ADVOCATING A RESPONSIBLE APPROACH TO IOWA'S CHOICE OF LAW POLICY

*Thomas H. Boyd**

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I. INTRODUCTION

In the mid-1960's and early 1970's, the Supreme Court of Iowa began to develop a modern approach to conflict of law questions in tort cases.[1] Prior to this time, the basic rule of thumb had been to apply the foreign state's law in substantive matters and apply the law of Iowa, as the forum state, to

* Law clerk for the Honorable Ronald E. Longstaff, U.S. Magistrate, Southern District of Iowa; B.A. 1984, M.A. 1987, and J.D. 1987, University of Iowa. The author wishes to thank Professor David H. Vernon, Allan D. Vestal Professor of Law, University of Iowa College of Law for his thoughtful criticism and suggestions.

1. *See* Berghammer v. Smith, 185 N.W.2d 226, 230 (Iowa 1971); Fuerste v. Bemis, 156 N.W.2d 831, 833 (Iowa 1968); Flogel v. Flogel, 257 Iowa 547, 548-49, 133 N.W.2d 907, 908 (1965); Fabricius v. Horgen, 257 Iowa 268, 276, 132 N.W.2d 410, 415-16 (1965).

settle procedural issues.[2] Determining that this approach was unfair and inadequate because of its inflexible or "wooden" quality,[3] the court adopted the reasoning of Restatement (Second) of Conflict of Laws section 142.[4] The principle behind this section, as well as the general theme embodied in the Restatement (Second) as a whole, is the "most significant relationship" theory.[5] The objective of this theory is to isolate the issues in a case, determine which state has the greater concern in the outcome of each particular issue, and apply that state's law to that issue.[6]

Iowa adopted the most significant relationship approach because of its flexibility.[7] Since adopting this theory, however, the Supreme Court of Iowa has failed to apply it properly and responsibly. Rather than contemplating the rationale that led to the development of the most significant relationship theory, the court has simply applied the Restatement (Second) in a very literal and unthinking manner.[8] This sort of application has caused Iowa's version of the most significant relationship theory to become as wooden as the unyielding and inflexible theories which the court had previously rejected.

In two recent decisions, the Supreme Court of Iowa has clearly evidenced its failure to analyze in depth the conflict of laws questions that come before it. In *Harris v. Clinton Corn Processing Company*,[9] the court adopted Restatement (Second) § 143—the companion section to § 142—and in doing so, failed to critically evaluate this state's objectives in pursuing a reasoned policy in conflict of laws and whether this particular section is the best vehicle to achieve these goals.[10] *Goetz v. Wells Ford Mercury, Inc.*,[11] presents further evidence that the court has ceased to consider the public interest reasons for having adopted the most significant relationship theory in the first place. Indeed, in an analysis which amounts to nothing more than the stacking of contacts,[12] the *Goetz* decision demonstrates the way in which the Restatement (Second) approach is misunderstood and misused by

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2. *See* Yeager, *Survey of Iowa Law: Recent Developments in the Conflict of Laws—Iowa Personal Injury Cases*, 23 DRAKE L. REV. 47, 47 (1973) [hereinafter Yeager]. "Prior to 1965, the Iowa court followed what were then accepted as the usual rules that questions of substantive tort liability are to be determined by the *lex loci delicti*, while questions of procedure are to be referred to the *lex fori*." *Id.*

3. Fabricius v. Horgen, 257 Iowa at 276, 132 N.W.2d at 415.

4. *See id*; *see also* Yeager *supra* note 2, at 47 ("the Iowa Supreme Court abandoned its preference for the *lex loci delicti* as the invariable choice in tort liability actions").

5. *See* Reese, *Conflict of Laws and the Restatement Second*, 28 LAW & CONTEMP. PROBS. 679, 682 (1963).

6. *See infra* text accompanying notes 61-90 and 163-72.

7. *See supra* text accompanying notes 3-4.

8. *See infra* text accompanying notes 55-60 and 159-62.

9. Harris v. Clinton Corn Processing Co., 360 N.W.2d 812 (Iowa 1985).

10. *See infra* text accompanying notes 61-141.

11. Goetz v. Wells Ford Mercury, Inc., 405 N.W.2d 842 (Iowa 1987).

12. *See infra* text accompanying notes 173-200.

the Supreme Court of Iowa.

It is essential that the decisions in *Harris* and *Goetz* be critically examined. Because conflict of laws is a complex and confusing area of the law, there must be a constant evaluation of Iowa's policy. The cases must conform with the state's interests. Consequently, there must be a constant assessment of the court's use of the most significant relationship theory. Introspection and critical analysis in this area are preferable to the blind, and too often erroneous, adherence to a single theory.

II. Choice of Law: Various Approaches and Theories

A choice of law question arises in "any case in which the facts occurred in one state and the suit is brought in another, so that the forum must decide between its own law and the law of the place where the events occurred" before it can know how to proceed with the trial.[13] Originally, a "territorial" theory was developed at the English common law for deciding choice of law questions.[14] This theory applies the foreign state's substantive law because that is where the right or cause of action arose[15] and accommodates the lawyers and judges in the forum by providing for the use of that state's procedural law with which they are more familiar.[16] In America, this doctrine evolved into the "local law" theory which basically allows each state to apply whatever choice of law standards it chooses[17] so long as these standards are constitutional.[18]

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13. R. Leflar, American Conflicts Law 3 (2d ed. 1968).

14. *See* R. Leflar, *supra* note 13, at 4. English law, however, has by no means been the sole source of choice of law theory. The French developed a procedural substantive analysis and focused on the powers to create rights and obligations. *See* E. Scoles & P. Hay, Conflicts of Laws 8 (1982). Italian jurists considered laws governing real property as territorial in application while laws governing the person had extraterritorial effect because they involved capacity. *Id.* The Dutch school strongly advocated the territorial theory and developed the notion of comity. *Id.* at 9-10. Von Wachter, a German scholar, is credited with doing the most to further the emphasis on local law in choice of law theory. *Id.* at 10.

15. *See* Sack, *Conflict of Laws in the History of English Law*, in Selected Readings on Conflict of Laws, 24 (M. Culp ed. 1956) (proposition first adopted in Dupleix v. DeRoven, 2 Vern. 540 (1705)).

16. *See* R. Leflar, *supra* note 13, at 4 ("[t]he governing procedural law was taken to be that of the forum state regardless of where the events occurred or where the parties were domiciled").

17. *See* R. Leflar, *supra* note 13, at 4. "The local law theory has commonly been attributed to both the late Walter Wheeler Cook and Judge Learned Hand." Cavers, *The Two "Local Law" Theories*, 63 Harv. L. Rev. 822, 822 (1950). Both of these men advocated the use of local rules to determine when, if at all, foreign law was applicable. *Id.* at 824-25.

18. *See* Wells v. Simonds Abrasive Co., 345 U.S. 514, 516 (1952); *see also* Whitten, *The Constitutional Limitations of State Choice of Law: Full Faith and Credit*, 12 Mem. St. U.L. Rev. 1, 2 (1981). For instance, it is not contrary to the Full Faith and Credit Clause for a court to refuse to maintain an action that is time-barred by the law of the forum regardless of whether the action is permitted in the foreign state. *See, e.g.*, Watkins v. Conway, 385 U.S. 188 (1966); M'Elmoyle v. Cohen, 38 U.S. (13 Pet.) 312 (1839); Newhouse v. Newhouse, 271 Ore. 109,

Many conflict of law theories have since been developed. In addition to the most significant relationship approach,[19] there are also interest analyses[20] which focus on the interest of the forum in applying its own law. There are also uniformity theories[21] which, of course, place the emphasis on consistency and cater to the expectations of the parties. These theories represent the various concerns involved in selecting a choice of law theory.

