Toward Predictable Choice of Law in Missouri

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The following article poses a series of black-letter choice-of-law rules based on a synthesis of Missouri conflicts cases and statutes.

I. Introduction

Since the 1960s, Missouri choice of law has undergone a thorough, methodological transformation. For the most part, the transformation consisted of the rejection of the rule-based approach of the Restatement (First) of Conflict of Laws and the adoption of the ad-hoc approach of the Restatement (Second) of Conflict of Laws. Other states in the 8th Circuit and throughout the country underwent similar transitions with varying degrees of success. Attorneys in some states – Iowa and Nebraska, for example – now have the luxury of Second Restatement choice-of-law precedent which is principally consistent in terms of both rationale and result.

Unfortunately, Missouri lawyers are not so lucky. In fact, particularly in the areas of tort and contract law, scholars have criticized Missouri’s approach to choice of law for the last 20 years with respect to both the theory applied and the results obtained. To some extent, Missouri’s frustrating experience with what has been dubbed the choice-of-law revolution could be compared to New York’s experience, about which one author opined a practitioner had “more need of a ouija board … than a copy of Shepard’s citations” when faced with some tort-type conflicts.

Thankfully, over time consistent precedent patterns have begun to emerge, even if rationale has not been uniform. What follows is a list of nine tort and contract rules/sub-rules, along with two diagrams that demonstrate the application of the stated rules. Eleven other rules are also included, covering additional common choice-of-law problems in Missouri. A sample of cases and statutes that support the rules are discussed in the text and cited in footnotes.

1. Default Tort Rule: “In tort cases in which the parties or events are connected with more than one State, the law of the State in which the plaintiff is injured governs.”

Examples of this rule in Missouri case law abound with little variation. In perhaps its first application of the Second Restatement to what conflicts revolutionary Brainerd Currie identified as a “true conflict,” the Supreme Court of Missouri in State ex rel. Broglin v. Nangle applied a Texas wrongful-death statute to a case involving a Missouri resident’s death in the state of Texas. The defendant in Broglin was incorporated under the laws of Missouri but had its principal place of business in Texas. Although the result in the case remained consistent with the rejected First Restatement rule, the Court acknowledged the geographic diversity of the parties and events and suggested Missouri had little interest in applying its law, which allowed only the deceased’s spouse, and not the deceased’s children, to recover under its wrongful death statute.
This new approach would eventually spawn the tort exceptions set forth below, which would never have evolved from the strictly territorial analysis of the First Restatement. In this instance, however, no departure was necessary. Rather, the Court quoted the Missouri Court of Appeals judge who had directed “lower courts to continue to apply the substantive law at the place of [injury] … when they are faced with conflicts they cannot resolve.” A uniform pattern of this result has accumulated in Supreme Court of Missouri and Missouri Court of Appeals case law.

2. Tort Exception #1

If the laws of the connected States conflict as to an issue of loss distribution and each party contesting that issue is domiciled (or, in the case of a business entity, has its principal place of business) in the same State [at the time of the underlying events] and that State is not the injury State, the law of the State of the contesting parties’ common domicile (or principal place of business) governs as to the contested issue.

Tort exception #1 is a slightly drawn-out definition of Brainerd Currie’s “false conflict.” But the above formulation belies the rule’s simplicity. The facts in Kennedy v. Dixon, the Supreme Court of Missouri’s first conspicuous endorsement of the Second Restatement, demonstrate the operation and effect of this rule precisely. In Kennedy the defendant and his wife, who lived in St. Louis, planned to take their two nieces to New York. The plaintiff accompanied them on the trip. On their way back to Missouri, the travelers collided head-on with a tractor-trailer in Indiana. The plaintiff sustained injuries in the accident and sued the defendant, who was driving at the time of the wreck.

