or injury of passengers.</p> <p>b. The term "damages sustained" refers to actual harm, not legal damages.</p> <p>c. The requirement that the damage sustained result from an accident aboard the aircraft reinforced the conclusion that recovery was available only for actual loss since an accident cannot cause punitive damages.</p> <p>(Chief Judge Mikva, the only dissenting party in this case, criticized the <i>In re Lockerbie</i> decision, 928 F.2d 1267, 1273 (2d Cir. 1991), finding it astonishing in light of earlier precedents, and pointed out that he did not agree with the conclusion that the Warsaw Convention bars recovery of punitive damages. Instead, he would have remanded the case with instructions to engage in a normal choice-of-law analysis under <i>Klaxon</i> and <i>Van Dusen</i>, 932 F.2d at 1490-1499).</p> |

STATE CASES

(Selective coverage: 1960-1993, in alphabetical order of the states)

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.40</p> <p style="text-align: center;">Alabama</p> <p style="text-align: center;"><i>Fitts v. Minnesota Mining & Mfg. Co.</i>, 581 So. 2d 819 (Ala. 1991)</p> <p>1. <i>Site of Crash:</i> Florida</p> <p>2. <i>Parties:</i></p> <p>Alabama plaintiffs sued the following defendants:</p> <p>a. Minnesota Mining & Manufacturing Company, a Minnesota Corporation with its principal place of business there. It was the designer and manufacturer of a flight instrument called a "Stormscope."</p> <p>b. Gulfstream Aerospace Corporation, the designer and manufacturer of the plane that crashed (neither the place of incorporation nor the principal place of business was disclosed by the court).</p> <p>3. <i>Issue:</i></p> <p>Should Alabama or Florida law apply to a wrongful death case by an Alabama court where the site of crash was in Florida?</p> <p>4. <i>Decision:</i></p> <p>Florida law applied.</p> <p>5. <i>Comparison with A.L.J. Rule (§ 6.01):</i></p> <p>Uncertain.</p> | <p>1. <i>Methodology: Lex loci delicti.</i></p> <p>2. <i>Rationale:</i></p> <p>Modern approaches are neither less confusing nor more certain than Alabama's traditional approach.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.41</p> <p style="text-align: center;">Alaska</p> <p style="text-align: center;"><i>M.O. Ehredt</i> v. <i>DeHavilland Aircraft Co. of Canada,</i> 705 P.2d 446 (Alaska 1985)</p> <p>1. <i>Site of Crash:</i> Alaska</p> <p>2. <i>Parties:</i></p> <p><i>Plaintiff</i>, the widow of an air taxi pilot killed in a crash whose personal representative and family were in Florida, brought a wrongful death action against <i>defendants</i>, (1) the pilot's employer, M.O. Ehredt d/b/a Air Taxi, an Alaska corporation with its principal place of business there, and (2) airplane manufacturer, DeHavilland Aircraft Company of Canada, Ltd., a Canadian corporation with its principal place of business there.</p> <p>3. <i>Issue:</i></p> <p>Does Alaska or Florida law govern the issue of damages related to a crash in Alaska?</p> <p>4. <i>Decision:</i></p> <p>Alaska's damage law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4)):</i></p> <p>The same result.</p> | <p>1. <i>Methodology:</i> Most significant relationship test.</p> <p>2. <i>Rationale:</i></p> <p>Alaska had the most significant relationship to the occurrence and the parties because:</p> <p>a. The crash occurred in Alaska, on a flight entirely within the state;</p> <p>b. The deceased pilot's employer was an Alaska domiciliary doing business in Alaska; and</p> <p>c. The employment relationship between the pilot and his employer was centered there. The Florida residence of the pilot's personal representative and family did not compel the application of Florida law.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.42</p> <p style="text-align: center;">Arizona</p> <p style="text-align: center;"><i>Bryant</i> v. <i>Silverman</i>, 703 P.2d 1190 (Ariz. 1985)</p> <p>1. <i>Site of Crash</i>: Colorado</p> <p>2. <i>Parties</i>:</p> <p><i>Plaintiffs</i>, domiciled in Arizona, New Mexico, and Texas, sued <i>defendants</i> (1) Sun West Airlines, an Arizona corporation with its principal place of business in Phoenix and servicing cities in New Mexico, Colorado and Arizona; (2) Piper Aircraft Corporation, a Pennsylvania corporation; and (3) Edo Corporation, a New York corporation.</p> <p>3. <i>Issue</i>:</p> <p>Should Arizona or Colorado wrongful death law govern compensatory and punitive damage issues?</p> <p>4. <i>Decision</i>:</p> <p>Arizona law applied.</p> <p>5. <i>Comparison with A.L.I. Rule</i> (§§ 6.01(c)(4), 6.06(b)(c)):</p> <p>The same result on compensatory damages, but either an uncertain or perhaps different result on punitive damages.</p> | <p>1. <i>Methodology</i>: Most significant relationship test.</p> <p>2. <i>Rationale</i>:</p> <p>a. The states having relevant contacts were Arizona and Colorado:</p> <p>(1) The place where the injuries occurred was Colorado.</p> <p>(2) One of the plaintiffs was domiciled in Arizona at the time of the crash, as was her deceased husband who died in the crash.</p> <p>(3) Sun West was incorporated and had its principal place of business in Arizona.</p> <p>(4) Since the decedent purchased his ticket in Colorado, the contractual relationship between the decedent and Sun West was centered in Colorado (of relatively low importance to this case).</p> <p>b. Under the facts of this case, domicile carried great weight in choosing the appropriate law. Less significant were the place of injury and the contractual relationship between the decedent and Sun West. Although Colorado was the state of injury, it did not have a strong interest in compensation because the injured plaintiffs were non-residents and the place of injury was fortuitous.</p> <p>c. Under Section 6 of the Restatement Second, the harmonious relationship or commercial interaction between Arizona and Colorado would be fostered by applying Arizona law. Predictability and uniformity of result are largely irrelevant since airplane accidents are not planned. Protection of justified expectations also is of little importance since airplane crash accidents are unanticipated acts.</p> |

d. "The basic policies underlying tort law are to provide compensation for the injured victims, and to deter intentional and deliberately tortious conduct by imposing punitive damages." *Id.* at 1195. Both Arizona and Colorado provide compensation for injured victims. Only Arizona allows punitive damages to deter similar future conduct. Thus, the basic policies of tort law were better fostered by applying Arizona law.