III. The Restatement (Second) Approach and Choosing the Statute of Limitation

A. *The Conventional Treatment of Statutes of Limitation*

Many courts in the United States have traditionally considered statutes of limitations to be procedural law in all cases.[22] This approach may be described as absolute characterization.[23] It was thought that the passage of the statutory period destroys only the remedy and not the right.[24] "A statute of limitations is, however, not subject to the same problems as strictly procedural matters."[25] The limitations period of a foreign state is usually easily ascertained.[26] Consequently, some jurisdictions have classified these limitation periods as substantive law when the particular statute of limitations affects the plaintiff's right rather than merely the remedy.[27] In either case, because this sort of distinction is necessarily subjective and highly artificial, courts have experienced difficulty discerning the line that separates proce-

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530 P.2d 848 (1975). Nor is there a constitutional inhibition in the reverse situation: if an action is not precluded by the forum's statute of limitations, then a court may permit the action despite the running of the foreign state's time period. *See, e.g.*, Bournais v. Atlantic Maritime Co., 220 F.2d 152, 158 (2d Cir. 1952); Goodwin v. Townsend, 197 F.2d 970, 972 (3d Cir. 1952); Marshall v. George M. Brewster & Son, Inc., 37 N.J. 176, ____, 180 A.2d 129, 135 (1962).

19. *See infra* text accompanying notes 61-90.

20. *See infra* text accompanying notes 91-114.

21. *See infra* text accompanying notes 120-33.

22. *See* G. Strumberg, Principles of Conflict of Laws 145-51 (3d ed. 1963); R. Weintraub, Commentary on the Conflict of Laws 48 (1971).

23. *See infra* text accompanying notes 115-19.

24. *See* E. Scoles & P. Hay, *supra* note 14, at 59-60. Generally, traditional common law has associated the concept of remedy with procedural law and the notion of right with substantive law. *Id.* at 59.

25. *See* Heavner v. Uniroyal, Inc., 63 N.J. 130, ____, 305 A.2d 412, 415 (1973) (distinguishing limitation periods from laws that are traditionally considered procedural); *see also* Vernon, *Statutes of Limitations in the Conflict of Laws: Borrowing Statutes*, 32 Rocky Mtn. L. Rev. 287, 289 (1960).

26. *See* R. Weintraub, *supra* note 22, at 50.

27. When a foreign statute creates a right which is not available at common law, and that statute also specifically designates a limitation period for the life of that right, that statute of limitations is considered to be substantive law. *See, e.g.*, Hossler v. Barry, 403 A.2d 762 (Me. 1979); Taylor v. Murray, 231 Ga. 852, 204 S.E.2d 747 (1974); Istre v. Diamond M. Drilling Co., 226 So. 2d 779 (La. App. 1969).

dural and substantive limitations periods.[28]

B. *Harris v. Clinton Corn Processing Company*

The Iowa Supreme Court recently faced a choice of law question involving statutes of limitations in *Harris v. Clinton Corn Processing Co.*[29] The *Harris* court chose to reaffirm Iowa's acceptance of section 142 of the Restatement (Second) of Conflict of Laws[30]—an approach that generally treats statutes of limitations as procedural and applies the law of the forum[31]—and to adopt section 143, the Restatement's exception to that general rule.[32] This exception states that "an action will not be entertained in another state if it is barred in the same state of the otherwise applicable law by a statute of limitations which bars the right and not merely the remedy."[33] The foreign state's limitation period will be applied in the latter instance because the statute is characterized as substantive.[34]

On December 22, 1980, Claude Harris suffered fatal injuries when a supply line he was repairing exploded.[35] The accident, which occurred in the course of the decedent's employment, took place in Tennessee.[36] Both Harris and his employer resided in Tennessee.[37] The supply line on which the decedent was working, however, had been designed and constructed in Iowa in 1975 by the Clinton Corn Processing Company, an Iowa business.[38]

The decedent's widow subsequently brought a wrongful death action in the United States District Court for the Middle District of Tennessee.[39] She sought relief from the defendant-manufacturer under theories of negligence

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28. *See* Reese, *The Second Restatement of Conflict of Laws Revisited*, 3 MERCER L. REV. 501, 506 (1983) (criticizing the RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 143).

29. Harris v. Clinton Corn Processing Co., 360 N.W.2d 812 (1985).

30. *Id.* at 816. *See* Joseph L. Wilmotte & Co. v. Roseman Bros., 258 N.W.2d 317, 326-28 (Iowa 1977); Berghammer v. Smith, 185 N.W.2d 226, 230 (Iowa 1971); Fuerste v. Bemis, 156 N.W.2d 831, 833 (Iowa 1968); Flogel v. Flogel, 257 Iowa 547, 548-49, 133 N.W.2d 907, 908 (1965); Fabricius v. Horgen, 257 Iowa 268, 276, 132 N.W.2d 410, 415-16 (1965).

31. (1) An action will not be maintained if it is barred by the statute of limitations of the forum, including a provision borrowing the statute of limitations of another state.
(2) An action will be maintained if it is not barred by the statute of limitations of the forum, even though it would be barred by the statute of limitations of another state, except as stated in § 143.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 142 (1971).

32. Harris v. Clinton Corn Processing Co., 360 N.W.2d at 816.

33. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 143 (1971).

34. E. SCOLES & P. HAY, *supra* note 14, at 60.

35. Harris v. Clinton Corn Processing Co., 360 N.W.2d at 813.

36. *Id.*

37. *Id.*

38. *Id.*

39. Brief for Defendant at 27, Harris v. Clinton Corn Processing Co., 360 N.W.2d 812 (Iowa 1985) (No. 84-406) (memorandum and order entered by Judge John Nixon on Sept. 3, 1982).

and strict liability.[40] Harris argued for the application of the Iowa statute of limitations.[41] That law allowed for a two-year period which commenced at the time that the injury occurred.[42] Under this theory, Harris' action would not have been barred by the limitation period.

The federal district court in Tennessee held that the Tennessee statute of limitations for wrongful death actions[43] had run and that the plaintiff's action was barred.[44] Tennessee's four-year statute of limitations applied to the filing of complaints for injuries sustained as the result of defectively designed or manufactured equipment.[45] The running of the time period commenced, according to the Tennessee statute, upon the "substantial completion" of the equipment.[46] Thus, as applied to the *Harris* facts, the limitation period began to run when the supply line system was completed in 1975.[47]

After dismissal in the Tennessee federal district court, the plaintiff filed a similar action for wrongful death against Clinton Corn Processing Company in the United States District Court for the Southern District of Iowa on December 14, 1982.[48] In light of the Tennessee federal district court's finding that the plaintiff's right to an action was barred by the Tennessee limitation period,[49] the Iowa federal district court certified the following question to the Iowa Supreme Court:

> Is a wrongful death action brought in Iowa governed by Iowa Code § 614.1(2) or by Tenn. Code Ann. § 28-3-202, where: (1) the action would be time-barred under the Tennessee provision but not under the Iowa provision; (2) Iowa's "borrowing statute," Iowa Code 614.7, is inapplicable; and (3) Tennessee substantive law governs the merits of the case?[50]

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40. Harris v. Clinton Corn Processing Co., 360 N.W.2d at 813.

41. *Id.*

42. IOWA CODE § 614.1(2) (1983). That action provides: "[i]njuries to person or reputation—relative rights—statute penalty. Those [actions] founded on injuries to the person or reputation, including injuries to relative rights, whether based on contract or tort, or for a statute penalty, within two years."

43. TENN. CODE ANN. § 28-3-202 (1980) provides:

> [a]ll actions to recover damages for any deficiency in the design, planning, supervision, observation of construction, or construction of an improvement to real property, for injury to property, real or personal, arising out of any such deficiency, or for injury to the person or for wrongful death arising out of any such deficiency, shall be brought against any person performing or furnishing the design, planning, supervision, observation of construction, construction of, or land surveying in connection with, such an improvement within four (4) years after substantial completion of such an improvement.

44. Harris v. Clinton Corn Processing Co., 360 N.W.2d at 813.

45. *See supra* note 43.

46. *Id.*

47. Harris v. Clinton Corn Processing Co., 360 N.W.2d at 813.

48. *Id.*

49. *Id.* at 814-16.

50. *Id.* at 813.

In the certified question, the Iowa federal district court declared that Iowa's "borrowing" statute[51] was inapplicable.[52] A borrowing statute is a law which describes situations when the forum state's choice of law rules are automatically superseded by the foreign state's choice of law rules.[53] While borrowing statutes are one means to implement a state's choice of law policy, courts have the ability to make choice of law decisions concerning statutes of limitations even without specific legislative instruction.[54] Thus, the Iowa Supreme Court does not overstep its authority when it creates Iowa choice of law policy.