Indiana had a guest statute which prevented a free-riding passenger from foisting liability for car accident injuries onto a gratuitous driver; Missouri had no such statute. The Supreme Court of Missouri in Kennedy noted under First Restatement rules the plaintiff would unfairly encounter more barriers to recovery than an Indiana resident injured in an accident in Indiana who sought recovery in an Indiana court. This was so because the plaintiff faced application of Missouri’s procedural Dead Man’s Statute, which excluded much of her evidence, in addition to Indiana’s substantive guest statute. Because the plaintiff and defendant were both Missouri residents, the Court abandoned the inflexible lex loci delicti rule of the First Restatement based on its examination of the relevant contacts in the case and Missouri’s interest in having its laws govern loss distribution with regard to accidents involving only Missouri residents.

3. Tort Exception #2: “If the injury and the conduct causing the injury occur in different States, and the laws of those States differ as to an issue of conduct regulation, the law of the State in which the conduct occurred applies.”

Dunaway ex rel. Dunaway v. Fellous is the typical example of this exception. In Dunaway, an Illinois plaintiff sued a Missouri tavern and the Missouri-domiciled owners of the tavern’s premises for injuries sustained in an accident in Illinois involving the plaintiff and an intoxicated patron of the Missouri tavern. The trial court applied Missouri law, which prevented the plaintiff from imposing liability on the tavern for the acts of intoxicated patrons. Though the default tort rule would counsel application of Illinois’ dram shop law permitting recovery, the Court of Appeals in Dunaway affirmed the trial court’s decision to apply Missouri law,
reasoning (1) Missouri’s dram shop owners should be able to rely on the Missouri legislature’s expressly-granted protection, and (2) application of Illinois’ dram shop law would circumvent Missouri public policy.\(^{28}\)

Another noteworthy case under tort exception #2 is *D.L.C. v. Walsh*.\(^{29}\) In *Walsh*, a divorced Kansas father sued Missouri doctors for medical malpractice relating to the examination of his daughter and the reporting of their suspicion the father had sexually abused his daughter to Kansas authorities.\(^{30}\) Both Missouri and Kansas law required doctors suspecting child abuse to report to state authorities.\(^{31}\) In addition, both states provided statutory immunity to reporting doctors.\(^{32}\) However, unlike Kansas courts, Missouri courts had interpreted Missouri’s law as providing immunity only where Missouri doctors reported suspected child abuse to Missouri authorities, as opposed to authorities in other states.\(^{33}\)

The Court of Appeals in *Walsh* affirmed the trial court’s application of Kansas law to the defendant doctors’ report of suspected abuse to authorities in Kansas.\(^{34}\) Interestingly, the Court of Appeals determined the defendants’ conduct occurred in Missouri in the form of their examination and counseling of the child.\(^{35}\) This determination would have required application of Missouri law under tort exception #2. In fact, a rather sound argument exists that a principal portion of the relevant conduct occurred in the form of the doctors’ report of the suspected abuse in Kansas. Viewed in this manner, *Walsh* fits under the default tort rule and the court properly, though fortuitously, applied the law of the place where both the injury and the injury-causing conduct occurred.

### 4. Tort Exception #3:

In suits for subrogation or reimbursement for workers’ compensation payments, the workers’ compensation law under which the employer compensated the injured party governs.

In *Langston v. Hayden*,\(^{36}\) a dispute between an injured employee residing in Kansas and his Kansas-based employer arose when the employee was involved in an accident with a driver in Missouri.\(^{37}\) The Kansas employee reached a workers’ compensation claim settlement with his Kansas-based employer.\(^{38}\) The Kansas employer then brought a claim for subrogation against the other driver in Missouri.\(^{39}\) Kansas and Missouri law differed with regard to the respective rights of employers and injured employees in suits against third-party defendants following workers’ compensation claims.\(^{40}\) The employee moved to have the employer’s case against the driver dismissed under Missouri law.\(^{41}\)