e. Arizona had a strong policy interest in fully compensating an injured plaintiff to make him whole because he was a domiciliary. Colorado limits compensatory damages for wrongful death to a plaintiff's net pecuniary loss in order to protect a Colorado defendant from large verdicts. Since Sun West was domiciled in Arizona, Colorado's policy of limited liability was not relevant. Thus, Arizona's interest in compensating an Arizona plaintiff was stronger than Colorado's interest in limiting damages.

f. Texas and New Mexico, like Arizona, allow recovery for intangible personal losses. Thus, the policies underlying wrongful death statutes relating to compensatory damages in Arizona, Texas and New Mexico do not differ.

g. After considering the relevant factors and the interests of both states, the court concluded that Arizona had the greatest interest in having its law applied to this case.

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.43</p> <p style="text-align: center;">California</p> <p style="text-align: center;"><i>Beech Aircraft Corp. v. Superior Court</i>, 132 Cal. Rptr. 541 (1976)</p> <p>1. <i>Site of Crash</i>: New Mexico</p> <p>2. <i>Parties</i>:</p> <p><i>Plaintiffs</i> were California administratrixes of New Mexico decedents.</p> <p>The <i>defendants</i> were (1) Beech Aircraft Corporation, a Delaware corporation with its principal place of business in Kansas, the producer and manufacturer of the plane that crashed; and (2) Adams-Rite, a California corporation with its principal place of business there, the designer and manufacturer of a door latching mechanism used in the ill-fated plane. The alleged cause of the crash was the defective design of the plane and door latching mechanism.</p> <p>3. <i>Issue</i>:</p> <p>Should California or New Mexico law apply to determine the rights and liabilities of the parties in a wrongful death case consolidated in a California court that arose out of a crash in New Mexico?</p> <p>4. <i>Decision</i>:</p> <p>California law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4))</i>:</p> <p>The same result.</p> | <p>1. <i>Methodology</i>: Governmental interest analysis.</p> <p>2. <i>Rationale</i>:</p> <p>a. Generally, a California court will apply its own rule of decision unless a party litigant timely invokes the law of a foreign state. In such event the party must demonstrate that the latter rule of decision would further the interest of the foreign state and therefore would be appropriate law for the forum to apply. Therefore, California law would apply unless the petitioner could show that New Mexico law would further the interest of the foreign state and would be the appropriate law for the forum to apply.</p> <p>b. There was no choice-of-law issue as to the existence of a wrongful death claim against the aircraft manufacturer because after the trial, the laws of the two states in question (California and New Mexico) became identical.</p> <p>c. As to the product liability and indemnity issues, California had rejected the "unreasonably dangerous" requirement of New Mexico law in a strict liability case.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.44</p> <p style="text-align: center;">Colorado</p> <p style="text-align: center;"><i>Murphy</i> v. <i>Colorado Aviation, Inc.</i>, 588 P.2d 877 (Colo. App. 1978)</p> <p>1. <i>Site of Crash:</i> Virginia</p> <p>2. <i>Parties:</i></p> <p><i>Plaintiffs</i> were California residents. The <i>defendant</i>, Colorado Aviation, was incorporated in Colorado.</p> <p>3. <i>Issue:</i></p> <p>Should Colorado or Virginia law apply to a wrongful death action in a Colorado court where the site of the crash was in Virginia?</p> <p>4. <i>Decision:</i></p> <p>Colorado law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4)):</i></p> <p>The same result.</p> | <p>1. <i>Methodology:</i> Most significant relationship analysis.</p> <p>2. <i>Rationale:</i></p> <p>a. Applying the principles in § 175 of the Restatement Second to define the interest and policies of the various states, the court, having found that plaintiff and his family were California residents, ruled that Virginia's only interest was as the situs of the crash. Contrasted with this were the facts that the aircraft was registered and hangared in Colorado, and had been first entrusted to a pilot in Colorado who did not have an instrument rating.</p> <p>b. The court concluded that Colorado had an interest outweighing that of the other states, to see that domestic corporations, owning sophisticated aircraft hangared there, do not negligently entrust them to pilots without the appropriate flight training.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.45</p> <p style="text-align: center;">Florida</p> <p style="text-align: center;"><i>Proprietors Ins. Co.</i> v. <i>Valsecchi,</i> 435 So. 2d 290 (Fla. App. 1983)</p> <p>1. <i>Site of Crash:</i> North Carolina</p> <p>2. <i>Parties:</i></p> <p><i>Plaintiffs</i>, the personal representatives of three decedents, were residents of New York and Massachusetts. <i>Defendants</i> were a Florida aviation company and its air personnel. The alleged cause of the crash was attributed to the defendants' failure to maintain the aircraft's electrical system while the aircraft was hangared in Florida.</p> <p>3. <i>Issue:</i></p> <p>Should North Carolina or Florida law apply to a wrongful death action before a Florida court arising out of a crash in North Carolina?</p> <p>4. <i>Decision:</i></p> <p>Florida law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4)):</i></p> <p>The same result.</p> | <p>1. <i>Methodology:</i> Most significant relationship test.</p> <p>2. <i>Rationale:</i></p> <p>a. As the crash site, North Carolina bore only a fortuitous, insignificant relationship with the occurrence and the parties.</p> <p>b. The significant contacts were: the initiation of the trip in Florida; the Florida residence of the defendants; and the Florida relationship between the parties.</p> <p>c. In sum, North Carolina had nothing to do with the parties or the cause of the accident. Its ties to the litigation were too insignificant to warrant the application of its law.</p> |