The Iowa Supreme Court observed, in the analysis it adopted from the Iowa federal district court,[55] that the courts of this state have historically classified most statutes of limitations as procedural.[56] On the other hand, it noted that some jurisdictions have considered statutes of limitations "as being in reality a grant of immunity"[57] and, therefore, they were most appropriately considered substantive law for choice of law purposes.[58] Ultimately, the court adopted what it seemed to view as a compromise between these two extremes—the Restatement approach[59]—and ruled that the Tennessee statute of limitations was applicable.[60]

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51. IOWA CODE § 614.7 (1983). The statute provides: "[w]hen a cause of action has been fully barred by the laws of any country where the defendant has previously resided, such a bar shall be the same defense here as though it has arisen under the provisions of this chapter; but this section shall not apply to causes of action arising within this state."

52. Harris v. Clinton Corn Processing Co., 360 N.W.2d at 813. On October 21, 1983, defendant's counsel expressly waived its opportunity to present the United States District Court for the Southern District of Iowa with evidence that Iowa's borrowing statute might be applicable. "There being no evidence in the record that defendant has been a resident of any state other than Iowa, the Court must conclude that the borrowing statute is inapplicable here." Harris v. Clinton Corn Processing Co., Civil No. 82-225-D-1 (S.D. Iowa Jan. 30, 1983) (order for certification of choice of law issue to the Iowa Supreme Court).

53. *See* E. SCOLES & P. HAY, *supra* note 14, at 62-64; R. LEFLAR, *supra* note 13, at 307-08; R. WEINTRAUB, *supra* note 22, at 48-49. Borrowing statutes provide an exception to the usual characterization of limitation periods as procedural law. "These statutes effectively borrow or adopt a shorter limitation period from another, relevant forum when certain criteria laid down by the borrowing statutes are met." Lorentzen & Lorentzen, *Finding the Right Period of Limitation Through the Use of Borrowing Statutes*, 33 FED. INS. COUNSEL Q. 363, 363 (1983).

54. *See* R LEFLAR, *supra* note 13, at 4-6 (discussion of judicial and legislative jurisdiction).

55. It should be noted that a significant portion of the Iowa Supreme Court's opinion in *Harris* quotes the Iowa federal district court's analysis. *See* Harris v. Clinton Corn Processing Co., 360 N.W.2d at 814-16.

56. *Id.* at 814 (citing Sedco Int'l, S.A. v. Cory, 522 F. Supp. 254 (S.D. Iowa 1981), *aff'd* , 683 F.2d 1201 (8th Cir. 1982), *cert. denied*, 459 U.S. 1017; Williams v. Burnside, 207 Iowa 239, 222 N.W. 413 (1928)).

57. *Id.* at 815.

58. *Id.* (citing President and Directors of Georgetown College v. Madden, 505 F. Supp. 557 (D. Md. 1980), *aff'd in pertinent part*, 660 F.2d 91 (4th Cir. 1981)).

59. *See infra* text accompanying notes 61-64.

60. Harris v. Clinton Corn Processing Co., 360 N.W.2d at 816-17.

C. *The Objectives of Limitation Periods and Restatement (Second) Sections 142 and 143*

Essentially, the Restatement provides that a statute of limitations is procedural law except when its expiration acts to bar the right to a course of action rather than a mere remedy.[61] If the right to a cause of action is barred, the statute of limitations issue will be a matter of substantive law and the court will apply the foreign state's limitation period.[62] An instance of where this exception comes into affect occurs when the same statute that creates the right to a cause of action also creates the statute of limitations under which that action may be brought.[63] The Iowa Supreme Court believed that this exception makes particularly good sense in wrongful death claims in which the right to the cause of action often arises from a statute that "creates but a single right of action and also contains a provision limiting the time in which actions under the statute may be brought."[64]

The disturbing aspect of the Restatement analysis adopted by the court in *Harris* arises from its narrow use of the procedural-substantive distinction in characterizing statutes of limitations. This standard does not consider the policy objectives that motivated the interested states to develop their respective choice of law rules and statutes of limitations.[65] Nor does it consider the effect this choice will have on the parties involved.[66] In essence, the Tennessee statute of limitations was applied solely because the court considered it to fit the Restatement's description of a substantive law.[67] This sort of "mechanical or slot-machine jurisprudence"[68] is unacceptable.

There is little justification for choosing one statute of limitations over another through the use of the Restatement's right-remedy distinction.[69]

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61. *See supra* text accompanying notes 30-34. The Restatement endorses the "specificity" test laid out in Davis v. Mills, 194 U.S. 451, 454 (1904).

> The almost invariable prerequisite is that the liability sought to be enforced must have been created by statute. Once this requirement has been met, the usual test is whether, in the opinion of the forum, the limitation provision was directed to the right "so specifically as to warrant saying that it qualified the right."

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 143, comment c (quoting Davis v. Mills, 194 U.S. at 454).

62. *Id.* (reporter's note to comment c).

63. *See* E. SCOLES & P. HAY, *supra* note 14, at 60-61; R. LEFLAR, *supra* note 13, at 305-07; R. WEINTRAUB, *supra* note 22, at 48; G. STRUMBERG, *supra* note 22, at 148-51.

64. Harris v. Clinton Corn Processing Co., 360 N.W.2d at 816 (quoting RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 143, comment c).

65. *See* Reese, *supra* note 28, at 506 (although intended as a solution, § 143 does not protect against stale claims and it fails to further any state interests).

66. *See* Grossman, *Statutes of Limitations and the Conflict of Laws: Modern Analysis*, 1980 ARIZ. ST. L.J. 1, 16 (1980); *see also* R. WEINTRAUB, *supra* note 22, at 50.

67. Harris v. Clinton Corn Processing Co., 360 N.W.2d at 816.

68. Vernon, *supra* note 25, at 289.

69. Sedler, *The Truly Disinterested Forum in the Conflict of Laws: Ratliff v. Cooper Laboratories*, 25 S.C.L. REV. 185, 196-98 (1973).

Rather than consciously striving to achieve uniform results while remaining within the bounds of fairness and reason, the objective of the characterization analysis seems to be uniformity for the sake of symmetry.[70] The distinction created by characterizing a statute of limitations as procedural or substantive is simply a criterion that is too insubstantial to warrant the choice of one law over another.[71]

There are three primary objectives sought to be achieved by placing a time limit upon the filing of a lawsuit. First, the law desires to provide plaintiffs with a reasonable amount of time for a plaintiff to assert a cause of action.[72] Second, there is an interest in relieving defendants of the constant threat of a lawsuit.[73] Third, statutes of limitations serve as a judicial means to protect against stale claims.[74]

The first and second objectives involve the attempt to determine a reasonable time limit that is fair to both plaintiffs and defendants. On the one hand, a statute of limitations that is too short could unreasonably deprive plaintiffs of the exercise of their lawful right to bring an action.[75] Moreover, the state itself, which has an interest in deterring improper activities by defendants residing within the state, attempts to allow sufficient time for plaintiffs to file lawsuits.[76] On the other hand, a statute of limitations that is too long will allow plaintiffs to sleep on their rights.[77] Potential defendants

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> There certainly is no functional basis for the "right-remedy" distinction. Indeed, it may represent nothing more than a bad example of whether the proverbial chicken came before the proverbial egg. It is said that statutes of limitation are generally "procedural" for conflicts purposes because they destroy only the "remedy" and not the "right." But the reason usually given for saying the statute destroys only the "remedy" is that suit can be maintained in a jurisdiction with a longer limitation period.

Id. at 196-97.

70. *See generally* B. Currie, *Notes on Methods and Objectives in the Conflict of Laws*, in SELECTED ESSAYS ON THE CONFLICT OF LAWS 177-187 (uniformity for uniformity's sake ignores justice and reason, and nullifies state interests).

71. "Differences based upon whether the foreign right was known to the common law or upon the arrangement of the code of the foreign state are too unsubstantial to form the basis for constitutional distinctions under the Full Faith and Credit Clause." Wells v. Simonds Abrasive Co., 345 U.S. 514, 518 (1952).