Although the facts fit under the default tort rule, some conflicts cases from other jurisdictions and Second Restatement §185 counsel the workers’ compensation law under which an employer compensates an injured employee should govern an employer’s right to subrogation and reimbursement for workers’ compensation from a third-party defendant. Under this rule, the court in *Langston* applied Kansas law and allowed the employer’s suit to proceed over the injured employee’s protest despite the accident’s occurrence in Missouri.\(^{42}\) Choice-of-law rules with regard to workers’ compensation issues are far from a settled matter among states that have adopted the Second Restatement and tort exception #3 could well be subject to alterations in future circumstances.\(^{43}\)
Griggs v. Riley\textsuperscript{44} and Hicks v. Graves Truck Lines Inc.\textsuperscript{45} are notable unexplained aberrations from the above line of tort cases. In this author’s opinion they are unpersuasive and should be rejected in light of contrary authority.

5. Contract Rule #1

A choice-of-law clause not subject to an accepted contract defense (such as fraud or duress) is enforceable if it chooses [Missouri] law. A choice-of-law clause not subject to an accepted contract defense is enforceable if it chooses another State’s law unless either there is no reasonable basis for the choice or the choice violates a fundamental public policy of [Missouri].\textsuperscript{46} From the first post-

Kennedy case involving the issue, little controversy has emerged surrounding this rule. To illustrate, in American Institute of Marketing, Inc. v. Brooks\textsuperscript{47} the Missouri Court of Appeals rejected the defendant’s argument that Alabama law applied to a contract despite the parties’ express provision indicating Missouri law would generally govern.\textsuperscript{46} Other cases show choice-of-law provisions choosing the laws of states other than Missouri are also generally enforceable.\textsuperscript{49} In those circumstances, there should be very few instances where the parties’ choice is found to have no reasonable basis or is found to be contrary to the fundamental public policy of Missouri.

6. Contract Rule #2

Subject to the sub-rules below, the law applicable to a contract without an enforceable choice-of-law clause is that of the State in which the parties contemplated the principal performance of the contract would occur, unless each party contesting that issue is domiciled (or, in the case of a business entity, has its principal place of business) in the same State [at the time of the underlying events] and that State is not the performance State, in which case the law of the State of the contesting parties’ common domicile (or principal place of business) governs as to the contested issue.\textsuperscript{50} Not surprisingly, cases supporting this rule are rare, as parties routinely and wisely include enforceable choice-of-law provisions in modern-day contracts. Nevertheless, Dillard v. Shaughnessy, Fickel & Scott Architects, Inc.\textsuperscript{51} demonstrates the first part of the rule. In Dillard, a Kansas church hired a general contractor to construct a church and school in Leawood, Kansas.\textsuperscript{52} The general contractor signed a contract with its subcontractor in Missouri.\textsuperscript{53} Both the general contractor and subcontractor were incorporated in Missouri, but the subcontractor’s principal place of business was in Kansas.\textsuperscript{54} The general contractor’s headquarters was in Missouri.\textsuperscript{55} The contract subsequently generated a dispute in a Missouri court regarding whether the general contractor was entitled to indemnification for its defense against the claims of a subcontractor employee injured on the job in Kansas.\textsuperscript{56} Kansas and Missouri law differed as to whether an indemnification provision regarding “any liability, loss, cost or expenses” included attorney’s fees.\textsuperscript{57} Consistent with contract rule #2, the court determined Kansas law applied, as Kansas was the place where principal performance of the contract was to occur.\textsuperscript{58}
The second part of the rule, involving the parties’ common domicile in a state other than the performance state, requires extrapolation from existing cases to adequately support. Bonner v. Automobile Club Inter-Insurance Exchange is most applicable. In Bonner, two Missouri-resident plaintiffs were involved in an automobile accident in New Mexico. A relative of the plaintiffs was driving at the time of the accident and was covered by an insurance policy issued in one of the plaintiffs’ names. The insurer was headquartered in Missouri and the parties had executed the policy in Missouri. The policy included a provision which required the insurer to settle or defend any claim or suit seeking damages for bodily injury from any covered person. The policy also contained a provision which excluded liability coverage for the insured’s family (“household exclusion”).