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| <p data-bbox="178 314 233 336">No.46</p> <p data-bbox="330 336 419 363" style="text-align: center;">Georgia</p> <p data-bbox="256 388 486 510" style="text-align: center;"><i>Risdon Enterprises, Inc.</i> v. <i>Colemill Enterprises, Inc.</i>, 324 S.E.2d 738 (Ga. App. 1985)</p> <p data-bbox="178 535 460 556">1. <i>Site of Crash:</i> South Carolina</p> <p data-bbox="178 585 270 606">2. <i>Parties:</i></p> <p data-bbox="178 633 579 848"><i>Plaintiff</i>, Risdon Enterprises, a Delaware corporation with its principal place of business in South Carolina, sued South Carolina individual <i>defendants</i> and corporate <i>defendants</i>, Colemill Enterprises, which were residents of South Carolina, Tennessee and North Carolina. The primary negligent conducts of defendants occurred in Georgia and South Carolina.</p> <p data-bbox="178 877 252 898">3. <i>Issue:</i></p> <p data-bbox="178 925 579 1043">What law should be applied to a tort action in which it is alleged that the defendants' negligent conduct in Georgia caused plaintiff's employee to be killed in a South Carolina airplane crash?</p> <p data-bbox="178 1072 283 1093">4. <i>Decision:</i></p> <p data-bbox="178 1120 579 1166">The substantive law of South Carolina, where the crash occurred, controlled.</p> <p data-bbox="178 1195 579 1217">5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(3)):</i></p> <p data-bbox="198 1244 344 1265">The same result.</p> | <p data-bbox="610 314 942 336">1. <i>Methodology:</i> <i>Lex loci delicti</i> rule.</p> <p data-bbox="610 365 715 386">2. <i>Rationale:</i></p> <p data-bbox="610 413 1009 608">The place of wrong is the place where the injury sustained was suffered rather than the place where the act initiating the events leading to the injury was committed. In this case, the last event necessary to make defendants liable for the alleged tort, namely, the airplane crash, occurred in South Carolina. Therefore, South Carolina law applied.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p data-bbox="172 320 231 343">No.47</p> <p data-bbox="341 343 411 367" style="text-align: center;">Idaho</p> <p data-bbox="260 394 491 440" style="text-align: center;"><i>Johnson v. Pischke,</i> 700 P.2d 19 (Idaho 1985)</p> <p data-bbox="172 467 379 490">1. <i>Site of Crash:</i> Idaho</p> <p data-bbox="172 517 271 540">2. <i>Parties:</i></p> <p data-bbox="172 568 580 780"><i>Plaintiffs</i>, all from Saskatchewan, brought claims for worker's compensation, personal injuries, and wrongful death against the following <i>defendants</i>: (1) The Saskatchewan survivors of the owner and pilot of the plane that crashed; and (2) Cessna Aircraft, a Kansas corporation with its principal place of business in Kansas, which manufactured and designed the plane.</p> <p data-bbox="172 807 249 830">3. <i>Issue:</i></p> <p data-bbox="172 857 580 973">What law should govern worker's compensation claims of personal injury and wrongful death claims brought by Saskatchewan residents before an Idaho court arising out of an Idaho crash?</p> <p data-bbox="172 1000 282 1023">4. <i>Decision:</i></p> <p data-bbox="172 1051 580 1128">a. Worker's compensation claims of personal injury against survivors of the owner of a plane were barred under Saskatchewan law;</p> <p data-bbox="172 1155 580 1232">b. Saskatchewan's one-year statute of limitations was applicable to wrongful death claims against the owner's survivors; and</p> <p data-bbox="172 1259 580 1336">c. Idaho's two-year wrongful death statute of limitations was applicable to claims against a Kansas corporation which had manufactured and designed a plane.</p> <p data-bbox="172 1363 580 1418">5. <i>Comparison with A.L.I. Rule (§§ 6.01(c)(2), 6.04, 6.05):</i></p> <p data-bbox="172 1445 580 1522">The same result on worker's compensation claims, but a different result on personal injury and wrongful death claims.</p> | <p data-bbox="607 320 1010 374">1. <i>Methodology:</i> Most significant relationship test.</p> <p data-bbox="607 397 723 421">2. <i>Rationale:</i></p> <p data-bbox="607 448 1010 498">a. Worker's compensation claims against the survivors of the owner and pilot of the plane:</p> <p data-bbox="607 525 1010 622">(1) Saskatchewan worker's compensation law differs from Idaho's. Saskatchewan had a significant interest in controlling the rights of injured employees to compensation.</p> <p data-bbox="607 649 1010 784">(2) "Saskatchewan's policy of insulating all covered employers from civil liability if they pay into and participate in its worker compensation program would be subverted by the application of Idaho law to this controversy." <i>Id.</i> at 23.</p> <p data-bbox="607 811 1010 977">(3) The plaintiff had elected to proceed under and accept the benefits of Saskatchewan law. Since the Worker's Compensation Board had exclusive jurisdiction and its decision was final and not open to review in any court, claims against the survivors of the owner and pilot were barred.</p> <p data-bbox="607 1004 1010 1078">b. Personal injury and wrongful death claims against the survivors of the owner and pilot of the plane:</p> <p data-bbox="607 1105 1010 1201">(1) The Saskatchewan Fatal Accidents Act contains a one-year statute of limitations while Idaho's wrongful death statute has a two-year statute.</p> <p data-bbox="607 1228 1010 1344">(2) This action was commenced more than one year but less than two years after accident. The most significant contacts were with Saskatchewan because of common domiciles and location of beneficiaries there.</p> <p data-bbox="607 1371 1010 1421">(3) Thus, Saskatchewan's one-year statute of limitations barred wrongful death claims.</p> <p data-bbox="607 1449 1010 1472">c. The wrongful death claim against Cessna:</p> <p data-bbox="607 1499 1010 1615">(1) "As the state where the injury occurred, Idaho's law, according to the Restatement [Second], should apply unless there is another state with a more significant relationship." <i>Id.</i> at 24.</p> <p data-bbox="607 1642 1010 1758">(2) The place of injury was Idaho. Following the crash, Idaho expended funds for locating and disposing of the remains from the downed aircraft. The funds came from fees paid by Idaho pilots and taxpayers.</p> |