72. *Developments in the Law—Statutes of Limitations*, 63 HARV. L. REV. 1177, 1185-86 (1950) [hereinafter *Developments*].

73. *Id.* at 1185. "The primary consideration underlying such legislation is undoubtedly one of fairness to the defendant. There comes a time when he ought to be secure in his reasonable expectation that the slate has been wiped clean of ancient obligations." *Id.*

74. *Id.* Statutes of limitations address the "effectiveness of the courts, and a desire to relieve them of the burden of adjudicating inconsequential or tenuous claims." *Id.*

75. For example, tolling provisions of some personal injury causes of actions will commence upon the occurrence of the injury rather than the commission of the act. *Id.* at 1195.

76. In essence, the state uses plaintiffs as a means towards achieving its policy. *See* Milhollin, *Interest Analysis and Conflicts Between Statutes of Limitation*, 27 HASTINGS L.J. 1, 19-21 (1975).

77. A primary purpose of statutes of limitations is to "discourage plaintiffs from sleeping

should not be left indefinitely with the threat of a lawsuit which restricts their ability to make plans for the future.[78] Legislatures attempt to discover a happy medium between these competing concerns when drafting statutes of limitations.[79]

The third objective of limitation statutes is to prevent courts from being burdened with stale claims.[80] Stale claims occur when pertinent evidence is lost, altered, destroyed, or otherwise rendered unavailable due to the passage of time.[81] The objective of avoiding stale claims is very much tied to interests of the forum because of concern for court congestion and the desire that defendants receive fair trials.[82] For these reasons, the forum state's legislature is the most appropriate authority to determine when so much time has passed that a responsible and rational finding on the merits of a case is unlikely.[83]

The Iowa and Tennessee legislatures are not seeking conflicting policy objectives. The Iowa legislature desires to protect plaintiffs' rights and deter defendants' negligence.[84] Furthermore, as the forum state, Iowa has a concern for regulating the flow of lawsuits in its courts.[85] At the same time, because the defendant is an Iowa company, Tennessee's only interest in *Harris* is to protect the plaintiff;[86] and the plaintiff's rights are only enhanced by extending the limitations period.[87] Simply put, there is no compelling policy reason to apply Tennessee's statute of limitations rather than Iowa's. Consequently, *Harris* involves what is referred to as a "false conflict."[88] This term describes a situation where only one of the two or more

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on their rights." Kalmich v. Bruno, 553 F.2d 549, 554 (7th Cir. 1977).

78. "[T]he foundation of the acquisition of rights by lapse of time is to be looked for in the position of the person who gains them, not in that of the loser." Holmes, *The Path of the Law*, 10 HARV. L. REV. 457, 477 (1897).

79. *See Developments*, *supra* note 72, at 1185.

80. *See* Vernon, *supra* note 25, at 292. "Despite the differences in the specific time periods established in the various states, all of the limitation statutes are aimed at the same things. Legislative judgments cannot be deemed to be exact in the sense of a claim being less stale on Monday and becoming stale on Tuesday." *Id.*

81. *See Developments*, *supra* note 72, at 1185.

82. It is unfair to ask a defendant to resist a claim when "evidence has been lost, memories have faded, and witnesses have disappeared." Order of Railroad Telegraphers v. Railway Express Agency, 321 U.S. 342, 349 (1944).

83. *See* Milhollin, *supra* note 76, at 19.

84. *See supra* notes 75-79 and accompanying text.

85. *See supra* notes 80-83 and accompanying text.

86. Harris v. Clinton Corn Processing Co., 360 N.W.2d at 813.

87. This is an obvious point. Harris' rights could only be expanded because she would receive a cause of action in an alternative forum if the Iowa statute of limitations is applicable.

88. Professor Brainerd Currie was the first to develop state interest analysis and the concept of "false" conflicts as an across-the-board choice of law theory. *See* R. LEFLAR, *supra* note 13, at 223-25; *see generally* Ehrenzweig, *"False Conflicts" and the "Better Rule:" Threat and Promise in Multistate Tort Law*, 53 VA. L. REV. 847 (1967); Westen, *False Conflicts*, 55 CALIF. L. REV. 74 (1967).

states with ostensibly conflicting laws has a legitimate interest in the application of its law.[89] In such an instance, the forum should apply the law of the interested state.[90]

D. *Consideration of Possible Alternative Theories*

To best evaluate the Supreme Court of Iowa's analysis in *Harris*, it is helpful to consider various conflict of laws theories.

1. *Interest Analysis*

An interest analysis[91] is entirely consistent with the previous acceptance by Iowa courts of Restatement section 142[92] which generally treats statutes of limitations as procedural and applies the forum's law.[93] Very simply, interest analyses are those which place the highest premium on advancing the objectives or serving the interests of the forum state. Thus, absent a genuine or "true" conflict,[94] the forum's statute of limitations will be applied by virtue of its interest in avoiding stale claims that might hinder the efficiency of its judicial mechanism.[95]

The interest analysis also exposes the flaws in Restatement section 143. The right-remedy distinction and its use for determining when a statute is substantive and when it is procedural entirely ignores the purpose for which the statute was created.[96] When the legislature created its statute of limitations, one of Iowa's objectives was to discourage negligence by Iowa manufacturers.[97] Thus, Iowa has an interest in allowing actions against such defendants. Tennessee, on the other hand, has no policy that will be inhibited if the Iowa limitation period is applied rather than its own. The Tennessee statute of limitations was legislated to address the rights of Tennessee plaintiffs and defendants.[98] In this instance, there is no Tennessee defendant and the plaintiff from that state can only have her rights enhanced through the

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89. *See* E. Scoles & P. Hay, *supra* note 14, at 17.
90. *See* Milhollin, *supra* note 76, at 19-22.
91. *See supra* note 88 and accompanying text.
92. *See supra* note 30 and accompanying text.
93. *See* text accompanying notes 30-34.
94. *See* E. Scoles & P. Hay, *supra* note 14, at 17-18.
95. *See* Milhollin, *supra* note 76, at 19.
96. *See supra* text accompanying notes 65-71. The modern trend has been to reject the "substantive-procedural law" dichotomy and determine choice of law questions based on which state has "the most substantial relationship" with the transaction (*see, e.g.*, Klingebiel v. Lockheed Aircraft Corp., 494 F.2d 345 (9th Cir. 1974); Horton v. Jessie, 423 F.2d 722 (9th Cir. 1970); Harvath v. Davidson, 148 Ind. App. 203, 264 N.E.2d 328 (1970)) or an "interest" analysis (*see, e.g.*, Dindo v. Whitney, 429 F.2d 25 (1st Cir. 1970); Henry v. Richardson-Merrell, Inc., 366 F. Supp. 1192 (D.N.J. 1973); Baldwin v. Brown, 202 F. Supp. 49 (E.D. Mich. 1962)).
97. *See supra* text accompanying notes 75-79.
98. *Id. See also* Vernon, *supra* note 25, at 292.

application of the Iowa statute.[99]

As a matter of fact, section 143 is inconsistent with the intent of the Restatement as a whole. The Restatement has adopted a "most significant relationship" theory.[100] This rule will apply the law of the interested state which has the most contacts with the transaction or event[101] and is based upon a review of several factors: needs of the interstate and international system; relevant policies of the forum; relevant policies of other interested states; protection of justified expectations; basic policies underlying the particular field of law's certainty, predictability and uniformity of result; and ease in determining and applying the law.[102] Obviously, these are all policy or state interest goals.[103] Accordingly, it is completely contradictory and unreasonable to permit or deny a claim simply because the choice of law standard has characterized the forum's statute of limitations as substantive or procedural.[104] Indeed, statutes of limitations are legislated for the purpose of achieving specific policy objectives.[105] The attainment of these objectives, rather than the arbitrary labeling of laws as substantive or procedural, should dictate the choice of statute of limitations. It is upon this proposition that the Restatement's choice of law factors are based.[106] And it is also this proposition that section 143 of the Restatement ignores.