The plaintiffs filed suit in New Mexico against the driver, claiming a recent Supreme Court of Missouri case had at least partially invalidated household exclusions as against Missouri public policy. The insurer repeatedly refused to defend the driver, disagreeing with the plaintiffs’ interpretation of the Missouri Supreme Court.

After the New Mexico court granted default judgment in favor of the plaintiffs, the plaintiffs sued the insurer in Missouri for bad faith and refusal to settle or defend. With respect to the duty to defend, the Missouri Court of Appeals applied Missouri law to the suit, although the alleged performance of the insurance contract was to occur in New Mexico in the form of the insurer’s defense against the plaintiffs’ claims. The court supported its decision with the following rationale:

The policy was executed in Missouri. [The plaintiffs] reside and [the defendant insurer] conducts business in Missouri. Although the underlying lawsuit was filed in New Mexico, all correspondence between the parties occurred within Missouri. [The driver] assigned her claim against [the defendant] in Missouri. Furthermore, this lawsuit was filed in Missouri. Therefore, Missouri law governs the duty to defend issue.

Although Bonner involved an insurance contract and its result in fact complies with the insurance contract sub-rule set forth below, the court analyzed the case under the Second Restatement’s general contract provisions rather than specialized Second Restatement § 193 applicable to insurance contracts, which the Missouri Court of Appeals had expressly adopted in Crown Center Redevelopment Corp. v. Occidental Fire & Casualty Co. nine years earlier. As such, Bonner provides considerable support for the proposition Missouri courts would follow the second part of the above rule.

Bonner aside, comment e. to § 188 of the Second Restatement also alludes to the importance of common domicile in contract choice-of-law problems: “The fact that one of the parties is domiciled or does business in a particular state assumes greater importance when combined with other contacts, such as … the place where the other party to the contract is domiciled or does business.” Furthermore, the rule is a logical extension of tort exception #1 involving common domicile in a state other than the injury state.
7. **Contract Sub-Rule #1:** “Unless subject to an enforceable choice-of-law clause,” the law of the state where the insured risk is principally located governs insurance contracts. However, the law that governs the master policy governs group life insurance contracts.

Cases under this first sub-rule have been especially prolific. Admittedly, cases will arise where it would be difficult to determine the state of the insured risk’s principal location. But in general, as the cited cases demonstrate, contract sub-rule #1’s application is uncomplicated. From the first cases in the 1980s to the most recent cases in the new century, Missouri courts have followed this Second Restatement rule.

8. **Contract Sub-Rule #2:** “Unless subject to an enforceable choice-of-law clause,” the law of the state where the parties are to principally perform services governs contracts for employment or personal services.

One of the first employment cases to emerge after Missouri’s embrace of Second Restatement principles was *National Starch and Chemical Corp. v. Newman.* The defendant employee began his employment as a traveling salesmen selling industrial adhesive materials with the plaintiff corporation in New York and then moved to Georgia, signing an employment agreement with a non-compete clause before commencing employment in either place. The plaintiff employer eventually promoted the defendant to a sales district centered in Kansas City, including territory in numerous surrounding states. Before his transfer to Kansas City, the defendant executed a third employment agreement containing a non-compete clause in Atlanta, Georgia; the plaintiff executed the same in New York City.

When the defendant eventually terminated his employment with the plaintiff and established a business in direct competition with the plaintiff’s in Kansas City, the plaintiff brought suit to enforce the terms of the third non-compete agreement the defendant had signed in Atlanta. The trial court applied the law of New York and Georgia and found the law of those states invalidated the non-compete clause in question. Missouri law would have upheld the terms of the non-compete covenant as reasonable under the circumstances.