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| | <p>(3) Although Cessna designed and made the plane in Kansas, its corporate accountability did not cease at the Kansas border. Cessna would continue to have responsibility for any faulty design and construction after the plane left its control in any place where the plane would be used. In the absence of a common domicile, Idaho, the place of injury, bore the most significant relationship to the issues.</p> <p>(4) Under the most significant contacts analysis, Idaho's two-year statute of limitations applied to the wrongful death cause of action against Cessna.</p> |
| <p style="text-align: center;">Choice-of-Law Facts, Issues and Decision</p> <hr/> <p>No.48</p> <p style="text-align: center;">Louisiana</p> <p style="text-align: center;"><i>Williams</i> v. <i>Petroleum Helicopters, Inc.</i> 234 So. 2d 522 (La. App. 3d Cir.), writ denied, 234 So. 2d 522 (1970)</p> <p>1. <i>Site of Crash:</i> Mississippi</p> <p>2. <i>Parties:</i></p> <p style="padding-left: 2em;"><i>Plaintiff and defendant</i> were both Louisiana residents.</p> <p>3. <i>Issue:</i></p> <p style="padding-left: 2em;">Is Louisiana's legal interest in a wrongful death action substantive and therefore governed by the <i>lex loci delicti</i> rule or procedural and therefore governed by the law of the forum?</p> <p>4. <i>Decision:</i></p> <p style="padding-left: 2em;">a. Legal interest in a tort action was a matter of substantive rather than procedural law.</p> <p style="padding-left: 2em;">b. Interest was computed under Mississippi rather than Louisiana law.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(2)):</i></p> <p style="padding-left: 2em;">A different result.</p> | <p style="text-align: center;">Analysis</p> <hr/> <p>1. <i>Methodology:</i> <i>Lex loci delicti</i> rule.</p> <p>2. <i>Rationale:</i></p> <p style="padding-left: 2em;">a. Whether interest is recoverable upon a judgment recovered in a wrongful death action is governed by the law of the place of the fatal injury.</p> <p style="padding-left: 2em;">b. "The general rule, which is followed by Louisiana courts, is that the question of a legal interest in a tort action is a matter of substantive rather than procedural law." 234 So. 2d at 524.</p> |

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| <p data-bbox="172 291 229 314">No.49</p> <p data-bbox="297 314 458 340" style="text-align: center;">Massachusetts</p> <p data-bbox="346 369 404 392" style="text-align: center;"><i>Cohen</i></p> <p data-bbox="366 397 384 417" style="text-align: center;">v.</p> <p data-bbox="260 417 494 440" style="text-align: center;"><i>McDonnell Douglas Corp.</i></p> <p data-bbox="303 440 444 463" style="text-align: center;">450 N.E.2d 581</p> <p data-bbox="319 463 434 486" style="text-align: center;">(Mass. 1983)</p> <p data-bbox="176 513 391 537">1. <i>Site of Crash:</i> Illinois</p> <p data-bbox="176 564 270 587">2. <i>Parties:</i></p> <p data-bbox="176 614 579 757">Plaintiff, the executor of the estate of an airplane crash victim's mother who was a Massachusetts resident, sued defendant, McDonnell Douglas, a Maryland corporation with its principal place of business in Missouri.</p> <p data-bbox="176 784 252 807">3. <i>Issue:</i></p> <p data-bbox="176 834 579 927">What law should Massachusetts apply with respect to compensatory and punitive damage claims against a Maryland corporation for breach of warranty?</p> <p data-bbox="176 954 283 977">4. <i>Decision:</i></p> <p data-bbox="198 1004 548 1027">Massachusetts law governed the action.</p> <p data-bbox="176 1054 561 1078">5. <i>Comparison with A.L.I. Rule (§ 6.06(c)):</i></p> <p data-bbox="198 1105 360 1128">A different result.</p> | <p data-bbox="610 291 1009 341">1. <i>Methodology:</i> Most significant relationship test.</p> <p data-bbox="610 369 723 392">2. <i>Rationale:</i></p> <p data-bbox="610 419 1009 469">a. Conflict-of-laws issues arising in actions under the UCC are resolved by it.</p> <p data-bbox="610 496 1009 685">b. In the absence of an agreement between the parties as to which state's law shall govern, the provisions of the Massachusetts UCC applied to transactions bearing an appropriate relation to that state. Thus, "resolution of the choice-of-law issue depends on the interpretation of the words 'appropriate relation.'" <i>Id.</i> at 583.</p> <p data-bbox="610 712 1009 902">c. In determining which states bear an appropriate relation to the plaintiff's claim, it is appropriate to view the choice-of-law issue in light of choice-of-law principles applicable in tort actions, since a claim for breach of warranty of merchantability is in essence a tort claim under the precedents of Massachusetts.</p> <p data-bbox="610 929 1009 1118">d. In this case, Massachusetts bore an appropriate relation to the plaintiff's claim since the injury to the victim's mother occurred in Massachusetts where she learned of the death of her son and where she died after suffering several angina attacks. The court concluded that no other state appeared to have a more significant interest in the case.</p> |