Yet even without section 143, the most significant relationship theory adopted by the Restatement is inferior to interest analysis. The number of factors a court may use makes the Restatement an extremely pliant standard and allows a court great flexibility in justifying its choice of law in a difficult case.[107] The presence of such flexibility in the choice of law rule, however, is not without its disadvantages. There is, for example, no clear prioritization as to the weight of each of the factors relative to the other

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99. *See supra* note 87 and accompanying text.

100. *See generally* Reese, *Conflict of Laws and the Restatement Second*, 28 LAW & CONTEMP. PROBS. 679 (1963). Generally, this doctrine looks at the law of the place which has had the "most significant relationship" with the transaction or event, or with the part of the transaction or event at issue in the litigation. R. LEFLAR, *supra* note 13, at 219-20. This concept has also been referred to as "dominant contacts," "center of gravity," and "grouping of contacts." *Id.*

101. R. LEFLAR, *supra* note 13, at 219-20.

102. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 6 (1971).

103. *See Reese*, *supra* note 100, at 681-90 (discussion of "policy" objectives contained within the selection factors of Restatement § 6); *see also* R. LEFLAR, *supra* note 13, at 222.

104. *See* R. WEINTRAUB, *supra* note 22, at 279 ("a contact may be considered significant only in terms of its relevance to a specific domestic law and policies underlying that law"); *see also* E. SCOLES & P. HAY, *supra* note 14, at 38-40; *Reese*, *supra* note 28, at 506.

105. *See* text accompanying notes 72-83.

106. *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 6, comment on subsection (1) (1971) ("[T]he court should give a local statute the range of application intended by the legislature when these intentions can be ascertained and can be constitutionally given effect.").

107. *Id.*, comments on subsection (2).

criteria.[108] The ambiguity produced by these factors has been criticized as only creating more confusion and uncertainty.[109]

Problems occur under the Restatement's most significant relationship standard when deciding which of these policy objectives merits consideration as the most important. While the legislatures that enact these limitations may agree on the general policy objective, disagreement arises over the length of time needed to best attain these goals.[110] For example, the forum state's interest in eliminating stale claims[111] might run counter to the period of time the foreign state believes is necessary to allow plaintiffs an adequate opportunity to exercise their right to bring a cause of action.[112] Because there is no clear distinction of the relative importance of each of these policy objectives, it is very difficult for parties to form expectations for the answers to choice of law questions.[113] Under interest analysis, however, the forum's policy objectives always prevail in such situations.[114] Thus, interest analysis is also superior in providing uniformity and certainty in choice of law matters.

2. *Absolute Characterization Approach*

Some jurisdictions have simply classified all statutes of limitations as procedural law.[115] Accordingly, the running of the foreign state's time period is inconsequential since the forum state's statute of limitations is always applied.[116] The benefit of this absolute characterization scheme is consistency in result. Because this scheme is highly predictable, concerns for the parties' expectations are accommodated.[117]

The obvious drawback to this blanket-type rule is its inflexibility. For instance, the rule does not provide for an exception in situations in which

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108. The flexibility of the Restatement's "most significant relationship" test is its fatal weakness. "The formula affords no real basis for decision in the hard cases because it does not identify the considerations which control the flexibility that it allows, which move courts to go one way or the other within the formula." R. LEFLAR, *supra* note 13, at 22.

109. It is simply ridiculous, it is argued, "to list any contacts as 'significant' a priori, without first knowing the domestic law of the state having that contact and policies underlying that domestic law." R. WEINTRAUB, *supra* note 22, at 277.

110. *See* Vernon, *supra* note 25, at 292.

111. *See* text accompanying notes 80-83.

112. *See* text accompanying notes 75-79.

113. *See* note 108 and accompanying text.

114. Under Professor Brainerd Currie's "governmental interest" analysis, true conflicts should always result in the application of the law of the forum. Currie, *Survival of Actions: Adjudication Versus Automation in the Conflict of Laws*, 10 STAN. L. REV. 205, 245 (1958); *see also* Currie, *supra* note 70, at 183.

115. *See, e.g.*, Citibank, Nat'l Ass'n v. London, 526 F. Supp. 793, 805 (S.D. Tex. 1981); Dart Indus., Inc. v. Adell Plastics, Inc., 517 F. Supp. 9, 10 (S.D. Ind. 1980); Manatee Cablevision Corp. v. Pierson, 433 F. Supp. 571, 573 (D.D.C. 1977).

116. Manatee Cablevision Corp. v. Pierson, 433 F. Supp. at 573.

117. *See* R. LEFLAR, *supra* note 13, at 303.

the automatic application of the forum's limitation period serves to bar what could be a legitimate claim under the foreign state's law.[118] The consequence of absolute characterization in such a case is that technical matters of procedure serve to bar the adjudication of an otherwise valid claim. In other words, the rule is consistent and predictable, but at the expense of sacrificing the legitimate policy interests of the foreign state.[119] This realization indicates that adoption of section 142 only provides as inadequate of a theory as the adoption of both section 142 and section 143.

3. *A Uniform Theory*

Another alternative is the Uniform Conflict of Laws—Limitations Act which was drafted and approved by the Commissioners on Uniform State Laws.[120] This model statute was created primarily to remedy problems re-

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118. An automatic application of the forum's statute of limitations would be unfair, for example, when said application denies a plaintiff a cause of action in the most convenient, least expensive forum. *See* G. STRUMBERG, *supra* note 22, at 166 (discussion of *forum non conveniens).*

119. *See* Twerski & Mayer, *Toward a Pragmatic Solution of Choice-of-Law Problems—At the Interface of Substance and Procedure*, 74 NW. U.L. REV. 781, 784 (1979).

120. UNIF. CONFLICT OF LAWS—LIMITATIONS ACT, 12 U.L.A. (Supp. 1988):

Section 1. Definitions.

As used in this [Act]:

(1) "Claim" means a right of action that may be asserted in civil action or proceeding and includes a right of action created by statute.

(2) "State" means a state, commonwealth, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a foreign country, or a political subdivision of any of them.

Section 2. Conflict of Laws; Limitation Periods.

(a) Except as provided by Section 4, if a claim is substantively based:

(1) upon the law of one other state, the limitation period of that state applies; or

(2) upon the law of more than one state, the limitation period of one of those states chosen by the law of conflict of laws of this State, applies.

(b) The limitation period of this State applies to all other claims.

Section 3. Rules Applicable to Computation of Limitation Period.

If the statute of limitations of another state applies to the assertion of a claim in this State, the other state's relevant statutes and other rules of law governing tolling and accrual apply in computing the limitation period, but its statutes and other rules of law governing conflict of laws do not apply.

Section 4. Unfairness.

If the court determines that the limitation period of another state applicable under Sections 2 and 3 is substantially different from the limitation period of this State and has not afforded a fair opportunity to sue upon, or imposes an unfair burden in defending against, the claim, the limitation period of this State applies.

Section 5. Existing and Future Claims.

This [Act] applies to claims:

(1) accruing after the effective date of this [Act];

or

(2) asserted in a civil action or proceeding more than one year after the effective date of this [Act], but it does not revive a claim barred before the effective date of

lated to forum shopping.[121] Specifically, one is subject to a charge of forum shopping when one chooses a forum with a slight connection to the factual circumstances surrounding one's suit for the purpose of benefiting from advantageous procedural laws of that state.[122] Obviously, forum shopping is a particular problem related to the characterization of statutes of limitations as procedural because plaintiffs are encouraged to bring suit in a forum that was chosen solely on the basis of the duration of its limitations period.[123] The Uniform Limitations Act treats limitations periods as substantive; the state whose law governs the other substantive issues of the case will govern the choice of the applicable statute of limitations.[124] Because the rule generally demands the use of the statute of limitations of the state whose substantive law is applied, it is unlikely that its use would have made any difference to the outcome in *Harris*.[125]

The Commissioners were conscious, however, of the possible harshness of their general rule and consequently included an escape clause in the Uni-

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this [Act].

Section 6. Uniformity of Application and Construction.

This [Act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

Section 7. Short Title

This [Act] may be cited as the Uniform Conflict of Laws—Limitations Act.

Section 8. Severability.

If any provision of this [Act] or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 9. Repeal.