Consistent with contract sub-rule #2, the Missouri Court of Appeals reversed and held Missouri law applicable to the contract; Missouri was the location where the contract was intended enforced and performed at the relevant time. Although the court rejected application of Second Restatement § 196 applicable to employment and personal service contracts because of the defendant’s service in numerous states, it nevertheless noted “most of [the defendant’s] solicitations of [the plaintiff’s] customers was [sic] in Missouri” in supporting its application of Missouri law.

A simpler case where the parties failed to include a choice-of-law clause in an employment contract was *Bigham v. McCall Service Stations, Inc.* The case involved a Kansas corporation with its principal place of business in Missouri and a plaintiff who was a Missouri resident and employee of the Kansas corporation. During the relevant times, the employee’s employment occurred exclusively in Missouri in the form of managing gasoline service stations. Kansas law imposed specific limitations on when an employer could unilaterally deduct amounts from an
employee’s wages. Despite the defendant’s Kansas incorporation and the plaintiff’s occasional employment in Kansas outside the relevant timeframe, the court found Missouri law applicable. Other cases confirm this rule.

9. Contract Sub-Rule #3:

Unless subject to an enforceable choice-of-law clause, [Missouri courts will uphold] a contract . against a defense of usury if the interest rate complies with [Missouri] law or complies with the law of a State with which the contract has a substantial connection and the interest rate is not greatly in excess of the maximum rate allowed under [Missouri] law.

This rule existed in Missouri long before the conflicts revolution of the 1960s and apparently has survived unscathed, though no modern cases exist.

10. Procedural Rule : Missouri law governs procedural matters, except with regard to statutes of limitation where the cause of action originates outside Missouri and the foreign limitation period is shorter than that applicable in Missouri.

Though limitation periods are generally considered rules of procedure for choice-of-law purposes, Missouri has a borrowing statute that operates to apply another state’s statute of limitation in certain circumstances. A borrowing statute’s usual purpose is to limit forum shopping or protect defendants from the effects of tolling statutes.

According to Missouri’s statute,

“[w]henever a cause of action has been fully barred by the laws of the state, territory or country in which it originated, said bar shall be a complete defense to any action thereon, brought in any of the courts of this state.” In other words, Missouri courts “borrow” an otherwise procedural foreign limitation period when the relevant cause of action originates outside of Missouri and the foreign limitation period would bar the action if brought in the foreign jurisdiction. Missouri courts have equated “originates” in § 516.190, RSMo 2000, with “accrues” and refer to § 516.100, RSMo 2000, to determine when an action “accrues.”

The cause of action shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, but when the damage resulting therefrom is sustained and is capable of ascertainment, and, if more than one item of damage, then the last item, so that all resulting damage may be recovered, and full and complete relief obtained.

Thus, “[a] cause of action accrues when and originates where damages are sustained and are capable of ascertainment.”

Additionally, § 516.300, RSMo 2000, under Supreme Court of Missouri interpretation, prevents interjection of a general statute of limitation
into a cause of action that has its own built-in statute of limitations. The creation of the cause of action with a built-in statute of limitations essentially makes it impossible to use the cause of action without using the limitation period because no cause of action exists beyond the expiration of the statute of limitations.\(^\text{103}\)

Thus, under § 516.300, Missouri’s borrowing statute does not apply to any action where the applicable substantive law contains its own built-in limitation period.\(^\text{104}\)

11. **Real Property Rule**: The law of the state where real property is located governs rights and interests in the real property except with regard to instances governed by a provision of the Missouri Uniform Trust Code: § 456.4-403, RSMo Supp. 2007.\(^\text{105}\)

12. **Perfection of Security Interests Rule**: “...Sections 9-301 through 9-307 of the Uniform Commercial Code” govern “[q]uestions of perfection, non-perfection, and the priority of security interests in personal property and intangibles.”\(^\text{106}\)