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| <p data-bbox="192 311 249 330">No.50</p> <p data-bbox="340 334 444 359">Michigan</p> <p data-bbox="350 386 427 407"><i>Branyan</i></p> <p data-bbox="381 413 393 430">v.</p> <p data-bbox="270 436 514 457"><i>Alpena Flying Service, Inc.</i>,</p> <p data-bbox="233 459 552 481">236 N.W.2d 739 (Mich. App. 1976)</p> <p data-bbox="192 508 417 529">1. <i>Site of Crash:</i> Virginia</p> <p data-bbox="192 556 286 577">2. <i>Parties:</i></p> <p data-bbox="192 604 585 697"><i>Plaintiffs</i>, Michigan residents, sued <i>defendant</i>, Alpena Flying Service, a Michigan corporation with its principal office and facilities in Michigan.</p> <p data-bbox="192 724 270 745">3. <i>Issue:</i></p> <p data-bbox="192 772 577 846">Whether limitation of plaintiff's damages should be determined in accordance with Michigan or Virginia law?</p> <p data-bbox="192 873 299 894">4. <i>Decision:</i></p> <p data-bbox="212 921 411 942">Michigan law applied.</p> <p data-bbox="192 969 467 1020">5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(2)):</i></p> <p data-bbox="212 1047 357 1068">The same result.</p> | <p data-bbox="622 311 767 332">1. <i>Methodology:</i></p> <p data-bbox="622 359 1020 479">"[T]he strict <i>lex loci delicti</i> rule should be abandoned in favor of a more flexible rule that permits analysis of the policies and interests underlying the particular issue before the court." <i>Id.</i> at 742-43.</p> <p data-bbox="622 506 736 527">2. <i>Rationale:</i></p> <p data-bbox="622 554 1020 722">Where the only significant interest of Virginia in a wrongful death action was as the place where an airplane accident occurred, the measure of damages to be recovered was to be determined in accordance with the law of Michigan, which was the domicile of decedents, their families, and the defendant.</p> |

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| <p>No.51</p> <p style="text-align:center">Mississippi</p> <p style="text-align:center"><i>McDaniel</i> v. <i>Ritter</i>, 556 So. 2d 303 (Miss. 1989)</p> <p>1. <i>Site of Crash</i>: Missouri</p> <p>2. <i>Parties</i>:</p> <p>Mississippi <i>plaintiffs</i>, personal representatives of the estates of a passenger killed in a crash sued <i>defendants</i>: (1) the estate of the pilot, who was from Tennessee; (2) Southern Institute of Aviation (SIA) Inc. d/b/a Memphis Jet Center, a Tennessee corporation with its principal place of business in Memphis; (3) Memphis Aviation, d/b/a Memphis Jet Center, a Tennessee corporation affiliated with SIA and responsible for the maintenance; and (4) the owner of the ill-fated aircraft who was a Tennessee resident.</p> <p>3. <i>Issue</i>:</p> <p>Should Mississippi or Tennessee law apply to a wrongful death action by a Mississippi court when the site of crash was in Missouri?</p> <p>4. <i>Decision</i>:</p> <p>Tennessee law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4))</i>:</p> <p>The same result.</p> | <p>1. <i>Methodology</i>: Most significant relationship test.</p> <p>2. <i>Rationale</i>:</p> <p>a. The states having relevant contacts were Mississippi, Tennessee, and Missouri:</p> <p>(1) the tort occurred in Missouri;</p> <p>(2) plaintiffs' decedent was a resident of Mississippi;</p> <p>(3) plaintiffs were all Mississippi residents; and</p> <p>(4) the aircraft that crashed was owned by a Tennessee defendant. It was registered in Tennessee and hangared at the Memphis, Tennessee, airport; the lessors of the aircraft, the Memphis Jet Center Companies were Tennessee corporations centered in Memphis; the pilot was a Tennessee resident; the pilot/passenger relationship was established in Memphis; and the interstate trip began and was to have ended in Memphis.</p> <p>b. Both in number and significance, the relevant contacts considered as a whole suggested that, vis-a-vis Mississippi or Missouri, Tennessee was the state with the most significant relationship to the occurrence and the parties.</p> |

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| <p data-bbox="196 324 252 347">No.52</p> <p data-bbox="327 370 465 394" style="text-align: center;">New Mexico</p> <p data-bbox="319 421 510 564" style="text-align: center;"><i>First Nat'l Bank</i> v. <i>Benson</i>, 553 P.2d 1288 (N.M. App.), cert. denied, 558 P.2d 1288 (1976)</p> <p data-bbox="196 591 462 614">1. <i>Site of Crash</i>: New Mexico</p> <p data-bbox="196 641 287 664">2. <i>Parties</i>:</p> <p data-bbox="196 691 529 738">Both <i>plaintiffs</i> and <i>defendants</i> were residents of Missouri.</p> <p data-bbox="196 765 268 788">3. <i>Issue</i>:</p> <p data-bbox="196 815 583 904">What law should apply to a wrongful death action instituted by Missouri plaintiffs in a New Mexico court arising out of an air crash in New Mexico?</p> <p data-bbox="196 931 301 954">4. <i>Decision</i>:</p> <p data-bbox="215 981 443 1004">New Mexico law applied.</p> <p data-bbox="196 1054 470 1101">5. <i>Comparison with A.L.I. Rule</i> (§ 6.01(c)(2)):</p> <p data-bbox="215 1128 373 1151">A different result.</p> | <p data-bbox="626 324 911 347">1. <i>Methodology</i>: <i>Lex loci delicti</i>.</p> <p data-bbox="626 374 739 397">2. <i>Rationale</i>:</p> <p data-bbox="626 425 1024 540">a. The precedent of New Mexico indicates that the rights and liabilities of parties in automobile accidents, as a general rule, are determined by the laws of the state where the accident occurred.</p> <p data-bbox="626 568 1024 710">b. A modification of the <i>lex loci delicti</i> rule was necessary, but there was a wide divergence of views on how to accomplish a just result. In the present case, the New Mexico court reasoned that it had no authority to change the <i>lex loci delicti</i> rule.</p> |