The following acts and parts of acts are repealed:

(1)

(2)

(3)

Section 10. Time of Taking Effect.

This [Act] shall take effect on _____.

121. *Id.*, prefatory note ("forum shopping by delay-prone plaintiffs, or by their attorneys, with suits filed in states with long limitations periods, inevitably occurred" under the traditional practice of characterizing statutes of limitations as procedural).

122. *See, e.g.*, Rosenstiel v. Rosenstiel, 278 F. Supp. 794, 800 (S.D.N.Y. 1967); Rayco Mfg. Co. v. Chicopee Mfg. Corp., 148 F. Supp. 588, 592-93 (S.D.N.Y. 1957); Nelson v. Eckert, 231 Ark. 348, 329 S.W.2d 426 (1959).

123. Grossman, *supra* note 66, at 16. "A potential plaintiff whose lack of diligence has resulted in a claim barred where it arose can compensate for tardiness simply by obtaining jurisdiction over the defendant in a state where the statute of limitations does not bar the claim." *Id.*

124. *See supra* note 120, comment to § 2 ("This section treats limitation periods as substantive, to be governed by the limitations law of the state whose law governs other substantive issues inherent in the claim").

125. *See supra* text accompanying notes 29-60.

form Limitations Act.[126] The statute's escape clause provides that if the foreign state's statute of limitations is substantially different from the forum state's statute of limitations, and the former does not afford a fair opportunity to sue upon or defend against a claim, then the forum state's statute will be applied.[127] In this manner, "the 'strong public policy' of a forum state can be effectuated."[128] The ambiguity of this language, however, makes it difficult to discern when such a situation may arise. It could be argued, taking the facts surrounding *Harris*, that Iowa's interest in protecting plaintiffs' rights and deterring defendants' negligence is very strong in situations involving defective equipment claims.[129] The Tennessee statute of limitations, which begins to run on the substantial completion of the equipment rather than on the occurrence of the accident or the discovery of the injury, would be highly repugnant to Iowa's "public policy." Under the Uniform Limitations Act, these policy interests may or may not be of sufficient weight to justify the use of the escape clause and reach the conclusion that Iowa's statute of limitations should be applied in *Harris*.[130]

By generally treating limitations periods as substantive, the Uniform Limitations Act attains a measure of uniformity and ease of applicability.[131] Yet this scheme also thwarts the objectives that these statutes of limitations were legislated to achieve.[132] Application of the foreign state's limitation period when there is no significant conflict regarding the policies that the respective statutes of limitations are intended to further only serves to disrupt the flow of the litigation within the forum.[133]

E. *Restatement (Second) Section 142 Is Inconsistent with the Most Significant Relationship Theory*

Both absolute characterization—which always views limitation periods as procedural and applies the law of the forum[134]—and the Uniform Limitation Act—which always views limitation periods as substantive and, except in extreme circumstances, applies the law of the state with the most sub-

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126. *See supra* note 120.

127. *See id.*, § 4.

128. *See id.*, comment to § 4 ("This section provides an 'escape clause' that will enable a court, in extreme cases, to do openly what has sometimes been done by indirection to avoid injustice in particular cases. The 'strong public policy' of a forum state can [thus] be effectuated").

129. *See* text accompanying notes 74-78.

130. The inherent difficulty with model statutes is that vague language has not been clarified by judicial opinions.

131. These are, of course, legitimate though not controlling objectives in picking a choice of law formula. *See supra* text accompanying notes 103 & 108-117.

132. *See supra* text accompanying notes 75-83.

133. *See supra* text accompanying notes 94-95.

134. *See supra* text accompanying notes 115-19.

stantial interest[135]—are inadequate. These choice of law schemes, like the Restatement analysis,[136] concentrate on the irrational procedural-substantive law distinction.[137] This blind and unyielding application of law utterly ignores the policy objectives which inspired the enactment of the statute of limitations.[138]

Interest analysis, on the other hand, is wholly concerned with achieving legislative objectives.[139] Generally, the forum's statute of limitations is applicable, not because it is considered procedural law but because of the forum's interest in avoiding stale claims.[140] An exception to this general rule occurs when the foreign statute of limitations was created by the legislature with the intent of benefiting either the plaintiff or the defendant or both and the forum's limitation period was not intended to benefit either party.[141]

In *Harris*, the Iowa Supreme Court erred by adopting section 143 of the Restatement and applying the Tennessee statute of limitations. By adopting this exception to section 142, that portion of the Restatement previously adopted by Iowa courts, the court failed to enforce the legitimate intent of the legislature. The preferable course would have been to apply the Iowa limitation period by virtue of interest analysis. Interest analysis for choice of law questions involving statutes of limitations is consistent with Iowa case law, more in tune with the spirit of the Restatement as a whole, and has the effect of implementing the objectives of the Iowa legislature.

IV. False Conflicts and Contact Stacking

In *Goetz v. Wells Ford Mercury, Inc.*,[142] the Supreme Court of Iowa maintained its superficial approach to conflict of laws questions. *Goetz* involved a choice of statutes governing the transfer of automobiles[143] rather than a question of which state's limitation period should be applied. Nonetheless, the court's failure to examine the rationale for applying a particular choice of law theory was once again apparent.

A. *Goetz v. Wells Ford Mercury, Inc.*

On October 12, 1983, Herman and Sylvia Goetz were struck and severely injured by an automobile as they were walking along the side of a street in Ledyard, Iowa.[144] The driver of the automobile, Linda Weringa,

135. *See supra* text accompanying notes 120-33.
136. *See supra* text accompanying notes 100-14.
137. *See supra* text accompanying notes 65-67.
138. *See supra* text accompanying notes 75-83.
139. *See supra* notes 91-114 and accompanying text.
140. *See supra* text accompanying notes 94-95.
141. *See supra* note 94 and accompanying text.
142. Goetz v. Wells Ford Mercury, Inc., 405 N.W.2d 842 (Iowa 1987).
143. *Id.* at 842-43.
144. *Id.* at 842.

and the Goetzes were Iowa residents.[145] Weringa had purchased the automobile less than one month before the accident, on September 26, 1983, from a Minnesota dealership, Wells Ford Mercury, Inc.[146]

The Goetzes filed a lawsuit on March 28, 1984, in the district court in Kossuth County, Iowa.[147] In pleading their claim, plaintiffs alleged that Weringa had been negligent in the operation of the automobile.[148] They further alleged "that Wells Ford Mercury, Inc. was the owner of the automobile driven by Weringa because there had not occurred a bona fide sale or transaction between Weringa and Wells pursuant to section 321.493 of the Iowa Code prior to the collision on October 12, 1983."[149] The Iowa statute cited in the complaint states that the owner is vicariously liable for persons operating his or her automobile with consent.[150] Thus, plaintiffs claimed that the dealership still owned the automobile and was responsible for the driver's actions because it had constructively given Weringa consent to operate the vehicle.[151]

To support the claim that Wells was vicariously liable for Weringa's involvement in the accident, the Goetzes alleged that the transaction involving the sale of the automobile was invalid.[152] Specifically, the Goetzes alleged that the dealership failed to adhere to certain provisions in Minnesota law relating to the transfer of title and procurement of liability insurance.[153]

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145. *Id.* at 842-43.

146. Brief for Appellant at 2, Goetz v. Wells Ford Mercury, Inc., 405 N.W.2d 842 (Iowa 1987) (No. 85-1253) (appellant's statement of the case).

147. Appendix at 34, Goetz v. Wells Ford Mercury, Inc., 405 N.W.2d 842 (Iowa 1987) (No. 85-1253) (official statement of proceedings).

148. *Id.* at 2-3 (transcript of plaintiff's substituted petition, filed May 8, 1985). The complaint alleged, in part, that "the Defendant, Linda Weringa, knowingly and willingly consumed alcoholic beverages, became intoxicated, and drove said vehicle in a reckless and wanton manner resulting in damages suffered" by Herman and Sylvia Goetz. *Id.*

149. *Id.* at 34.