13. **Succession Rule**: The law of the state where the relevant real property is located governs “[t]estate or intestate succession of interests in real property…. [T]he law of the decedent’s last domicile … [governs] [t]estate or intestate succession of interests in personal property.”\(^\text{107}\)

14. **Will Validity Rule**: A written will is valid if executed in compliance with:

   (1) The laws of [Missouri];

   (2) The laws, as of the time of execution, of the [State] where the will is executed; or

   (3) The laws of the [State] where, at the time of execution or the time of the testator’s death, the testator is domiciled, has a place of abode or is a national.\(^\text{108}\)

15. **Inter Vivos Trust Rule**:

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

   (1) the settlor was domiciled, had a place of abode, or was a national;

   (2) a trustee was domiciled or had a place of business; or

   (3) any trust property was located.\(^\text{109}\)

This rule is intended to apply to inter vivos trusts relating to interests in both real and personal property and demonstrates the above-referenced trust exception to the real property rule.\(^\text{110}\)

Generally, the law designated in the trust instrument or, in the absence of a choice-of-law
provision, the law with the most significant relationship to the issue governs the meaning and effect of trust terms.\textsuperscript{111}

\textit{16. Marriage Validity Rule:} “Marriages that are valid in the place of celebration are valid in [Missouri]” even if the parties could not have contracted the marriage under Missouri law.\textsuperscript{112} “Marriage Exception: Same-sex marriages are of no effect in [Missouri] even if lawful in the place of celebration.”\textsuperscript{113} In rare other circumstances, [Missouri courts may deny effect to] an out-of-state marriage that was valid where celebrated . . . if it violates the public policy of [Missouri].”\textsuperscript{114} For example, Missouri will not recognize a common-law marriage between Missouri residents when the marriage is contracted on a sojourn to a common-law marriage state.\textsuperscript{115}

\textit{17. Divorce Rule:} “[Missouri] law applies to govern an action in a [Missouri] court for the dissolution of a marriage. Jurisdiction in a divorce action requires that [Missouri] be the genuine domicile of at least one of the parties.”\textsuperscript{116}

“The traditional and accepted rule is that a court seized of dissolution of marriage litigation invariably applies the law of the forum to resolve the issues and incidents of the case.”\textsuperscript{117}

\textit{18. Marital Property Rule} : The law of the state where the relevant real property is located governs spousal rights in real property.\textsuperscript{118} “The law of the State of the marital domicile at the time of acquisition” determines “[s]pousal rights in personal property and intangibles.”\textsuperscript{119}

\textit{19. Family Support Rule} : The law of the state “that is the domicile of the person receiving support determines “‘[t]he obligation and the measure, if any, of . . . family support.’”\textsuperscript{120}

\textit{20. Child Custody Rule} : A Missouri court applies Missouri law to custody disputes if the Missouri court has jurisdiction under the Uniform Child Custody Jurisdiction Act (“UCCJA”).\textsuperscript{121}

\section*{II. Conclusion}

Despite scholars’ criticism of Missouri’s approach to tort and contract choice-of-law issues, the above rules show Missouri courts have, for the most part, reached results that approximate the sort of outcomes those who advocated rejection of the First Restatement intended: results tending toward flexibility, simplicity, multistate harmony, and predictability. Some of the cases cited provide more direct support for the rules than others, but their cumulative effect builds toward a steady pattern. The additional rules, though not beset by the same level of complexity or criticism, similarly augment a lawyer’s assortment of litigation tools and strategies. For now, these rules can serve as a nutshell guide to Missouri choice-of-law precedent and statutes.

\url{Fig. 1 - Tort Claims Involving Contacts with Multiple States} (http://www.mobar.org/data/journal/2009/janfeb/chart1.pdf)

\url{Fig. 2 - Contract Claims Involving Contacts with Multiple States} (http://www.mobar.org/data/journal/2009/janfeb/chart2.pdf)
Tort Claims Involving Contacts with Multiple States

Loss distribution issue?