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| <p data-bbox="172 305 229 330">No.53</p> <p data-bbox="317 353 431 378" style="text-align: center;">New York</p> <p data-bbox="212 407 528 523" style="text-align: center;"><i>Long</i> v. <i>Pan American World Airways, Inc.</i>, 213 N.E.2d 796 (N.Y. 1965)</p> <p data-bbox="172 552 411 577">1. <i>Site of Crash:</i> Maryland</p> <p data-bbox="172 600 270 625">2. <i>Parties:</i></p> <p data-bbox="172 649 561 745">Pennsylvania plaintiffs sued defendant, Pan American World Airways, a New York corporation with its principal place of business there.</p> <p data-bbox="172 768 249 794">3. <i>Issue:</i></p> <p data-bbox="172 817 572 913">Does Pennsylvania or Maryland law apply to a wrongful death action instituted in a New York court by Pennsylvania plaintiffs arising out of Maryland air crash?</p> <p data-bbox="172 942 283 967">4. <i>Decision:</i></p> <p data-bbox="196 991 424 1016">Pennsylvania law applied.</p> <p data-bbox="172 1039 451 1087">5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4)):</i></p> <p data-bbox="196 1110 344 1136">The same result.</p> | <p data-bbox="608 305 901 330">1. <i>Methodology:</i> Interest analysis.</p> <p data-bbox="608 353 720 378">2. <i>Rationale:</i></p> <p data-bbox="608 401 1002 450">a. New York, the forum, was a disinterested third state.</p> <p data-bbox="608 473 1002 745">b. Both Pennsylvania and Maryland permit recoveries for wrongful death, but the Maryland law creates a cause of action only for the surviving spouse, parent, or child of the deceased, or a person who was wholly dependent on him. "On the other hand, in Pennsylvania, when a decedent is not survived by designated relatives or dependents, his estate is entitled to a limited recovery for wrongful death and the plaintiffs would be proper parties to bring these suits." <i>Id.</i> at 797.</p> <p data-bbox="608 768 1002 913">c. Since a Pennsylvania citizen had met an untimely death allegedly as the result of a New York defendant's wrongdoing in the course of business, Pennsylvania had an interest in the correct application of its wrongful death statute.</p> <p data-bbox="608 942 1002 1087">d. The decedents purchased their round-trip tickets in Pennsylvania and the flight began and was to terminate there. Having solicited interstate passengers in Pennsylvania, the defendant had no cause to complain about the application of Pennsylvania law.</p> <p data-bbox="608 1110 1002 1184">e. In contrast, Maryland's sole relationship with the occurrence was the fortuity of the crash there.</p> |

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| <p>No.54</p> <p style="text-align:center">New York</p> <p style="text-align:center"><i>Wood</i> v. <i>American Airlines, Inc.,</i> 426 N.Y.S.2d 193 (N.Y. Sup. Ct. 1979)</p> <p>1. <i>Site of Crash:</i> Virgin Islands</p> <p>2. <i>Parties:</i> <i>Plaintiffs,</i> Alabama residents and parents of the Tennessee decedent, sued <i>defendant,</i> American Airlines, a Delaware corporation with its headquarters in New York.</p> <p>3. <i>Issue:</i> Should Virgin Islands, New York, or Tennessee law apply to a wrongful death claim instituted in New York by a Tennessee estate and arising out of a crash in the Virgin Islands?</p> <p>4. <i>Decision:</i> Tennessee law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(4)):</i> A different result.</p> | <p>1. <i>Methodology:</i> New York's "principle of grouping of contacts."</p> <p>2. <i>Rationale:</i> Under the circumstances presented, Tennessee had the greatest concern and most intimate relationship with the matter, because: the Virgin Islands crash site was purely adventitious; the decedents' change of planes in New York was likewise fortuitous; and if New York or Virgin Islands law were to apply, "the airline would have found the disposition of this case less expensive because of the fact that decedent and his wife were both killed in the crash, a holding, in effect, that the lives of two were worth less than the life of one." <i>Id.</i> at 195. .</p> |
| <p>No.55</p> <p style="text-align:center">Ohio</p> <p style="text-align:center"><i>Moats</i> v. <i>Metropolitan Bank</i> 319 N.E.2d 603 (Oh. 1974)</p> <p>1. <i>Site of Crash:</i> Pennsylvania</p> <p>2. <i>Parties:</i> Both <i>plaintiff</i> and <i>defendant</i> were residents of Ohio.</p> <p>3. <i>Issue:</i> Should Ohio or Pennsylvania substantive law apply in an Ohio wrongful death action where the site of a crash was in Pennsylvania?</p> <p>4. <i>Decision:</i> Ohio substantive law governed the action.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(2)):</i> The same result.</p> | <p>1. <i>Methodology:</i> Most significant relationship analysis.</p> <p>2. <i>Rationale:</i> a. The rule of <i>lex loci delicti</i> is no longer automatic. That Ohio was the place of injury was not the single determining element which should influence the choice of law. Ohio also had an interest as the forum in advancing its existing legislative policy. b. Pennsylvania had little interest in having its law applied. Both decedents were residents of Ohio, the aircraft was owned by an Ohio corporation, it was hangared there, and the administration of the estate of the deceased Ohio residents was of direct concern to Ohio. The only significant interest of Pennsylvania in this lawsuit was as the place where the accident occurred, a factor which was insufficient to outweigh the other considerations.</p> |