150. IOWA CODE § 321.493 (1987).

> In all cases where damage is done by any motor vehicle by reason of negligence of the driver, and driven with the consent of the owner, the owner of the motor vehicle shall be liable for such damage.
>
> A person who has made a bona fide sale or transfer of his right, title, or interest in or to a motor vehicle and who has delivered possession of such motor vehicle to the purchaser or transferee shall not be liable for any damage thereafter resulting from negligent operation of such motor vehicle by another, but the purchaser or transferee to whom possession was delivered shall be deemed the owner. The provisions of subsection 2 of Section 321.45 shall not apply in determining, for the purpose of fixing liability hereunder, whether such sale or transfer was made.

Id.

151. Brief of Appellant, *supra* note 146, at 3.

152. *Id.* "Because there was no bona fide transfer or sale of the vehicle from Wells Ford to Weringa prior to the date of the collision and because Weringa was operating the vehicle with the knowledge and consent of Wells Ford, Wells Ford is vicariously liable to the Goetzes as owner of the vehicle for liability purposes." *Id.*

153. Goetz v. Wells Ford Mercury, Inc., 405 N.W.2d at 843.

According to the plaintiffs, failure to comply with these requirements results in a flawed and, therefore, invalid transaction, and Wells Ford Mercury, Inc. was the true owner of the automobile at the time of the accident.[154] Wells claimed that these Minnesota statutes were inapplicable to transactions involving nonresidents such as Linda Weringa.[155]

In a pretrial ruling, the Iowa district court determined that Wells Ford did not comply with Minnesota law governing the transfer of automobiles,[156] but "although the trial court felt compliance was required in the sale to Weringa, it declined to hold whether the failure would trigger vicarious liability under Iowa code section 321.493."[157] Plaintiff filed an interlocutory appeal for adjudication of this issue by the Supreme Court of Iowa.[158]

The court held that, notwithstanding the claim of failure to comply with Minnesota's transfer laws, the dealer could not be held vicariously liable for the acts of the motorist.[159] Because of what the court viewed as overwhelming contacts with this state,[160] Iowa had the most significant relationship in this case.[161] Consequently, Iowa law rather than Minnesota law was applied to evaluate the validity of the transaction between Wells Ford Mercury, Inc. and Linda Weringa.[162]

B. *False Conflict*

The glaring flaw in the court's analysis is its failure to recognize that *Goetz* involves a false conflict.[163] In their brief, the Goetzes properly framed

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Plaintiffs' petition alleged noncompliance with four Minnesota statutes:
(1) Minnesota Statute section 168A.11 requires a dealer to promptly execute an assignment and warranty of title (with certain specified information).
(2) Minnesota Statute section 168.15 requires, under certain circumstances, the removal of Minnesota plates and registration certificate upon transfer of ownership.
(3) Minnesota Statute section 168.091 requires the issuance of a permit when a motor vehicle is sold to a nonresident.
(4) Minnesota Statute section 65B.48 requires motorists to carry liability insurance or a plan of reparation security.

Id.

154. Goetz v. Wells Ford Mercury, Inc., 405 N.W.2d at 842.
155. *Id.* at 843.
156. *Id.*
157. *Id.*
158. *Id.* at 842.
159. *Id.* at 843-44.
160. Minnesota's only relationship with the matter at hand is that the sale of the vehicle occurred there. All other points involved have to do with Iowa. The alleged tortious conduct occurred here. The injuries occurred here, the plaintiffs are Iowa residents, as is the defendant driver. The trial will be here and any judgment will be entered and enforced here.

Id. at 843.

161. *Id.* (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145, at 414 (1971)).
162. *Id.*
163. *See supra* notes 88-89 and accompanying text.

the issue on appeal as "whether certain Minnesota motor vehicle transfer, registration and insurance laws were applicable to sales or transfers of motor vehicles in Minnesota to nonresidents of the State of Minnesota."[164] The application of the Minnesota statutes does not depend upon the event and parties immediately associated with the automobile accident. Instead, the issue of applicability focuses on the commercial transaction.

The transaction in question took place in Minnesota[165] and the dealership was incorporated under Minnesota law.[166] Consequently, Iowa's only interest in the matter relates to the protection of the consumer, Linda Weringa, who is an Iowa resident.[167] Clearly, the application of statutes to ensure proper passage of title and adequate insurance coverage serves to benefit Iowa consumers.[168] Thus, there is no conflict of policy, interest, or law in this matter. Minnesota's laws should be applied to determine the validity of the transaction.

Proper application of the most significant relationship theory under the Restatement (Second) would also result in the application of Minnesota law. Restatement (Second) section 244 addresses the "Validity and Effect of Conveyance of Interest in Chattel."[169] This section states that the court should apply the local law of that state that "ha[s] the most significant relationship to the parties, the chattel and the conveyance . . . ."[170] If this statement were insufficient to convince the court that Minnesota law should be applied, section 244 continues on to state that absent an agreement by the parties to the contrary, greatest consideration should be given to the location of the chattel at the time of the conveyance.[171] This contact belongs, of course, to Minnesota. If indeed there is a conflict of laws at all, it is overwhelmingly apparent that Minnesota enjoys the most significant relationship in this matter by virtue of Restatement (Second) section 244.[172]

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164. Brief of Appellant, *supra* note 146, at 1.

165. *Id.* at 2.

166. Appendix, *supra* note 147, at 4.

167. Goetz v. Wells Ford Mercury, Inc., 405 N.W.2d at 842.

168. Equally as obvious is that the insurance coverage and title transfer provisions mandated by Minnesota law also serve to benefit the drivers, passengers, and pedestrians on Iowa's roadways.

169. (1) The validity and effect of a conveyance of an interest in a chattel as between the parties to the conveyance are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the parties, the chattel and the conveyance under the principles stated in § 6.

(2) In the absence of an effective choice of law by the parties, greater weight will usually be given to the location of the chattel, or group of chattels, at the time of the conveyance than to any other contact in determining the state of the applicable law.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 244.

170. *Id.*, comment f.

171. *Id.*

172. *Id.*, comment 1.

C. *Contact Stacking*

Even when one overlooks the fact that the court was in error in approaching the issue on appeal as a tort question, the Supreme Court of Iowa was nonetheless in error in the way in which it applied the tort sections of the Restatement (Second). In its opinion, the court stated that "[t]he question of whether to apply Minnesota or Iowa law turns on which of the two states has the more significant relationship to the controversy."[173] This is actually a fair and accurate statement of the theory as it is laid out in Restatement (Second) section 145.[174] One difficulty arises, however, in determining how the court applied this theory in *Goetz*[175]—and, consequently, how the court will apply this theory to cases in the future.[176] Simply stated, there is no indication by the court as to how much weight it gives to the particular criteria it has chosen to examine in making these decisions. In *Goetz*, the court's analysis consisted of nothing more sophisticated than contact stacking:[177]

> Minnesota's only relationship with the matter at hand is that the sale of the vehicle occurred there. All other points involved have to do with Iowa. The alleged tortious conduct occurred here. The injuries occurred here, the plaintiffs are Iowa residents, as is the defendant driver. The trial will be here and any judgment will be entered and enforced here.[178]

Without indicating why each of these contacts hold any particular importance, the court simply makes a numerical compilation of each state's contacts and applies the law of the state that has the greater number of contacts.

The court has obviously taken the four elements suggested for consideration in section 145[179] and incorporated them into its checklist analysis.

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173. Goetz v. Wells Ford Mercury, Inc., 405 N.W.2d at 843.

174. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145, comment on subsection (1). It should be noted that the court did not mention the Restatement in its opinion, but its analysis was consistent with § 145.

175. *See infra* text accompanying notes 179-200.

176. A clearly stated conflict of laws policy is necessary to allow litigants to form their expectations with some certainty. *See supra* notes 91-133 and accompanying text.

177. The phrase "contact stacking," describes the analysis many courts erroneously employ under the guise of the most significant relationship theory. This analysis is improper because it is entirely mechanical. This approach represents the antithesis of modern choice of law theory because it fails to consider whether a particular state truly has an interest in a matter. All this approach provides is a tabulation of the number of contacts awarded to each state.