No

Claim for reimbursement after workers compensation claim?

Yes

Law under which employee was compensated governs

No

Injury and conduct causing the injury occurred in different States?

Yes

Law of place of injury governs

No

Conduct regulation issue?

No

Law of place of injury governs

Yes

Law of place of conduct causing the injury governs

Yes

Common domicile or principal place of business in State other than injury State?

No

Law of place of injury governs

Yes

Law of common domicile or principal place of business governs
Footnotes

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3 Where used in the following rules and text, “state” generally includes U.S. states, foreign countries, and jurisdictional subdivisions of foreign countries. This article examines Missouri state court cases and fits them into modified rules primarily harvested from the work of conflicts expert Patrick J. Borchers. The author obtained permission with regard to modification and use of the rules Borchers originally formulated.


5 510 S.W.2d 699 (Mo. banc 1974).


7 Broglin, 510 S.W.2d at 702.

8 Id. at 701-04.

9 Id. at 704.

11 Issues relating to loss distribution usually include “conflicts between an ordinary or ‘gross’ negligence standard, the applicability of charitable immunity, and the exclusivity of the workers’ compensation remedy in a products liability case.” Patrick J. Borchers, Conflict of Laws, 49 Syracuse L. Rev. 333, 347 (1999). On the other hand, “[c]onduct regulating rules are those rules – such as speed limits, detailed safety standards, and the like – designed to affect primary conduct.” Id.

12 Borchers, note 4, at 6-7. “For purposes of [tort] Exception #1, ‘the same State’ includes States that are distinct but have identical laws on the issue being contested.” Id.

13 439 S.W.2d 173 (Mo. banc 1969).

14 Id. at 175.

15 Id.

16 Id. The plaintiff was a teacher who lived in the same apartment building as the defendant and his wife. Id.

17 Id.

18 Id.

19 Id.

20 Id. at 181-82

21 Id., “§ 491.010, RSMo 1959, V.A.M.S., Missouri’s so-called Dead Man’s Statute.”

22 Id. at 184-85.

23 Borchers, note 4, at 7.

24 842 S.W.2d 166 (Mo. App. E.D. 1992).

25 Id. at 167-68.

26 Id. at 167-68.

27 Id. at 168.

28 Id. at 169.

29 908 S.W.2d 791 (Mo. App. W.D. 1995).
30 Id. at 793-94.
31 Id. at 793.
32 Id. at 795-96.
33 Id. at 794.
34 Id. at 801.
35 Id. at 797.
36 886 S.W.2d 82 (Mo. App. W.D. 1994).
37 Id. at 83.
38 Id.
39 Id. at 84.
40 Id. at 87. Under Kansas workers’ compensation law, if the employee did not bring suit against
the third-party tortfeasor within one year of the injury date, the law deemed the employee’s claim
automatically assigned to the employer. Id. at 84.
41 Id. at 84.
42 Id. at 86.
43 See, e.g., Reid v. Hansen, 440 N.W.2d 598, 601-03 (Iowa 1989).
44 489 S.W.2d 469 (Mo. App. E.D. 1972)
45 707 S.W.2d 439 (Mo. App. W.D. 1986).
46 Borchers, note 4, at 13.
47 469 S.W. 2d 932 (Mo. App. E.D. 1971).
48 Id. at 936.
50 Borchers, note 4, at 13-14. “For purposes of Contract Rule # 2, ‘the same State’ includes
States that are distinct but have identical laws on the issue being contested.” Id.
51 943 S.W.2d 711 (Mo. App. W.D. 1997).

52 Id. at 713.

53 Id. at 716-17.

54 Id. at 717.

55 Id.

56 Id.

57 Id. at 713.

58 Id. at 717-19.

59 899 S.W.2d 925 (Mo. App. E.D. 1995).