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| <p>No.56</p> <p style="text-align: center;">Oklahoma</p> <p style="text-align: center;"><i>Brickner v. Gooden,</i> 525 P.2d 632 (Okla. 1974)</p> <p>1. <i>Site of Crash:</i> Mexico</p> <p>2. <i>Parties:</i></p> <p>Both <i>plaintiffs</i> and <i>defendants</i> were residents of Oklahoma.</p> <p>3. <i>Issue:</i></p> <p>Should Oklahoma or Mexican law apply in three separate tort actions for damages as a result of an airplane accident occurring in Mexico?</p> <p>4. <i>Decision:</i></p> <p>Oklahoma laws applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(2)):</i></p> <p>The same result.</p> | <p>1. <i>Methodology:</i> Most significant relationship analysis.</p> <p>2. <i>Rationale:</i></p> <p>a. The law of the place of wrong is not necessarily the applicable law for all tort actions in Oklahoma.</p> <p>b. All the parties were and still are residents of Oklahoma; the aircraft was hanged and registered in Oklahoma; and the trip originated in Oklahoma and was to end in Oklahoma. Oklahoma therefore had the most significant relationship to the occurrence and the parties.</p> |
| <p>No.57</p> <p style="text-align: center;">Oregon</p> <p style="text-align: center;"><i>DeFoor v. Lematta,</i> 437 P.2d 107 (Or. 1968)</p> <p>1. <i>Site of Crash:</i> California</p> <p>2. <i>Parties:</i></p> <p>Both <i>plaintiff</i> and <i>defendant</i> were residents of Oregon.</p> <p>3. <i>Issue:</i></p> <p>Should the Oregon or the California wrongful-death statute apply?</p> <p>4. <i>Decision:</i></p> <p>The Oregon statute applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(2)):</i></p> <p>The same result.</p> | <p>1. <i>Methodology:</i> Most significant relationship analysis.</p> <p>2. <i>Rationale:</i></p> <p>a. Both the plaintiff and defendant were domiciled in Oregon. Thus, any insurance involved in this litigation was presumably procured in Oregon.</p> <p>b. The economic impact upon any judgment collected in Oregon would be felt there primarily.</p> <p>c. Oregon's interest in providing for recovery of damages for the wrongful death of its citizens was fully served by applying the Oregon law.</p> <p>d. California, on the other hand, had no significant interest.</p> |

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| <p>No.58</p> <p style="text-align: center;">Pennsylvania</p> <p style="text-align: center;"><i>Griffith</i> v. <i>United Air Lines, Inc.,</i> 203 A.2d 796 (Pa. 1964)</p> <p>1. <i>Site of Crash:</i> Colorado</p> <p>2. <i>Parties:</i></p> <p><i>Plaintiff</i>, executor of the estate of a Pennsylvania resident killed in air crash, sued the <i>defendant</i>, United Air Lines (United), a Delaware corporation with its principal place of business in Illinois.</p> <p>3. <i>Issue:</i></p> <p>What law should apply to damage claims instituted in a Pennsylvania court where the site of crash was in Colorado?</p> <p>4. <i>Decision:</i></p> <p>Pennsylvania law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01 (c)(4)):</i></p> <p>A different result.</p> | <p>1. <i>Methodology:</i> Government interest analysis.</p> <p>2. <i>Rationale:</i></p> <p>a. Following <i>Babcock v. Jackson</i>, 191 N.E.2d 279 (N.Y. 1963) the court stated, "the strict <i>lex loci delicti</i> rule should be abandoned in Pennsylvania in favor of a more flexible rule which permits analysis of the policies and interests underlying the particular issue before the court." 203 A.2d at 805.</p> <p>b. The site of the crash was purely fortuitous.</p> <p>c. The policies underlying the Colorado statute which limits the amount of recovery might be intended to protect Colorado defendant from large verdicts against them. However, United was not domiciled there.</p> <p>d. Pennsylvania's interest in the amount of recovery, on the other hand, was great. The relationship between decedent and United was entered into in Pennsylvania. The domicile of decedent and his family was vitally concerned with the administration of decedent's estate and the well-being of the surviving dependents to the granting full recovery, including expected earnings. Therefore, Pennsylvania had a stronger interest in having its law applied.</p> |
| <p>No.59</p> <p style="text-align: center;">Pennsylvania</p> <p style="text-align: center;"><i>Kuchinic</i> v. <i>McCrorry</i> 222 A.2d 897 (Pa. 1966)</p> <p>1. <i>Site of Crash:</i> Georgia</p> <p>2. <i>Parties:</i></p> <p>Both <i>plaintiffs</i> and <i>defendant</i> were residents of Pennsylvania.</p> <p>3. <i>Issue:</i></p> <p>Should Pennsylvania or Georgia law determine the legal effect of a host-guest relationship in an airplane?</p> <p>4. <i>Decision:</i></p> <p>Pennsylvania law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(2)):</i></p> <p>The same result.</p> | <p>1. <i>Methodology:</i> Government interest analysis.</p> <p>2. <i>Rationale:</i></p> <p>Georgia's only contact with the case was as the fortuitous situs of accident. Pennsylvania was, however, the place where a host-guest relationship was established and where it was intended to terminate. Pennsylvania was also the domicile of all of the aircraft's occupants. Pennsylvania law therefore applied, under which representatives of deceased passengers could have recovered from the estate of a deceased pilot upon a finding of simple negligence, rather than Georgia law, which requires a guest to prove gross negligence before recovering damages from a host.</p> |