178. Goetz v. Wells Ford Mercury, Inc., 405 N.W.2d at 843.

179. (2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:
(a) the place where the injury occurred,
(b) the place where the conduct causing the injury occurred,
(c) the domicile, residence, nationality, place of incorporation and place of business of the parties, and

This is problematic for two reasons. First, the court failed to fully adhere to the instructions of section 145.[180] Although the analysis involved the elements expressly provided in that section, it did not consider other sections that are recommended in section 145 and are intended to serve as guides for how to consider the four basic elements.[181] The analysis failed to explain why section 145, and not section 146, was the preferable Restatement (Second) section to apply.[182] Second, the analysis provides no guidance for future cases other than those that are factually on all fours with *Goetz*.[183]

This holding not only fails to provide for the expectations of future litigants, but it is also entirely devoid of any explanation based on the rationale of the most significant relationship approach. Restatement (Second) section 146 states that, in personal injury cases, the most significant relationship analysis looks first and foremost at the place where the injury occurred.[184] That state's local law is always applied "unless, with respect to the particular issue, some other state has a more significant relationship . . . ."[185] This means that there is a presumption that the local law of the state where the injury occurred should be applied.[186]

Obviously, the application of section 146 to the facts in *Goetz* would lead to a determination to apply Iowa law to determine the issue of liability.[187] Less clear, however, is the outcome in a hypothetical scenario similar to *Goetz* where the only difference may be that the plaintiffs are Minnesota residents.[188] If those plaintiffs do not recover, then the state in which they

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(d) the place where the relationship, if any, between the parties is centered.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145(2).

180. The final sentence of RESTATEMENT (SECOND) § 145(2) indicates that each contact must be weighed as to its relative importance. For example, "the place of injury is of particular importance in the case of personal injuries and of injuries to tangible things." *Id.*, comment f.

181. *Id.* (comments recommend RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 146-47 be applied in cases involving personal injuries).

182. *Id.* Section 146 states:

In an action for a personal injury, the local law of the state where the injury occurred determines the rights and liabilities of the parties, unless, with respect to the particular issue, some other state has a more significant relationship under the principles stated in § 6 to the occurrence and the parties, in which event the local law of the other state will be applied.

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 146.

183. *See supra* notes 176-77 and accompanying text.

184. *See supra* note 182.

185. *Id.*

186. *See supra* note 182, comment c. Overcoming this presumption "will depend on whether some other state has a greater interest in the determination of the particular issue than the state where the injury occurred." *Id.*

187. *See supra* notes 144-46 and accompanying text.

188. This hypothetical, of course, would give the presumption of application to Minnesota law. *See supra* note 186 and accompanying text.

reside may have to foot the bill for their care and rehabilitation.[189] In this hypothetical, Minnesota clearly has a significant relationship which rivals Iowa's for the most significant relationship. This is a difficult situation. The decision resolving it should be made based on a case-by-case treatment, taking into account, among other things, the amount of the claim and the availability of alternative sources of payment of the claim.[190] Because the court failed to make any statement regarding the relative importance of any of these particular elements considered in *Goetz*, however, it is difficult to determine the outcome of future decisions. Consequently, litigants have very little with which to form expectations and to determine whether their claim or defense is worth pursuing.

In any event, the situation facing the court in *Goetz* would have been easily decided by applying the basic standard provided in section 146. This section was ignored despite the express instruction of section 145[191] and the policy recommended in earlier Iowa case law.[192] The court instead limited its analysis and simply made observations concerning the four criteria provided in section 145.[193]

The most incredible of these observations referred to "the place where the relationship, if any, between the parties is centered."[194] Under the *Goetz* facts, there probably did not exist a relationship in the sense intended by this criterion.[195] And even if there was such a relationship, it would probably have centered in Minnesota because that is where the transaction involving the automobile was executed.[196] The only other argument supporting the existence of such a relationship, and that this relationship was centered in Iowa, must hinge on the actions of the driver as an agent acting on behalf of a Minnesota principal.[197] But under absolutely no circumstances does section 145, for choice of law purposes, refer to the relationship that arises from the litigation following the event itself. For this to be the case, the most significant relationship theory would be a vehicle for creating contacts after the occurrence of the event which gave rise to the subject litigation. Nothing could be further from the fundamental intent of the Restatement (Sec-

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189. Perhaps this interest would be sufficient to shift the presumption. The Supreme Court of Iowa must, however, adopt RESTATEMENT (SECOND) § 146 and comment on its application to attain any certainty in this matter. *See supra* note 182.

190. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 146, comment e.

191. *See supra* notes 181-89 and accompanying text.

192. "[T]he better and more modern rule is that the determination as to the existence of actionable negligence is according to the law of the jurisdiction where the claimed tort occurred . . . ." Fabricius v. Horgen, 257 Iowa 268, 277, 132 N.W.2d 410, 416 (1965).

193. Goetz v. Wells Ford Mercury, Inc., 405 N.W.2d at 843.

194. RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 145(2)(d).

195. *Id.*, comment c.

196. *Id.*

197. *Id.*

ond).[198] And yet that is exactly what the court has declared by observing that the "trial will be here and any judgment will be entered and enforced here."[199] Obviously, such a reading of the Restatement (Second) only encourages those forum shopping practices which the most significant relationship theory was intended to eliminate. Moreover, and far more importantly, concerns for judicial economy and the enforcement of decisions are always inappropriate elements for consideration in the determination of the purely substantive issue of liability.[200]

Thus, the Supreme Court of Iowa's analysis in *Goetz v. Wells Ford Mercury, Inc.* contains two major errors. First, it failed to recognize that *Goetz* involved a false conflict. The court should have treated the matter as a transfer of property question instead of as a tort issue. Second, the court not only improperly chose Restatement (Second) of Conflict of Laws section 145—a tort section—but also applied it incorrectly. Had *Goetz* involved a tort issue, the court should have applied section 146, rather than section 145, because it was particularly designed by the drafters for personal injury cases.

V. Conclusion

The most significant relationship theory is a responsible approach for deciding conflict of laws questions. The Supreme Court of Iowa, however, has failed to properly employ this theory in its analysis. As *Harris* and *Goetz* demonstrate, determining which state truly has the most significant relationship is not always possible if the court is unwilling to commit itself to considering the issues in depth. In the future, the Supreme Court of Iowa must use greater care in deciding conflict of laws cases.

First, and most importantly, the court must isolate each issue presented in a case. Choice of law determinations can no longer involve an all or nothing approach. Nor can this determination be made in the overly simplistic characterization of law as being either substantive or procedural. To apply the most significant relationship theory properly, the analysis must begin with a separation of issues in a case and an examination of which states have a viable interest in the outcome of these issues.

Goetz provides an excellent example of a case that involves mixed issues of law. The event that initiated the litigation may be categorized as a tort. The Supreme Court of Iowa, however, allowed this circumstance to obscure the fact that the issue on appeal involved matters of property and contract. The result of this error is that the most significant relationship

198. Restatement (Second) of Conflict of Laws § 6. One of the fundamental concerns in choice of law analysis is predictability and uniformity of result. *Id.* at § 6(2)(f). "These are important values in all areas of the law. To the extent that they are attained in choice of law, forum shopping will be discouraged." *Id.*, comment i.

199. Goetz v. Wells Ford Mercury, Inc., 405 N.W.2d at 843.

200. *See supra* notes 61-90 & 134-41 and accompanying text.

theory was improperly used and the wrong law was applied.

Second, the Supreme Court of Iowa must state what interests it intends to forward by adopting the most significant relationship approach. By doing so, it will be possible to properly evaluate which portions of the Restatement (Second) of Conflict of Laws should be adopted. As demonstrated in analyzing the *Harris* decision, not all of the Restatement (Second) necessarily conforms with the most significant relationship theory. In fact, section 143 is inconsistent with this approach and, consequently, the court erred in the adoption of that section.

Third, and finally, the Supreme Court of Iowa must state what contacts it considers more significant than others and offer a rationale in support of these designations. This may be done expressly or through the adoption of additional sections of the Restatement (Second). Much confusion and ambiguity would be eliminated by deciding, for instance, that for tort cases involving personal injuries the primary contact to be considered is the place where the injury occurred. Holdings such as this would clarify the ambiguity of the law in this area, serve the interests of the states involved, and more adequately provide for the reasonable expectations of the litigants.