60 Id. at 926.

61 Id.

62 Id. at 929. Though the case reveals only that the insurer did business in Missouri, the insurer in fact has its principal place of business in Missouri. AAA, Offices, http://www.ouraaa.com/aaainfo/offices/missouri/index.html (last visited Feb. 11, 2008).

63 Id. at 926.

64 Id. at 926-27.

65 Id. at 927-28.

66 Id. at 927.

67 Id. at 927-28. The driver had assigned her claims for bad faith and breach of the duty to defend to the plaintiffs. Id. at 929.

68 Id. at 929.

69 Id.

70 716 S.W.2d 348, 357-59 (Mo. App. W.D. 1986).

71 Bonner, 899 S.W.2d at 929.
72 Restatement (Second) of Conflict of Laws § 188 cmt. e. (1971).

73 Borchers, note 4, at 15; Restatement (Second) of Conflict of Laws § 193 (1971). *Byrn v. Am. Universal Ins. Co.*, 548 S.W.2d 186 (Mo. App. E.D. 1977) is one notable departure from this rule. However, as the dissent in *Byrn* suggested, the Court of Appeals error appeared to have been mischaracterizing the case as arising in tort rather than contract. *Byrn*, 548 S.W.2d at 191-94.

74 *Miller v. Home Ins. Co.*, 605 S.W.2d 778, 780 (Mo. banc 1980); Restatement (Second) of Conflict of Laws § 192, cmt. h (1971).


76 Borchers, note 4, at 16.

77 577 S.W.2d 99 (Mo. App. W.D. 1978).

78 Id. at 101.

79 Id.

80 Id.

81 Id.

82 Id. at 100-02.

83 Id. at 102.

84 Id. at 104-05.

85 Id. at 104.

86 Id. at 103.

87 Id. at 104.

88 637 S.W.2d 227 (Mo. App. W.D. 1982).

89 Id. at 228.

90 Id. at 231.
91 Id. at 229.

92 Id. at 232.


94 Borchers, note 4, at 17.


97 Section 516.190, RSMo 2000.


99 Section 516.190, RSMo. 2000.

100 Natalini v. Little, 185 S.W.3d 239, 243-44 (Mo. App. S.D. 2006) (citation omitted).

101 Section 516.100, RSMo 2000. In Kansas City Star Co. v. Gunn, 627 S.W.2d 332, 334 (Mo. App. W.D. 1982), the Missouri Court of Appeals stated its determinations of which substantive law applied and where the cause of action accrued for purposes of the statute of limitation were synonymous or interchangeable. On the contrary, under the rules stated in Gunn and Natalini, it would be possible for a cause of action to accrue in one state for purposes of the statute of limitation and be governed by the law of a second state on the merits, at least where the limitation period is not built-in to the substantive law that applies.

102 Natalini, 185 S.W.3d at 243.


104 Id. at 871.

105 Borchers, note 4, at 21; Thurston v. Rosenfield, 42 Mo. 474 (Mo. 1868).

107 Borchers, note 4, at 22; Comerford v. Coulter, 82 Mo. App. 362 (Mo. App. W.D. 1900).

108 Section 474.360, RSMo 2000.


115 Hesington, 460 S.W.2d at 827.

116 Borchers, note 4, at 24; see Hays v. Hays, 24 S.W.2d 997, 997-1001 (Mo. 1930); In re Marriage of Berry, 155 S.W.3d 838, 840-41 (Mo. App. S.D. 2005); § 452.305, RSMo 2000.

117 John P. MaCahey et al., Valuation & Distribution of Marital Property § 10.02 (Matthew-Bender 1986).

118 Borchers, note 4, at 25; In re Marriage of Breen, 560 S.W.2d 358, 361 (Mo. App. W.D. 1977); Rule 54.06(b).


121 Borchers, note 4, at 26; § 452.450, RSMo 2000. Similar to analysis under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), the determination that the court in question has jurisdiction over the action results in default application of forum law. Id.; See Borchers, note 4, at 27 and Robin Jo Frank, Note, American and International Responses to