| Choice-of-Law Facts, Issues and Decision | Analysis |
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| <p>No.60</p> <p style="text-align: center;">South Dakota <i>Heidemann v. Rohl</i>, 194 N.W.2d 164 (S.D. 1972)</p> <p>1. <i>Site of Crash</i>: Nebraska</p> <p>2. <i>Parties</i>: Both <i>plaintiffs</i> and <i>defendants</i> were South Dakota residents.</p> <p>3. <i>Issue</i>: Does Nebraska or South Dakota law apply to a wrongful death action instituted by South Dakota plaintiffs arising out of a Nebraska air crash?</p> <p>4. <i>Decision</i>: Nebraska law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(2))</i>: The same result.</p> | <p>1. <i>Methodology</i>: <i>Lex loci delicti</i>.</p> <p>2. <i>Rationale</i>: a. Although there is dissatisfaction with the <i>lex loci delicti</i> rule, there is also a reluctance on the part of many courts to adopt a modern approach because modern approaches generally set forth theory and concepts rather than rules that a court can reliably follow. "As a result, there is considerable confusion and inconsistency of application." <i>Id.</i> at 169. b. By contrast, the traditional place of wrong rule enhances certainty, simplicity, and ease of application.</p> <p>Note: In <i>Chambers v. Dakota Charter, Inc.</i>, 488 N.W.2d 63 (S.D. 1992), the Supreme Court of South Dakota abandoned the <i>lex loci delicti</i> rule and adopted the "most significant relationship" analysis.</p> |
| <p>No.61</p> <p style="text-align: center;">Texas <i>Marmon</i> v. <i>Mustang Aviation, Inc.</i>, 430 S.W.2d 182 (Tex. 1968)</p> <p>1. <i>Site of Crash</i>: Colorado</p> <p>2. <i>Parties</i>: <i>Plaintiffs</i>, residents of Texas and Illinois, sued the <i>defendant</i>, Mustang Aviation, a Texas corporation with its principal place of business there.</p> <p>3. <i>Issue</i>: Should the law of Colorado, the place of the accident, or the law of Texas, the forum, apply?</p> <p>4. <i>Decision</i>: Colorado law applied.</p> <p>5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(2))</i>: A different result.</p> | <p>1. <i>Methodology</i>: <i>Lex loci delicti</i> rule.</p> <p>2. <i>Rationale</i>: An action for wrongful death did not exist at common law. Since the Texas wrongful death statute does not have extraterritorial force, the law of Colorado, the place of the airplane crash, rather than that of Texas applied.</p> <p>Note: In <i>Gutierrez v. Collins</i>, 583 S.W.2d 312 (Tex. 1979), the Supreme Court of Texas held: (1) a statute governing actions for death or personal injury caused by the wrongful act outside Texas compels the application of the <i>lex loci delicti</i> rule only in cases brought on <i>statutory</i> cause of action; and (2) in the future, all conflicts cases sounding in tort would be governed by the most significant relationship test.</p> |

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| <p data-bbox="189 305 249 330">No.62</p> <p data-bbox="364 324 420 353" style="text-align: center;">Utah</p> <p data-bbox="357 382 420 407" style="text-align: center;"><i>Jackett</i></p> <p data-bbox="380 411 395 430" style="text-align: center;">v.</p> <p data-bbox="306 430 471 479" style="text-align: center;"><i>Los Angeles Dep't of Water & Power,</i></p> <p data-bbox="270 479 508 504" style="text-align: center;">771 P.2d 1074 (Utah 1989)</p> <p data-bbox="189 527 384 552">1. <i>Site of Crash:</i> Utah</p> <p data-bbox="189 575 283 600">2. <i>Parties:</i></p> <p data-bbox="189 624 592 749"><i>Plaintiff, California resident, sued defendant, Los Angeles Department of Water & Power, a California governmental entity, for injuries caused by alleged negligent maintenance and operation of the helicopter that crashed.</i></p> <p data-bbox="189 772 263 797">3. <i>Issue:</i></p> <p data-bbox="189 821 592 919">Should California or Utah statute of limitations apply to a negligence case instituted by a California plaintiff before a Utah court arising out of an air crash in Utah?</p> <p data-bbox="189 942 297 967">4. <i>Decision:</i></p> <p data-bbox="209 991 411 1016">California law applied.</p> <p data-bbox="189 1039 588 1087">5. <i>Comparison with A.L.I. Rule (§ 6.01(c)(2) and § 6.04):</i></p> <p data-bbox="209 1110 353 1136">The same result.</p> | <p data-bbox="626 305 841 330">1. <i>Methodology:</i> Comity.</p> <p data-bbox="626 353 733 378">2. <i>Rationale:</i></p> <p data-bbox="626 407 1016 506">a. Although the limitations period of a forum generally applies, a forum state may extend sovereign immunity to a sister state as a matter of comity.</p> <p data-bbox="626 529 1016 894">b. In determining whether to extend comity in a particular case, the courts focus on a variety of public policy concerns which include: "to give primary regard to the rights of their own citizens; to foster cooperation, promote harmony and build goodwill with sister states; to have claims against a state litigated by that state's own courts; and to prevent forum shopping and avoid practical problems involved in enforcing a judgment by one state against another." <i>Id.</i> at 1076 (citations omitted). "Of primary importance is whether the public policies of the forum state would be contravened if comity were extended." <i>Id.</i></p> <p data-bbox="626 917 1016 942">c. Comity was therefore appropriate because:</p> <p data-bbox="626 966 1016 1112">(1) Both California and Utah have similar immunity statutes, each with a two-year limitations period. Such a statute would be applied to Utah governmental entities sued in Utah as well as California entities sued in California.</p> <p data-bbox="626 1136 1016 1261">(2) Utah had little interest in litigating this dispute because both parties were residents of California and the fortuitous occurrence of the crash in Utah was not a compelling reason for its courts to accept jurisdiction there.</p> <p data-bbox="626 1284 1016 1383">(3) Extending comity in this case prevented forum shopping because it was only after plaintiff missed California's two-year's statute of limitations that he filed suit in Utah.</p> |